



## 2021 Annual Dairy Legal Update

Below is a listing of legal and regulatory developments impacting the dairy industry during the 2021 calendar year.

### 1. Pennsylvania Milk Marketing Board Actions

#### **Pennsylvania Government-Supplied Farm Bulk Tank Calibration Services Phased Out**

On January 27, 2021, the Pennsylvania Milk Marketing Board (PMMB) [issued](#) Bulletin No. 1591 declaring that for cooperative members it will phase out farm bulk tank calibration services beginning April 1, 2021, and it will no longer perform such services by May 1, 2021. The PMMB will continue to provide this service for independent producers until the Board permanently ends the farm bulk tank calibration program on December 31, 2021.

#### **Pennsylvania Milk Marketing Board Released Final Regulation on Cooperative Over-Order Premium Disclosure**

On March 2, 2021, the Pennsylvania Milk Marketing Board (PMMB) delivered to the Pennsylvania Independent Regulatory Review Commission (IRRC) and the General Assembly Agriculture Committees the [final form regulation package](#) for [Regulation #47-20](#), "Transactions Between Dealers and Producers; Payment," originally published as proposed in the Pennsylvania Bulletin on September 21, 2019 ([49 Pa.B. 5455](#)). The regulation informally titled by the PMMB as the "Cooperative Over-Order Premium Line Item" initiative, would amend 7 Pa. Code § 143.15 to require cooperatives to furnish a line item on members' monthly statements that identifies the over-order premium paid through a prescribed calculation that is consistent with the financial structure of a dairy cooperative. The IRRC considered the regulation during its April 15, 2021, meeting.

#### **Milk Donations or Discounted Sales Did Not Violate Pennsylvania Mandatory Minimum Wholesale Prices**

On May 12, 2021, the Pennsylvania Milk Marketing Board (PMMB) [issued](#) Bulletin No. 1594, titled "Policy Regarding Charitable Donations and Charitable Sales of Price-Controlled Packaged Products," which permanently expressed the PMMB policy that donations or discounted charitable sales of milk below Pennsylvania's mandatory minimum prices was permissible if made to 501(c)(3) corporations and for bona fide charitable purposes. This did not apply to sales to the USDA pursuant to its various food purchasing programs, including for The Emergency Food Assistance Program (TEFAP). The new \$400 million USDA Dairy Donation Program was not specifically addressed. PMMB reporting and recordkeeping parameters were also specified. Bulletin 1594 became effective upon the expiration of Pennsylvania Governor Tom Wolf's COVID-19 Proclamation of Disaster Emergency and replaced April 10, 2020's [Bulletin No. 1573](#), which temporarily accomplished the same outcome.



## **Pennsylvania's Dairy Producer Termination Notice Requirement Increased to Ninety Days**

On May 12, 2021, the Pennsylvania Milk Marketing Board (PMMB) submitted to the Independent Regulatory Review Commission (IRRC) for approval [final form regulation #47-18](#), titled "Transactions between dealers and producers; Termination of dealer-producer contract." It amended Pa. Code § 143.31 to increase from twenty-eight (28) to ninety (90) the number of days' notice required to be provided to a dairy producer by a milk dealer when terminating an agreement or course of dealing to purchase that producer's raw milk. The final form regulation provided for exceptions for financial distress, insolvency, insufficient customer sales and catastrophic events, all of which are defined very specifically in the regulation. Dealers may negotiate an agreement containing a lower (or higher) number of days' notice. IRCC considered the final form regulation for approval at its June 17, 2021, meeting.

## **Pennsylvania Milk Marketing Board Entered Consent Order Against Upstate Niagara Cooperative for TEFAP Fluid Milk Sales Below Pennsylvania Minimum Wholesale Price**

On August 11, 2021, the Pennsylvania Milk Marketing Board (PMMB) [voted](#) to accept a [proposed consent order](#) with Upstate Niagara Cooperative (Upstate) acknowledging Upstate's below Pennsylvania minimum price sales from its northern Pennsylvania plant, formerly Schneider Valley Farms, in violation of Pennsylvania's Milk Marketing Law and consenting to Upstate's citation settlement payment of \$36,240. In May 2021, Upstate was awarded USDA contracts to supply fluid milk for The Emergency Food Assistance Program (TEFAP) based on bids below PMMB minimum prices. According to PMMB's [Sunshine Meeting minutes](#), PMMB will continue monitoring bid solicitations for compliance. On August 23, 2021, PMMB Secretary Carol Hardbarger [published](#) an account of the incident and other related facts and comments in *Lancaster Farming*.

## **Pennsylvania Milk Marketing Board Issued Bulletin Clarifying Enforcement of Minimum Prices in USDA Milk Purchase**

On September 8, 2021, the Pennsylvania Milk Marketing Board (PMMB) issued [Bulletin 1597](#), titled "Wholesale Sales to the United States Department of Agriculture, Minimum Price Enforcement Policy." This bulletin was issued in response to a recent incident where a Pennsylvania sale to the U.S. Department of Agriculture (USDA) for The Emergency Food Assistance Program (TEFAP) was made by a Pennsylvania-licensed dealer at lower than PMMB-established minimum prices.

## **Pennsylvania Milk Marketing Board Issued \$1.00 Over-Order Premium**

On September 22, 2021, the Pennsylvania Milk Marketing Board (PMMB) issued [Official General Order No. A-1012](#), continuing the current \$1.00 per hundredweight over-order premium (OOP) for all Class I milk produced, processed, and sold in Pennsylvania for the next six months, effective October 1, 2021, through March 31, 2022.

## **2. USDA-Related Actions**

### **The U.S. Department of Agriculture Announced New Pandemic Assistance for Producers Initiative**

On March 24, 2021, the U.S. Department of Agriculture (USDA) [announced](#) its new \$6 billion financial assistance initiative, [USDA Pandemic Assistance for Producers](#). Combining existing programs with new spending, the initiative aims to resolve disparities in previous assistance distribution through a four-part agenda: 1) \$6 billion in Consolidated Appropriations Act and unspent coronavirus funds for new program spending, including assistance for the [Dairy Donation Program](#), biofuels, specialty crops, and farmworker personal protective equipment; 2) \$500 million in additional existing program spending, including the Specialty Crop Block Grant Program and the Local Agricultural Marketing Program; 3) continuation of the [Coronavirus Food Assistance Program](#) (CFAP) payments, including



rate increases and automatic payments for cattle producers, price trigger crop producers, and flat-rate crop producers with eligible CFAP 1 or CFAP 2 applications; and 4) advancing the CFAP 2 program through \$2.5 million in outreach and promotional spending and reopening the CFAP 2 application window for at least 60 days, beginning April 5, 2021. According to the announcement, for USDA initiative efforts that require rulemaking, the agency began the rulemaking process during the spring 2021.

### **Farmer to Families Food Box Program Ended; Fresh Produce Box Purchases and Dairy Donation Program Planned**

According to [statements](#) made by Secretary Vilsack and posted to the USDA website on April 14, 2021, the Farmer to Families Food Box Program terminated at the close of April 2021 when the current funded vendor contracts ended. On April 9, 2021, USDA [released](#) a pre-solicitation announcement informing potential vendors that The Emergency Food Assistance Program (TEFAP) would be funding purchases of fruits and vegetables for boxes to be distributed through TEFAP until September 30, 2021, and containing details on vendor qualifications and participation in a solicitation once it is issued. In addition, USDA [published](#) a notice that it would implement a new \$400 million "Dairy Donation Program" (DDP), authorized in the Consolidation Appropriation Act of 2021, to facilitate timely donation of dairy products to the charitable food system. The minimum requirements, contained in the announcement, included information on donor reimbursement which can be retroactive under the Act. Regarding reimbursement, USDA stated that "dairy organizations can plan on a rate of reimbursement equal to the minimum classified value of the milk when the donated product was processed."

### **The U.S. Department of Agriculture (USDA) Reopened Comment Period on Origin of Livestock Rule Under National Organic Program**

On May 12, 2021, the U.S. Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) [posted](#) in the Federal Register a proposed rule, titled "National Organic Program; Origin of Livestock; Reopening of Comment Period" (86 FR 25961). The posting reopened the comment period for the April 2015 proposed rule requiring that organic milk products be derived from animals under "continuous organic management from the last third of gestation onward." Newly certified organic dairy producers, however, may transition livestock into organic production if the animal has been "under continuous organic management" for at least 12 months. According to the proposed rule, once an animal has been transitioned, it is treated as one that was "under continuous organic management" from the last third of gestation onward, and the rule does not distinguish between the two. AMS sought comments regarding the prohibition of transitioned animals in organic operations and whether the term "operation" or "producer" should be used to describe the regulated entity. The 60-day comment period closed on July 12, 2021.

### **The U.S. Department of Agriculture Announced \$2.6 Billion in Additional Funding for Pandemic Assistance for Producers**

On June 15, 2021, the U.S. Department of Agriculture (USDA) [announced](#) \$2.6 billion in additional funding under the agency's [Pandemic Assistance for Producers](#) programs. According to the announcement, the agency has allocated funds as follows: small timber businesses - \$200 million; biofuels producers - \$700 million; Dairy Donation Program - \$400 million; Supplemental Dairy Margin Coverage - \$580 million; and organic cost share assistance - \$20 million. Additionally, USDA has allocated \$700 million for Pandemic Response and Safety Grants, which will reimburse producers for worker protection efforts and purchases of Personal Protective Equipment (PPE).



## Small Milk Distributing Plants Petitioned to be FMMO-Exempt

On July 19, 2021, a group of small milk distributing plants filed a [petition](#) with USDA to exempt all Class I handlers with monthly route distribution sales below three (3) million pounds per month from pooling obligations under Federal Milk Marketing Orders. Current FMMO regulations require Class I distributing plants with monthly route distribution sales above 150,000 pounds to participate in FMMO pools. A similar exemption was approved in 2010 for producer-handlers with sales of under three (3) million pounds per month. The justification stated is the negative impact on small Class I handlers of recent market conditions (negative Producer Price Differentials) in the form of increased pool obligations and constrained supply availability. No action on the petition was announced by USDA.

## The U.S. Department of Agriculture Announced Pandemic Market Volatility Assistance Program for Dairy Producers

On August 19, 2021, the U.S. Department of Agriculture [announced](#) the [Pandemic Market Volatility Assistance Program](#). The program was to initially distribute \$350 million in dairy producer lost revenue reimbursement suffered in July-December 2020 due to: (a) dairy market and pricing abnormalities; (b) the unintended consequence of large negative Class I producer price differential calculations from a change in price formula made via the 2018 Farm Bill; and (c) precipitous Class I and Class II federal pool revenue shortfalls under existing Federal Milk Marketing Orders (FMMO). USDA stated that the program in its entirety will ultimately provide over \$2 billion for dairy industry pandemic relief and will be administered under the umbrella of USDA-Agricultural Marketing Service's [Dairy Program](#). The initial eligible reimbursement will be for 80 percent of the revenue difference per month (based on annual production) on volume up to 5 million pounds. The payment rate will vary by FMMO based on the actual losses on pooled milk. USDA will make payments through agreements with independent handlers and cooperatives, who will be reimbursed for administrative costs and will distribute the monies on the same basis as July-December 2020 producer payments were made. USDA will communicate with eligible handlers and cooperatives on participation terms and will distribute payments within 60 days of entering into agreement. Producer payments must be made within 30 days thereafter.

## The U.S. Department of Agriculture (USDA) Announced \$400 Million Dairy Donation Program Details

On September 1, 2021, the U.S. Department of Agriculture (USDA) Agricultural Marketing Service (AMS) [published](#) in the Federal Register a final interim rule providing details of the \$400 million [Dairy Donation Program](#) (DDP). Under the program, dairy cooperatives and processors who partner with the charitable food system for milk and dairy product donations or discounting may apply for processing, transportation, and other cost reimbursements. The rule became effective on September 2, 2021, and it will expire within two years unless extended.

## The U.S. Department of Agriculture (USDA) Announced 2022 Dairy Margin Coverage Program Enrollment

On December 8, 2021, the U.S. Department of Agriculture's (USDA) Farm Service Agency (FSA) [announced](#) the 2022 enrollment period opening for the [Dairy Margin Coverage \(DMC\) Program](#), which pays dairy producers when the difference between the all-milk price and the average feed price drops below a [producer-selected dollar amount](#). According to the announcement, USDA has updated the program's feed cost calculation and will use 100% premium alfalfa hay instead of 50%. Additionally, operations with less than five (5) million pounds of past production may enroll in Supplemental DMC for 2022 and may also submit their 2019 data for retroactive payments if they were previously unable to enroll in the program. The signup period for both DMC and Supplemental DMC was open from December 13, 2021, until February 18, 2022.



### 3. Dairy Antitrust Issues

#### Dairy Farmers of America Settled with Maryland and Virginia Dairy Cooperative, Food Lion

On February 24, 2021, the U.S. District Court for the Middle District of North Carolina filed an entry of settlement in a suit against Dairy Farmers of America (DFA), which sought to compel the company to divest one of three North Carolina Dean Foods processing facilities it obtained in its April 2020 bankruptcy sale acquisition of Dean Foods. *Food Lion, LLC v. Dairy Farmers of America, Inc.*, No. 1:20-cv-442. The complaint [filed](#) by Food Lion, LLC and Maryland and Virginia Milk Producers Cooperative Association (MDVA) in May 2020, claimed that the sale produced anticompetitive effects, because it essentially allowed DFA regional control over both raw milk supply markets and the markets for processed and packaged dairy products. According to a [mediator's report](#) dated March 3, 2021, complete settlement of the case was reached at mediation conferences held February 22 and 23, 2021, and the parties will file a stipulation of dismissal with prejudice, although no deadline is listed for the filing. While the report states that a settlement agreement is in preparation, no details of the settlement have been released.

#### Dairy Farmers of America (DFA) Sold Two Dairy Plants to Complete Antitrust Stipulation for Dean Foods Purchase

As of March 24, 2021, Dairy Farmers of America (DFA) has finalized the sale of two former Dean Foods Dairy processing plants (located in De Pere, Wisconsin and Harvard, Illinois) to a partnership between New Dairy Opco and Select Milk Producers, according to an [announcement](#) by investment banking and bankruptcy restructuring firm Capstone Headwaters, who represented the buyers. New Dairy Opco is the entity which purchased the majority of Borden Dairy Company's assets out of its bankruptcy in July 2020. The sale was part of an October 2020 [stipulated judgment](#) entered in the U.S. District Court for the Northern District of Illinois ordering the [divestiture](#) as the conclusion of the U.S. Department of Justice's (DOJ) Antitrust Division [investigation](#) into the DFA purchase of Dean Foods assets. *United States of America v. Dairy Farmers of America, Inc.*, No. 1:20-cv-2658. On December 17, 2020, the stipulated judgment was [amended](#) to drop a former Dean Foods dairy plant in Franklin, Massachusetts (and ancillary facilities) from the original list of three dairy plants acquired by DFA subject to the divestiture order. The purchase price for the two sold plants was undisclosed.

#### Antitrust Review Completed of Kraft Heinz Cheese Lines

On November 10, 2021, the U.S. Department of Justice's (DOJ) Antitrust Division [announced](#) the completion of its review of the French dairy company B.S.A. S.A.'s (Lactalis) acquisition of the Kraft Heinz Company's U.S. natural cheese business and [filed](#) a civil antitrust lawsuit in the U.S. District Court for the District of Columbia. The suit demands, via the proposed pre-negotiated settlement agreement, the divestiture of Kraft Heinz's Athenos feta cheese brand and its Polly-O ricotta cheese brand to other buyers in order for Lactalis to achieve U.S. antitrust law compliance for the purchase. Lactalis presently owns the President feta and Galbani ricotta cheese brands. Under the settlement, Athenos will be sold to Emmi Roth USA Inc. and Polly-O to BelGioioso Cheese, Inc., or to approved alternative buyers. The proposed settlement was [published](#) in the Federal Register (86 FR 73319) on December 27, 2021, with a 60-day public comment period, after which the D.C. Circuit Court can act.

### 4. Other U.S. National Dairy Issues

#### Dean Foods Required to Pay \$29 Million To USDA for Unpaid Federal Milk Marketing Order and Federal Check-Off Program Debts

On January 15, 2021, the U.S. Bankruptcy Court for the Southern District of Texas [entered](#) a Stipulation and Agreed Order agreed to by Southern Foods Group, LLC, and its various affiliated companies in Chapter 11 bankruptcy (Dean) and the United States Department of Justice requiring Dean to pay, within thirty (30) days, the sum of \$29,082,182, which represents 90% of unpaid





amounts owed for milk marketed in April and May of 2020, to the U.S. Department of Agriculture (USDA) for Federal Milk Marketing Order (FMMO) obligations, and marketing order program obligations to the National Dairy Promotion Board and the National Fluid Milk Processor Promotion Board. The stipulation was subsequently [announced](#) by USDA Agricultural Marketing Service (AMS) on January 19, 2021.

### **Environmental Groups Petitioned EPA to Regulate Methane Emissions from Animal Operations**

On April 6, 2021, twenty-five (25) environmental and public interest groups, including Center for Food Safety and Food and Water Watch, [announced](#) their filing of a [petition](#) with the U.S. Environmental Protection Agency (EPA), requesting that the agency initiate rulemaking under Section 111 of the Clean Air Act (CAA) ([42 U.S. Code § 7411](#)) to regulate methane emissions from dairy farms with 500 or more cows and swine operations with 1,000 or more hogs. The petition calls on the agency to identify operations that utilize liquefied manure management systems as stationary sources of methane emissions that cause or contribute significantly to air pollution that endangers health and welfare and identify such dairy and hog operations as source categories subject to regulation under CAA 111(b)(1)(A). While the petition concedes that industrial dairy and hog operations do not directly emit ground-level ozone, an acknowledged [criteria air pollutant](#), it states that the facilities do emit nitrogen oxides and volatile organic compounds, “which are precursors to [ground-level] ozone formation.” The petition also states that industrial animal operations emit particulate matter both directly as dust and indirectly through emissions of ammonia, nitrogen oxides, volatile organic compounds, and sulfur dioxide—all precursors to particulate matter formation. Additionally, the petition requests that, within one year of such decision, EPA publish regulations under CAA 111(b)(1)(B) to reduce methane from new and existing operations and issue guidelines for standards of performance development under CAA 111(d)(1). The petition advocates for the “widespread application of sustainable, pasture-based practices” and recommends pasture-based farm emissions as the standard for achievable emission reductions through regulatory action.

### **Multiple Federal Milk Marketing Order Reform Proposals Announced; Producer Groups to File Emergency USDA Hearing Petitions**

On April 23, 2021, the National Milk Producers Federation (NMPF) [announced](#) its intention to file a petition with USDA for an emergency hearing on a request to alter the method of calculating the final monthly Class I producer price (called the “Class I Mover”). NMPF’s petition would seek to keep the current calculation as the “floor” but allow modifications every two years based on market conditions over the prior 24 months that may be unexpectedly driving the Class I producer price below the Class III price as has occurred over the last nine months. On April 27, 2021, a coalition of producer groups from Wisconsin, Minnesota, and Nebraska as well as Edge Dairy Farmer Cooperative announced their intention to file an emergency petition to pursue their FMMO reform proposal, called [Class III Plus](#). This proposal would eliminate Class I advanced pricing and USDA would calculate the Class I skim milk price by starting with the Class III skim milk and adding a Class I skim milk price adjuster to be established each September for the forthcoming calendar year.

### **Suit Challenged Dietary Guidelines**

On April 28, 2021, a group of medical doctors, Physicians Committee for Responsible Medicine, and others, [filed](#) a complaint in the U.S. District Court for the Northern District of California against the U.S. Department of Agriculture (USDA) and U.S. Department of Health and Human Services, alleging that the 2020 Dietary Guidelines were not based upon current scientific and medical knowledge, including in recommending, and not disclosing “the ill effects of,” eating meat and dairy, and that USDA has a conflict of interest in serving as the administrative lead for the Dietary Guidelines while also having a statutory duty to develop and expand markets and uses for all agricultural products, including dairy and meat. *Physicians Committee for Responsible Medicine, et al. v. Vilsack, et al.*, No. 21-CV-03088.



## Federal Court Denied Challenge to Butter Pasteurization Regulation

On May 24, 2021, the U.S. District Court for the District of Columbia [issued](#) an opinion granting summary judgment in favor of the U.S. Food and Drug Administration (FDA) in a challenge to the agency's authority to require the pasteurization of butter in interstate commerce under [21 CFR 1240.61, Mandatory pasteurization for all milk and milk products in final package form intended for direct human consumption](#). *McAfee v. U.S. Food and Drug Administration*, No. 1:19-cv-3161. The case was brought by the Farm-to-Consumer Legal Defense Fund and Mark McAfee, the owner of California-based Organic Pastures Dairy, which sells raw milk nationally labeled as pet food under its brand "Raw Farm." The plaintiffs claimed that the FDA lacked statutory authority to mandate butter pasteurization and requested that the agency remove butter from the definition of milk products under 21 CFR 1240.3 but the court found that the pasteurization rule was authorized by FDA's broad authority under the Public Health Service Act (PHSA) to protect the public against the spread of communicable disease and in deference to the agency accepted FDA's rationale that only pasteurization destroys disease-causing pathogens.

## Federal Court Ruled Plant-Based Company May Use "Butter," Products Not Misleading

On August 10, 2021, the U.S. District Court for the Northern District of California [issued](#) an order granting summary judgment in favor of plant-based food producer Miyoko's Kitchen and determining that the state of California may not regulate the company's use of the terms "butter," "lactose free," "cruelty free," and "revolutionizing dairy with plants." *Miyoko's Kitchen v. Ross*, No. 3:20-cv-893. Miyoko's [filed](#) the lawsuit in February 2020 after receiving a [letter](#) from California's Department of Food and Agriculture (CDFA) ordering the company to remove the terms from its "Cultured Vegan Plant Butter" label and take down pictures of "animal agriculture" from its website. CDFA claimed that the words and images were misleading and that the dairy-free, plant-based product was misbranded because 21 U.S. Code § 321a, enacted in 1923, defines "butter" as a product "made exclusively from milk or cream, or both, with or without common salt ... and containing not less than 80 per centum by weight of milk fat." The court found that the statutory definition "alone cannot doom commercial speech" and rejected California's argument that the age of the statute bears heavily on consumers' understanding of "butter," stating "[q]uite simply, language evolves."

## 5. U.S. Regional Dairy Issues

### California Held Referendum on State Quota Premium System

On January 25, 2021, California Department of Food and Agriculture (CDFA) [issued](#) an order adopting an [administrative hearing recommendation](#) approving a [petition](#) requesting a producer referendum to implement a flat quota rate of \$1.43 per hundredweight (cwt) for all counties in the state and thereafter eliminate the current California state Quota Implementation Plan (QIP) as of March 1, 2025, via a [proposed Sunset Plan](#). Under the current state QIP program, California dairy farmers receive a premium, funded through California "milk pool" deductions, for quota-covered raw milk (which is unavailable for non-quota milk). "Quota" in California is a transferable contractual entitlement to share in premiums generated by the market pool. [According to CDFA](#), the referendum voting period is March 4, 2021, through June 1, 2021. [see below entry for subsequent history.]

### California Dairy Producers' Referendum Failed to Terminate Quota System

On July 2, 2021, the California Department of Food and Agriculture (CDFA) [released](#) the results of the California Market Milk Producers' referendum vote on whether to eliminate the state's Quota Implementation Plan (QIP) effective March 1, 2025. 733 of the 933, or 78.56% of the eligible producers voted in favor of the referendum, meeting the 51% participation requirement. Elimination of the QIP required an affirmative vote from either 65% of the voters who produce 51% of the total milk or 51% of the voters who produce 65% of the total milk. However, only 49.25% of the voters who produced 54.47% of the total milk voted to eliminate the QIP, thus falling short of the needed



votes to pass the referendum. California's quota system, which collects an assessment on Class I sales and distributes it to quota purchasers, will remain in place and be administered as it has since Federal Milk Marketing Order No. 51 was implemented in 2018.

### **West Virginia Legislature Passed the State's First "Farm Bill"**

On April 28, 2021, West Virginia Governor Jim Justice [signed into law HB 2633](#), passed by the West Virginia House of Delegates on April 6, 2021, and referred to as a West Virginia Farm Bill. It is a recodification of West Virginia Code Chapter 19 with some revisions and additions. As [announced](#) by West Virginia Agriculture Commissioner Kent Leonhardt, among other things, the bill creates a new Agriculture Investment Fund; extends the state's Fresh Food Act to include dairy products; establishes West Virginia Department of Agriculture (WVDA) authority over farmers' market regulations; allows for the sale of raw milk as a non-consumable product or animal feed; and removes the fee on untreated garbage feeding permits for swine. Commissioner Leonhardt states, "Just like the federal government and several other states, the Department has been working towards introducing a recurring farm bill. Our goal is to work towards updating chapter 19 code to modernize rules and regulations and reduce burdens on West Virginia farmers."

### **Michigan Dairy Farm Penalized for NPDES Violations; Entered Consent Decree with EPA**

On May 10, 2021, the U.S. District Court for the Western District of Michigan [issued](#) a decision affirming a consent decree between the U.S. Environmental Protection Agency (EPA) and Walnutdale Family Farms, LLC., located in Wayland, Michigan. *United States v. Walnutdale Family Farms, LLC*, No. 1:20-cv-397. According to the [complaint](#), the 1,460-head dairy operation violated its National Pollutant Discharge Elimination System (NPDES) permit on multiple occasions between 2013 and 2017, also violating a 2004 consent decree. Walnutdale's violations include improper discharges, deficient maintenance, and operation of waste storage facilities, failing to report discharges, failing to abide by its NPDES land application requirements, and incomplete recordkeeping. Under the consent decree, Walnutdale will pay a civil penalty of \$33,750 and assess and remedy its storage facilities and depth markers, remove woody vegetation from the storage site, and implement proper land application and reporting procedures. The company also faces potential monetary penalties for failing to timely implement the remedial measures.

### **Hershey and Land O'Lakes Partnered with Alliance for the Chesapeake Bay to Implement "Sustainable Dairy PA"**

On June 30, 2021, the Alliance for the Chesapeake Bay [announced](#) that it has partnered with the Hershey Company (Hershey) and Land O'Lakes, Inc. to form [Sustainable Dairy PA](#), a collaboration to support an environmentally-sound supply chain for Hershey's chocolate production in Pennsylvania. According to Sustainable Dairy PA, Hershey has committed an initial \$300,000 to help Land O'Lakes member dairy farms implement agricultural conservation practices. The Alliance's website states that the collaboration has prioritized 119 Central Pennsylvania Land O'Lakes dairy farmers who sell 50% or more of their milk supply to Hershey.

### **Danone Terminated Horizon Organic Producers**

On August 25, 2021, Maine Governor Janet Mills and its Department of Agriculture, Conservation, and Forestry (DACF) [announced](#) that it is researching ways to assist fourteen (14) Maine organic dairy producers that received termination letters from Danone, owner of Horizon Organic, effective August 2022. According to the announcement, Danone has also terminated an unspecified number of producers in New Hampshire, Vermont, and New York.





## **Organic Organizations Alleged Danone’s Horizon Contract Terminations Violate B Corp “Declaration of Interdependence”**

On November 8, 2021, eleven (11) organic producer and consumer interest groups [submitted](#) a complaint to B Lab, the certifier for socially and environmentally responsive “B Corporations,” alleging that Danone North America (Danone N.A.) violated its [B Corp Declaration of Interdependence](#) when its Horizon Organic wholly-owned subsidiary decided to terminate contracts with eighty-nine (89) Northeast organic dairy farms.

### **Danone North America Extended Northeast Horizon Organic Contracts Until February 2023**

On December 13, 2021, Danone North America, owner of Horizon Organic, [sent](#) a letter to the Northeast Dairy Producers Alliance (NODPA) offering to extend the purchase contracts of the eighty-nine (89) producers terminated by the company in August 2021. According to the letter, Danone has contacted the affected producers and offered them an additional six-month contract extension, totaling eighteen months instead of the original twelve, ending on February 28, 2023, instead of August 31, 2022. Additionally, Danone will pay an additional fee per hundredweight purchased during the extended six-month period. The contract extension and additional payment were measures [requested](#) by NODPA in an October 2021 informal petition. [Maine Governor Janet Mills](#) and [Senator Chuck Schumer](#) issued statements in response to the contract extensions.

## **6. International Issues**

### **European Union Parliament Considered Legislation Prohibiting Use of Dairy Terms with Non-Dairy Products**

[Amendment 171](#), legislation prohibiting the use of dairy terms to describe non-dairy products, was considered by the European Parliament. Amendment 171, part of legislation package [2018/0218\(COD\)](#) to amend the Common Agricultural Policy (CAP) from 2021-2027, would have revised [Annex VII](#), Part III, Point 5 of [Regulation \(EU\) 1308/2013](#) to specify that the listed dairy terms “shall be protected from any direct or indirect commercial use ... for comparable products or ... substitute[] [products].” The amendment further prohibits the use of dairy terms with modifiers such as style, type, method, as produced in, imitation, flavor, substitute, like, or similar terms. The listed dairy terms in Regulation (EU) 1308/2013 include milk, whey, cream, butter, buttermilk, butteroil, cheese, yogurt, and kephir, among others. The text of 2018/0218(COD) was adopted by the Parliament on October 23, 2020, although the amendments are still “awaiting Parliament’s position” in the first reading. On February 9, 2021, multiple industry stakeholders [issued](#) a letter in opposition to Amendment 171, stating that the legislation would prohibit the terms soy milk and vegetarian cheese. [see below entry for subsequent history].

### **European Union Parliament Reportedly Withdrew Legislation Prohibiting Use of Dairy Terms with Non-Dairy Products**

According to [Dairy Reporter article](#) dated May 26, 2021, the European Union Parliament withdrew Amendment 171, which would have prohibited the use of dairy terms for non-dairy products.

### **U.S. Initiates Formal USMCA Trade Dispute with Canada over Tariff-Rate Quotas**

On May 25, 2021, the Office of the U.S. Trade Representative [requested](#) the initiation of a dispute settlement panel under the terms of the United States-Mexico-Canada Agreement (USMCA) to challenge Canada’s allocation of dairy tariff-rate quotas (TRQs), i.e., the ability to apply for reduced-tariff Canadian import of enumerated U.S. dairy products, to only processors and not retailers, an action which the United States alleges is in violation of the USMCA. Canadian processors would be direct competitors of U.S. dairy product manufacturers and unlikely to be interested in utilizing the TRQs set aside in the USMCA to import U.S. dairy products. The trade dispute, the subject of a



December 9, 2020, request for consultation made to Canada, will now be decided by formal USMCA dispute resolution procedures.

### **The European Union Postpones Dairy Export Health Certificate Deadline until January 2022**

On August 10, 2021, the European Commission entered [Implementing Regulation \(EU\) 2021/1329](#), which extended the deadline by which U.S. dairy product imports must be accompanied by health certificates from August 21, 2021, to January 15, 2022. According to an [announcement](#) dated August 13, 2021, from the U.S. Department of Agriculture (USDA) Agricultural Marketing Service (AMS), AMS will issue the new health certificates through its [EU Dairy Export Certification Programs](#). AMS will require producers and “entities throughout the supply chain” to maintain records showing that milk products produced for European Union (EU) export comply with either [Grade “A” Pasteurized Milk Ordinance](#) or [USDA AMS Milk for Manufacturing Purposes](#) program requirements. AMS states that it will inspect existing records and certify milk sources during compliance audits for current EU Somatic Cell Count and Bacteria Standard Plate Count requirements.

### **Hershey Partnered with New Zealand-based a2 Milk Company to Release New Chocolate Milk**

On October 26, 2021, New-Zealand-based a2 Milk Company [announced](#) that it is partnering with The Hershey Company to co-brand a line of chocolate milk made with 2% reduced fat a2 milk. According to the announcement, “a2 Milk comes from cows that naturally produce only the A2 protein rather than the combination of A1 and A2 proteins contained in most dairy products. Published research suggests a2 Milk that naturally contains the A2 protein may help avoid stomach discomfort in some people.” The product was to be available in retail outlets in January 2022.

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#### **CENTER MISSION AND BACKGROUND**

The Center for Agricultural and Shale Law conducts research and educational programs to serve a wide variety of stakeholders including agricultural producers, landowners, mineral interest and royalty owners, business professionals, judges, attorneys, legislators, government officials, community groups, and the general public. Center programs are funded in part by the Commonwealth of Pennsylvania through the Pennsylvania Department of Agriculture. The Center for Agricultural and Shale Law is a partner of the National Agricultural Law Center (NALC) at the University of Arkansas System Division of Agriculture, which serves as the nation’s leading source of agricultural and food law research and information.

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