



# QUARTERLY DAIRY LEGAL WEBINAR



**PennState Law**

Center for Agricultural  
and Shale Law



# QUARTERLY DAIRY LEGAL WEBINAR

## **3rd Quarter of 2022, July – September**

***Focus Topic: Dairy Programs & 2023 Farm Bill***

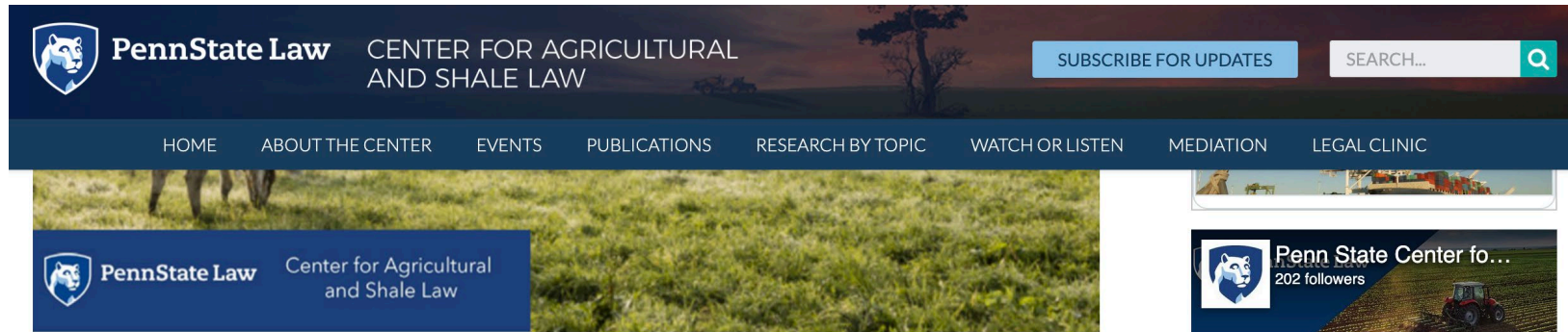
Tuesday, October 25, 2022

12:00pm – 1:00pm (ET)



# Quarterly Dairy Legal Webinar Series

## #9 in the series – covering the 3rd quarter of 2022



### Quarterly Dairy Legal Webinar

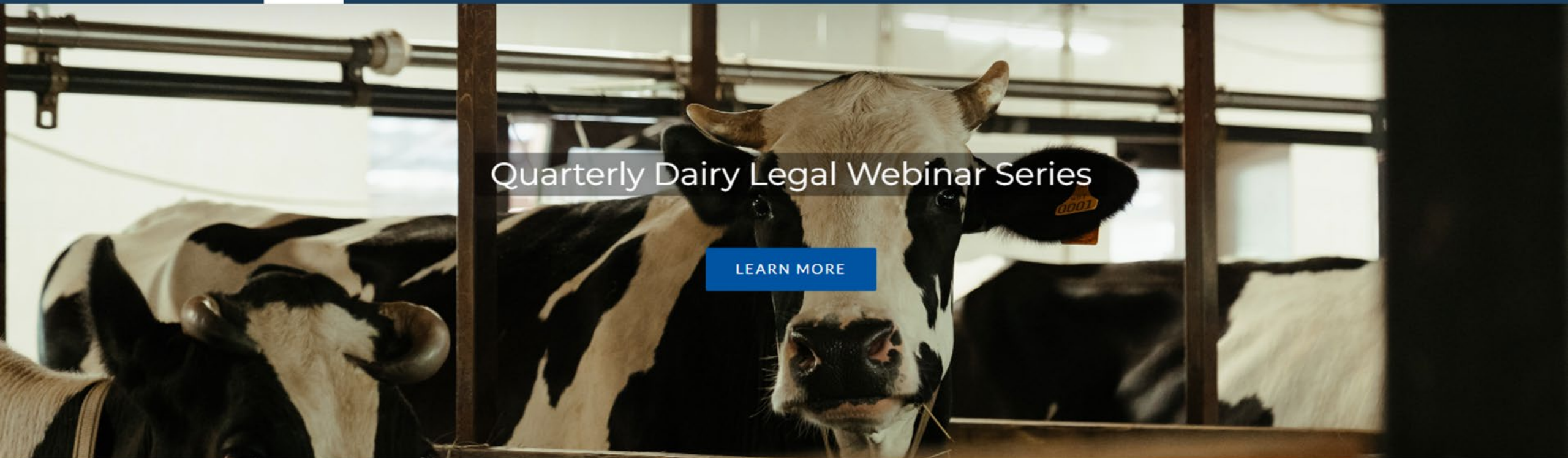
Penn State's Center for Agricultural and Shale Law continues its *Quarterly Dairy Legal Webinar series* for the balance of 2022. Free one-hour webinars cover the legal and regulatory developments in the U.S. dairy industry from the preceding quarter. Each also includes an in-depth look at a single focus topic of law, regulation, or government policy of interest to dairy professionals of all kinds.

*1 hour of substantive CLE credit is available for Pennsylvania licensed attorneys at no charge.*

**October 25, 2022 (3<sup>rd</sup> Quarter of 2022)** 12 noon ET. In addition to a round-up of quarterly legal developments, the focus topic will be the upcoming *2023 Farm Bill and the potential implications for the dairy industry*. What new or revised provisions, programs or policies impacting dairy are the subject of advocacy and by whom? Dairy remains a core commodity and the revenue protection programs, for example, have been tweaked in each of the last few farm bills. Federal Milk Marketing Order reform remains hotly debated and looks to be front and center in the 2023 Farm Bill negotiations. ([Register](#))







## Quarterly Dairy Legal Webinar Series

LEARN MORE

### Agricultural Law Weekly Review

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#### Agricultural Law Weekly Review – Week Ending October 14, 2022

Agricultural Finance: Socially Disadvantaged Farmers Allege Breach of Contract for Repeal of American Rescue Plan Act Debt Relief Program 🌱 On October 7, 2022, forty-one individuals filed a complaint in the U.S. Court of Federal Claims alleging breach of contract against the U.S. government for Congress’s repeal of the socially disadvantaged farmer debt relief program in the American Rescue Plan Act (ARPA). *Boyd v. United States*, No. 1:22-cv-01473. The repeal was part of the Inflation Reduction Act (IRA), Sec. 22008. The plaintiffs, who meet the definition of “socially disadvantaged farmers” (SDF) under ARPA’s Section 1005–1006 debt relief provisions, claim that [...]

#### Tweets from @AgShaleLaw



PSU Ag & Shale ...  
@AgShaleLaw · 10h



#ShaleLaw HotLink: "Large oil project asks to inject wastewater into Wyo. aquifer" [buff.ly/3TulZxj](https://buff.ly/3TulZxj)  
[#wastewater](#) [#oilandgas](#)  
[#Wyoming](#) [#regulation](#) [@politico](#)  
[@hroxaner](#)





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## Quarterly Dairy Legal Update -

# AGRICULTURAL LAW *Update*



**PennState Law**

Center for Agricultural  
and Shale Law

October 2022

CASL Publication No. LU22-014

### **Quarterly Dairy Legal Update: July – September of 2022**

### **Dairy and Dairy Products Law – the Center’s Newest *Virtual Resource Room***

During the second quarter of 2022, the Penn State Center for Agricultural and Shale Law went live with a new Virtual Resource Room on its website at [aglaw.psu.edu](http://aglaw.psu.edu) titled, “Dairy and Dairy Products Law.”



# **Dairy Quarterly Legal Webinar Series Format**

- Recent Legal Developments in the Dairy Industry
- Focus Topic of Importance to Dairy Industry
- Questions



# Dairy Quarterly Legal Webinar

- **This webinar will be recorded.**
- Use the Q&A feature for questions.
- CLE credits:
  - Link will be posted in the chat
  - Please fill out form
  - Listen for code word
  - Questions?
    - Email: [jks251@psu.edu](mailto:jks251@psu.edu)





## Thanks to Our Partners

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. This material is provided as part of that partnership and is based upon work supported by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture.







## **Today's Agenda:**

Round-up of the past quarter's legal and regulatory developments impacting the dairy industry

- **Presenter: Chloe Marie, Research Specialist**

Focused topic of interest to dairy producers and professionals:

- **Topic: Dairy Programs & 2023 Farm Bill**
- **Presenter: Brook Duer, Staff Attorney**



# Pennsylvania Milk Marketing Board's (PMMB) Actions

## **Pennsylvania Milk Marketing Board (PMMB) Conducts Hearing and Issues Adjudication on Pennsylvania Department of Agriculture's Petition to Reconsider the "Existence, Level, and Duration" of Pennsylvania Over-Order Premium**

On July 11, 2022, the PMMB [entered](#) an order scheduling a hearing commencing on August 30, 2022, to take evidence on the May 27, 2022, petition filed by the Pennsylvania Department of Agriculture on "the existence, level and duration" of Pennsylvania's current over-order premium (OOP).

The current Pennsylvania OOP mandates a producer price premium over the federal order price through a calculation intended to approximate the volume a producer's milk utilized as Class I fluid milk. The hearing aired recurring complaints that

- 1) The current OOP calculation allows wholesalers and retailers to receive a mandated minimum wholesale and retail price, respectively, on higher volumes of milk than the volumes on which they are required to pay the over-order premium, or its equivalent as a pass-through, in the mandated producer and minimum wholesale price; and
- 2) The OOP is only paid to producers deemed to be contributing to in-state Class I fluid milk sales.

Click [here](#) to access the testimonies for additional information.



# Pennsylvania Milk Marketing Board's (PMMB) Actions

On September 21, 2022, the PMMB [entered](#) a new 90-day over-order premium (OOP) order (OGO No. A-1014), as opposed to its customary 180-day order. **The order continues Pennsylvania's current OOP at \$1.00 per hundredweight for the period October 1, 2022, through December 31, 2022.**

The PMMB's written decision states, "[Section 801 of the \[Milk Marketing\] Law](#) requires the Board to establish minimum producer prices that allow producers to recover their cost of production plus a reasonable profit ... We believe that the current over-order premium system **should be examined and modified**, as and if necessary, to ensure all Pennsylvania producers receive a minimum producer price that approaches section 801's requirements."

The Board explained that legislative changes would be needed to allow it to act to achieve that goal, stating that it "*believes **House Bill 224** would provide additional tools ... to implement Section 801's minimum produce price requirement in a way that would better align minimum retail prices with the amount received by producers ... **The specific method or methods developed may take any number or forms, but we first need the tools and framework House Bill 224 would provide to begin to develop those specifics.***"

Click [here](#) to access House Bill 224 (awaiting action by the state Senate).

Click [here](#) to access Agricultural Law Podcast No. 226 for further information.



## **U.S. Department of Agriculture's (USDA) Actions**

### **USDA Announces \$300 Million for New Organic Transition Initiative, Including \$100 Million in Specified Markets, Such as Dairy**

On August 22, 2022, USDA [announced](#) \$300 million for a new [Organic Transition Initiative](#) to provide mentoring, direct assistance, and supply chain support for farmers transitioning to organic production. As a prerequisite to organic certification, lands, or animals generating organic-certified commodities must be free from prohibited inputs for 36 months, during which time “farmers face challenging technical, cultural, and market shifts,” said USDA Secretary Tom Vilsack.

The USDA will provide \$100 million in funds to support organic supply chains in specified markets to improve organic capacity and infrastructure, market access, and supply organic ingredients.





## **U.S. Department of Agriculture's (USDA) Actions**

### **USDA Announces \$2.8 Billion for 70 Climate-Smart Partnership Projects, Including Some Dairy Projects**

On September 14, 2022, USDA [announced](#) \$2.8 billion for 70 selected projects, ranging from \$5 million to \$100 million, from the first wave of funding under the [Partnerships for Climate-Smart Commodities Program](#). USDA states that it will announce projects from the second funding pool later this year. Although USDA initially allotted \$1 billion for the program, the agency states that the strength of the first-round proposals – more than 450 projects submitted by more than 350 entities from every state as well as tribal lands, D.C., and Puerto Rico – led the agency to increase the funding.



## U.S. Department of Agriculture's (USDA) Actions

Lead partners on projects in **Pennsylvania** involving dairy commodities include:

- (\$45 million) **Dairy Farmers of America, Inc.:** *Scaling Methane Emissions Reductions and Soil Carbon Sequestration – A Value-Added Commodities Approach for United States Dairy*
- (\$35 million) **The Wolfe's Neck Farm Foundation, Inc.:** *Alliance to Catalyze Transition Incentives through Open Networks for Climate Smart Agriculture*
- (\$25 million) **Cooperative Regions of Organic Producer Pools:** *Organic Valley Carbon Insetting Program: Building a Multi-stakeholder Path to Produce, Market and Promote Climate-Smart Commodities Across the U.S.*
- (\$90 million) **Truterra, LLC:** *Climate SMART (Scaling Mechanisms for Agriculture's Regenerative Transformation)*
- (\$ 25 million) **Pennsylvania State University:** *Climate-smart Agriculture that is profitable, Regenerative, Actionable, and Trustworthy (CARAT)*
- (\$ 40 million) **Farm Journal, Inc.:** *Connected Ag Climate-Smart Commodities Pilot Project*
- (\$40 million) **The DeLong Co., Inc.:** *Incentivizing Climate-Smart Growing Practices, expanding climate-smart markets and developing brand awareness.*
- (\$ 25 million) **The Conservation Innovation Fund:** *The Mid-Atlantic Conservation Innovation Fund Climate-Smart Commodities project.*
- (\$ 70 million) **Carbon A List, LLC:** *Transforming the Farmer-to-Consumer Supply Chain with Climate Smart Agriculture Partnerships.*

Click [here](#) to access the list of the 70 selected projects.



# National Dairy Stakeholders' Actions & Issues

## Center for Dairy Excellence Announces Grants for Pennsylvania Producers

On August 31, 2022, the Center for Dairy Excellence [announced](#) three competitive grant opportunities for Pennsylvania dairy producers:

- [The Dairy Excellence Grant Program](#) (*application closed*) – matched recipient funds up to \$5,000 for improvement projects, to increase cow comfort, milk production, and overall operation efficiency.
- [The Technical Assistance Grant Program](#) (*application closed*) – provided fifteen (15) \$5,000 grants to producers in Pennsylvania, Maryland, Delaware, and New Jersey for marketing and branding consultation.
- The [Dairy Processing Grant Program](#) - **open from September 1 through November 1, 2022**, to Pennsylvania dairy processors receiving milk from at least two Pennsylvania producers will match recipient funds up to \$10,000 for processing expansions or improvements.



# National Dairy Stakeholders' Actions & Issues

## National Dairy FARM Program Opens Comment Survey on Animal Care Version 5 Standards

On September 12, 2022, the National Dairy Farmers Assuring Responsible Management (FARM) Program [announced](#) the opening of a comment survey on revisions to its [Animal Care Version 5 Standards](#), which FARM revises every three years. The FARM Program provides standards and accountability measures to demonstrate dairy farmer's commitment to provide best practices in animal care and dairy product production.

The proposed standards will be reviewed by the FARM Animal Care Task Force and the National Milk Producers Federation (NMPF), Animal Health and Well-Being Committee. The NMPF Board of Directors provides the final approval for the revised standards. Any revised standards are proposed to become effective July 1, 2024, through June 30, 2027.

Dairy industry stakeholders may [submit comments](#) on the standards **until 5:00 PM EST on October 28, 2022.**





## Regional Dairy Actions & Issues

### **Dairy Farmers of America, Inc. (DFA) Sued for Alleged “Monopsony” in Northeast Dairy**

On July 29, 2022, dairy producer S.R.J.F., Inc. [filed](#) a federal class action lawsuit against Dairy Farmers of America, Inc. (DFA) in the U.S. District Court for the District of Vermont alleging that dairy farmer cooperative DFA attempted to, or actually created, a monopsony in the market for raw Grade A milk in the Northeast suppressing competition in violation of antitrust law. *S.R.J.F., Inc. v. Dairy Farmers of America, Inc.*, No. 2:22-cv-147. A monopsony is a market in which there is only one buyer for a product. DFA in recent years has greatly expanded its dairy processing operations, most notably in acquiring and operating processing assets of Dean Foods.

Using publicly available data, plaintiffs highlighted a divergence in 2020 between DFA’s average sales price and the average price DFA paid to its members. Additionally, plaintiffs allege that DFA reduced competing dairy farms and cooperatives’ access to raw milk processors, thus reducing the number of potential buyers for raw Grade A milk in the Northeast region.

The putative class in this case includes any dairy farmers who produced and sold raw Grade A milk within the Northeastern United States, as defined by DFA’s Northeast Area, any time from May 10, 2016, to the present.



**PennState Law**

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# Dairy Programs & 2023 Farm Bill

Tuesday, October 25, 2022  
12:00pm – 1:00pm (ET)





# Overview of Dairy Programs in the Farm Bill – *AFBF Market Intel, September 27, 2022*

- This presentation presents material authored and published by AFBF Economist Daniel Munch.

## Overview of Dairy Programs in the Farm Bill





# Agriculture Improvement Act of 2018

- The current farm bill is set to expire on Sept. 30, 2023.
- There have been 18 farm bills since the 1930s.

## SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Agriculture Improvement Act of 2018”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definition of Secretary.

### TITLE I—COMMODITIES

#### Subtitle A—Commodity Policy

Sec. 1101. Definition of effective reference price.

Sec. 1102. Base acres.

Sec. 1103. Payment yields.

Sec. 1104. Payment acres.

Sec. 1105. Producer election.

Sec. 1106. Price loss coverage.

Sec. 1107. Agriculture risk coverage.

Sec. 1108. Repeal of transition assistance for producers of upland cotton.

#### Subtitle B—Marketing Loans

Sec. 1201. Extensions.

Sec. 1202. Loan rates for nonrecourse marketing assistance loans.

Sec. 1203. Economic adjustment assistance for textile mills.

Sec. 1204. Special competitive provisions for extra long staple cotton.

Sec. 1205. Availability of recourse loans.

#### Subtitle C—Sugar

Sec. 1301. Sugar policy.

#### Subtitle D—Dairy Margin Coverage and Other Dairy Related Provisions

Sec. 1401. Dairy margin coverage. *(Replaces Margin Protection Program)*

Sec. 1402. Reauthorizations.

Sec. 1403. Class I skim milk price.

Sec. 1404. Dairy product donation.

#### Subtitle E—Supplemental Agricultural Disaster Assistance

Sec. 1501. Supplemental agricultural disaster assistance.

#### Subtitle F—Noninsured Crop Assistance

Sec. 1601. Noninsured crop assistance program.

#### Subtitle G—Administration

Sec. 1701. Regulations.

Sec. 1702. Suspension of permanent price support authority.

Sec. 1703. Payment limitations.

Sec. 1704. Adjusted gross income limitations.

Sec. 1705. Farm Service Agency accountability.

Sec. 1706. Implementation.

Sec. 1707. Exemption from certain reporting requirements for certain producers.





# The threat of “Mutually Assured Destruction”

- If the farm bill were to expire without a new bill in place or if programs were not granted an extension by Congress, all of the programs would return to the 1949 bill.
- That means reverting to support price programs for the limited number of commodities covered by the 73-year-old law.
- Adjusted for inflation, these support prices would be far above even the current elevated market.
- **And – no Nutrition Title / no SNAP!**

# Farm Bill Basics

Renée Johnson, Specialist in Agricultural Policy  
Jim Monke, Specialist in Agricultural Policy



IN FOCUS

Updated June 28, 2022

## Farm Bill Primer: What Is the Farm Bill?

Without reauthorization, some farm bill programs would expire, such as the nutrition assistance and farm commodity support programs. Other programs have permanent authority and do not need reauthorization (e.g., crop insurance) and are included in a farm bill to make policy changes or achieve budgetary goals. The farm bill extends authorizations of discretionary programs. The farm bill also suspends long-abandoned permanent laws for certain farm commodity programs from the 1940s that used supply controls and price regimes that would be costly if restored.

### The 2018 Farm Bill (P.L. 115-334), by Title

**Title I, Commodities:** Provides support for major commodity crops, including wheat, corn, soybeans, peanuts, rice, dairy, and sugar, as well as disaster assistance.

**Title II, Conservation:** Encourages environmental stewardship of farmlands and improved management through land retirement programs, working lands programs, or both.

**Title III, Trade:** Supports U.S. agricultural export programs and international food assistance programs.

**Title IV, Nutrition:** Provides nutrition assistance for low-income households through programs, including the Supplemental Nutrition Assistance Program (SNAP).

**Title V, Credit:** Offers direct government loans and guarantees to producers to buy land and operate farms and ranches.

**Title VI, Rural Development:** Supports rural housing, community facilities, business, and utility programs through grants, loans, and guarantees.

**Title VII, Research, Extension, and Related Matters:** Supports agricultural research and extension programs to expand academic knowledge and help producers be more productive.

**Title VIII, Forestry:** Supports forestry management programs run by USDA's Forest Service.

**Title IX, Energy:** Encourages the development of farm and community renewable energy systems through various programs, including grants and loan guarantees.

**Title X, Horticulture:** Supports the production of specialty crops, USDA-certified organic foods, and locally produced foods and authorizes a regulatory framework for industrial hemp.

**Title XI, Crop Insurance:** Enhances risk management through the permanently authorized Federal Crop Insurance Program.

**Title XII, Miscellaneous:** Includes programs and assistance for livestock and poultry production, support for beginning farmers and ranchers, and other miscellaneous and general provisions.

# Farm Bill Basics (cont.)

## What Was the Estimated Cost in 2018?

Farm bills authorize programs in two spending categories: mandatory and discretionary. While both types of programs are important, mandatory programs usually dominate the farm bill debate. Programs with mandatory spending generally operate as entitlements, and the farm bill provides mandatory funding for programs based on multiyear budget estimates (*baseline*). Programs with authorized discretionary funding are not funded in the farm bill; any discretionary appropriations for these programs would be provided through separate congressional action.

At enactment in December 2018, the Congressional Budget Office (CBO) estimated that the total cost of the mandatory programs in the farm bill was \$428 billion over its five-year duration, FY2019-FY2023, or \$1.8 billion more than a five-year extension of the 2014 farm bill (P.L. 113-79).

Farm bills have both 5-year and 10-year budget projections. The 10-year score for the 2018 farm bill was budget neutral, and program outlays were projected to remain at \$867 billion over FY2019-FY2028 (**Table 1**). Four titles accounted for 99% of the 2018 farm bill's mandatory spending: Nutrition (primarily SNAP), Commodities, Crop Insurance, and Conservation. Programs in all other farm bill titles accounted for about 1% of mandatory outlays; these programs were authorized to receive mostly discretionary (appropriated) funds.

**Table 1. Budget for the 2018 Farm Bill and the Baseline in 2022 for Farm Bill Programs**

(dollars in millions, 10-year mandatory outlays)

Titles	2018 Farm Bill at Enactment	Baseline as of May 2022
	FY2019-FY2028 (\$ millions)	FY2023-FY2032 (\$ millions)
Commodities	61,414	56,185
Conservation	59,748	59,214
Trade	4,094	4,810
Nutrition	663,828	1,090,484
Credit	-4,558	a/
Rural Development	-2,362	a/
Research	1,219	1,300
Forestry	10	a/
Energy	737	500
Horticulture	2,047	2,100
Crop Insurance	77,933	79,761
Miscellaneous	3,091	800
<b>Total</b>	<b>867,200</b>	<b>1,295,154</b>

**Sources:** CRS using CRS Report R45425, Budget Issues That Shaped the 2018 Farm Bill; CBO Baseline (May 2022), at <https://www.cbo.gov/about/products/baseline-projections-selected-programs>, for the five largest titles; and amounts in law for programs in other titles.

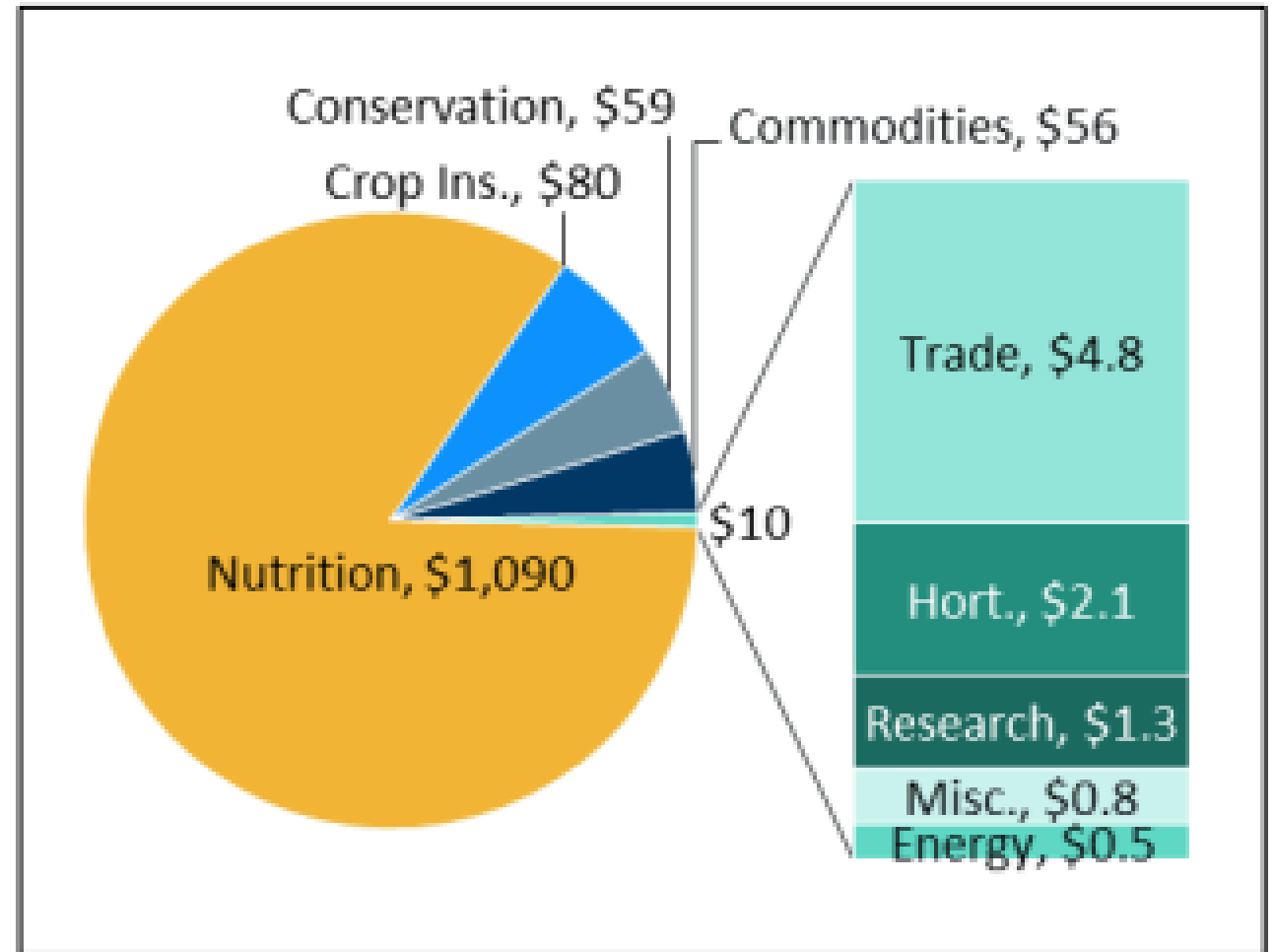
**Notes:** a/ = Baseline for the credit title is likely negative indicating payments into the Farm Credit System Insurance fund. The rural development title has no current programs with baseline. Baseline for the forestry title is \$10 million or less.

# Farm Bill Basics (cont.)

The relative proportions of farm bill spending have shifted over time. In the 2022 projection, the Nutrition title is 84% of the farm bill baseline, compared with about 76% when the 2018 farm bill was enacted and 67% in the 2008 farm bill. Sharp increases in the Nutrition title reflect pandemic assistance and administrative adjustments made to SNAP benefit calculations. For non-nutrition farm bill programs, baseline amounts in 2022 are slightly lower than when the 2018 farm bill was enacted (\$205 billion over 10 years as of 2022 compared with \$210 billion over 10 years in 2018).

Supplemental spending is not part of the baseline but may be important because of its size in recent years. In FY2019 and FY2020, the Trump Administration increased outlays by a total of over \$25 billion to farmers and ranchers affected by retaliatory tariffs. Since FY2020, Congress and the White House have provided over \$30 billion of supplemental pandemic assistance to farms and over \$60 billion for nutrition.

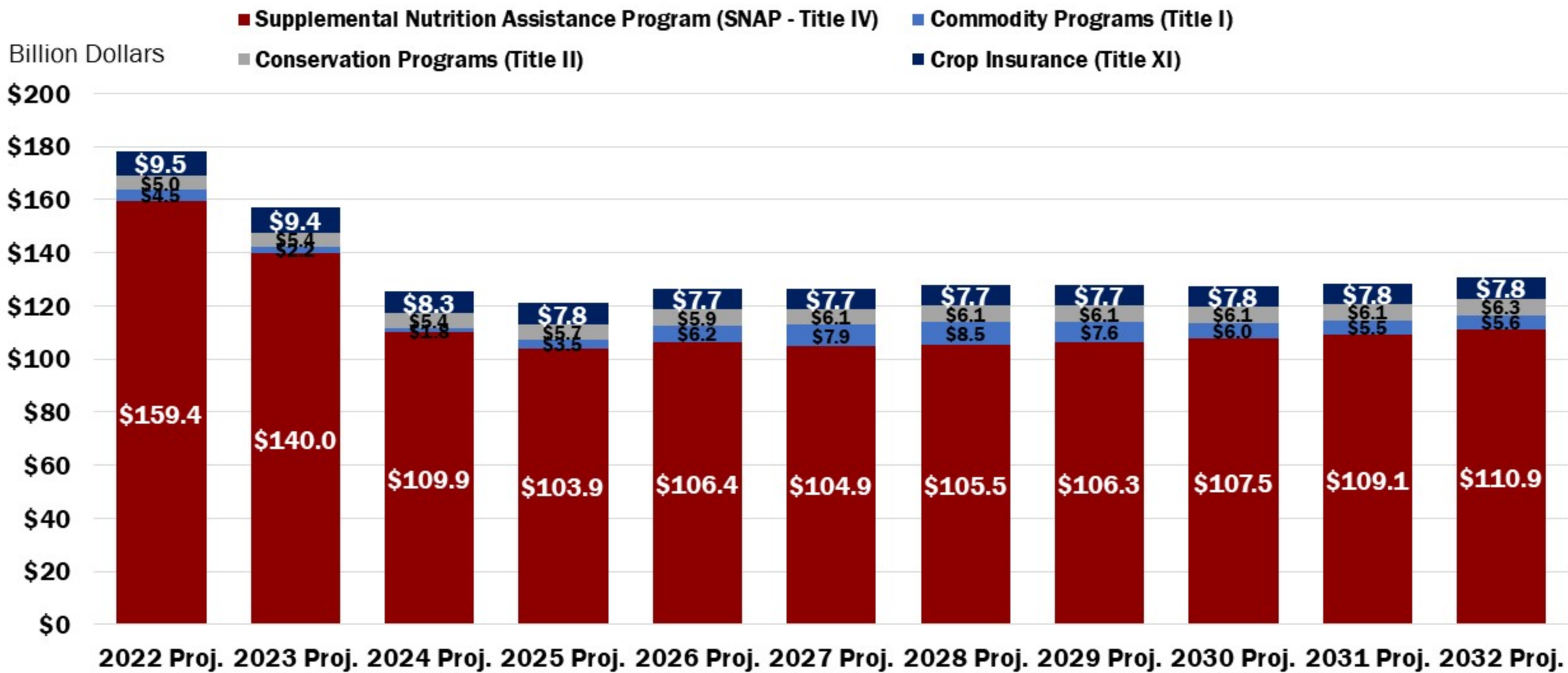
**Figure 1. Baseline for Farm Bill Programs, by Title**  
(billion dollars, 10-year mandatory outlays, FY2023-FY2032)



**Source:** CRS using the CBO Baseline (May 2022) for the five largest titles, and amounts in law for programs in other titles.

**Note:** Total estimated at \$1,295 billion.

# May 2022 CBO Outlays of Major Farm Bill Programs

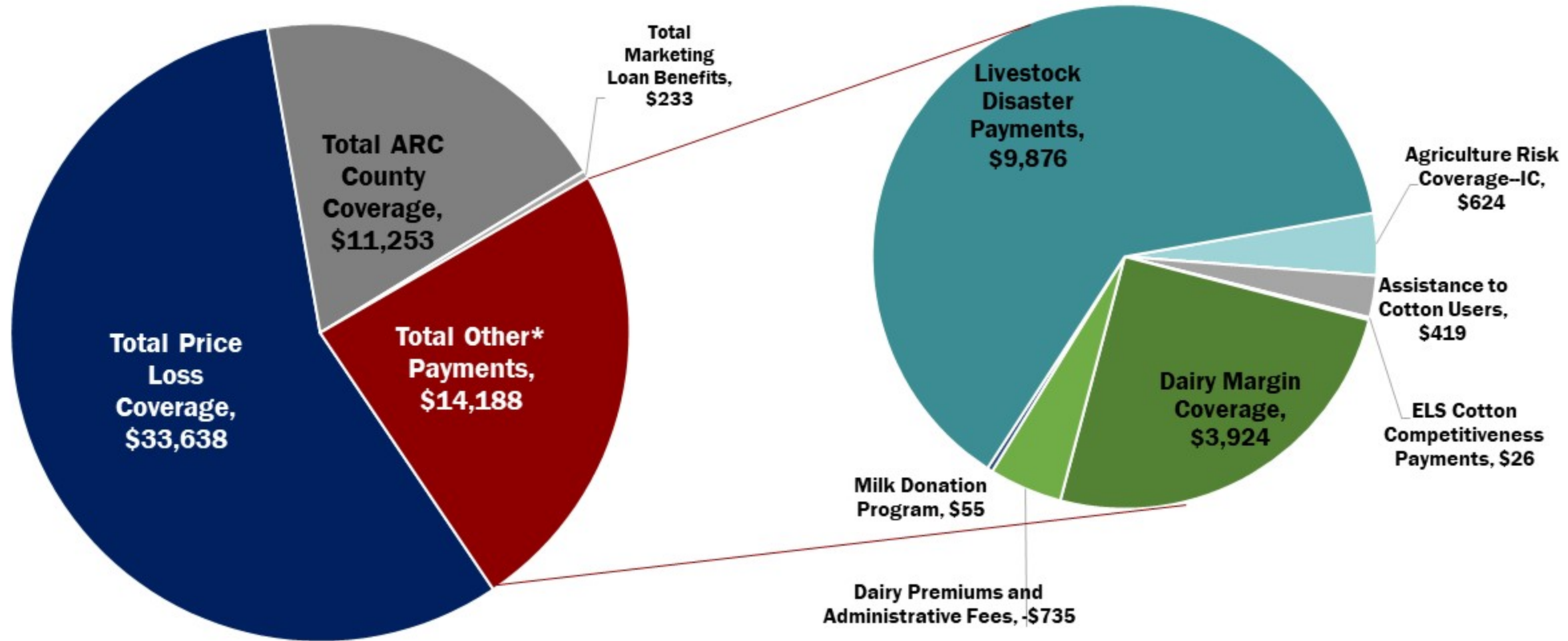




# Title I Program 10-Year Total

\*Other Payments Include: ARC- Individual Coverage, Assistance to Cotton Users, ELS Cotton Competitiveness Payments, Dairy Margin Coverage, Dairy Premiums and Administrative Fees, Milk Donation Program, and Livestock Disaster Payments

Billion Dollars





# 2023 Farm Bill Negotiations Complications

- Massive expenditures, primarily on Title II – Conservation, in the American Rescue Plan Act and Inflation Reduction Act, will greatly impact overall budget analysis of the 2023 Farm Bill.
- ***Environmental stakeholders (re: climate change, carbon emissions and sequestration, greenhouse gas reduction) will be more involved than ever*** – in addition to all the other misc. “stakeholders” beyond traditional ag who now have a seat at the table.
- Conservation used to be about soil and water conservation and quality, conservation now includes increasing carbon sequestration in soil.
- Q: Will this be the year that SNAP is severed from the Farm Bill?



# Title I Programs/Spending re: Dairy

**Dairy Margin Coverage (DMC)** – created in 2018 Farm Bill, replaces the Margin Protection Program (MPP created in 2014)

- DMC provides risk protection when milk prices are low and/or avg. feed costs are high. Compensates for reduced margins.
- Administered through USDA FSA instead of private insurers. Not crop insurance. No “insurable event.”
- Voluntary sign-up = payments when the calculated national margin falls below a producer-selected “desired” margin.
- Margin: the difference between the average price of feedstuffs (the price of a mix of high-quality alfalfa hay, corn and soybean meal) and the national all-milk price.



## Title I Programs (cont.) - DMC

MPP: \$100 enrollment fee for catastrophic coverage (no premium)

- **CAT**: If margin <\$4/cwt for 2 months = payment to achieve \$4/cwt on 90% of producer's production history (highest annual btw. 2011-2013).
- **Buy-up**: for a premium, can buy higher guaranteed margin, in \$.50 increments up to \$8/cwt, on choice of 25%- 90% of production history.
  - **Tier 1 coverage – on first 4M lbs. of production**
  - **Tier 2 coverage – for production over 4M lbs.**
- CAT coverage had high enrollment; very little Buy-up coverage purchased; very small gross payout (\$10M in 2016; \$19,000 in 2017)



## DMC (cont.)

**DMC**: Changes made to MPP in 2018; rechristened.

***CAT***: Same \$100 admin. fee; If monthly margin <\$4/cwt = payment to achieve \$4/cwt on 95% of producer's production history.

***Buy-up***: for a premium, can buy higher guaranteed margin, in \$.50 increments. up to \$9.50/cwt, on choice of 5% - 95% of production history.

- ***Tier 1 coverage*** – on first 5M lbs. of production; can choose to guarantee a margin btw. \$4/cwt - \$9.50/cwt.
- ***Tier 2 coverage*** – for production over 5M lbs.; can choose to guarantee a margin btw. \$4/cwt - \$8/cwt.
- ***Premiums were adjusted to be less expensive. Production history and the avg. feed costs calculation adjusted slightly upwards (using 100% premium alfalfa).***



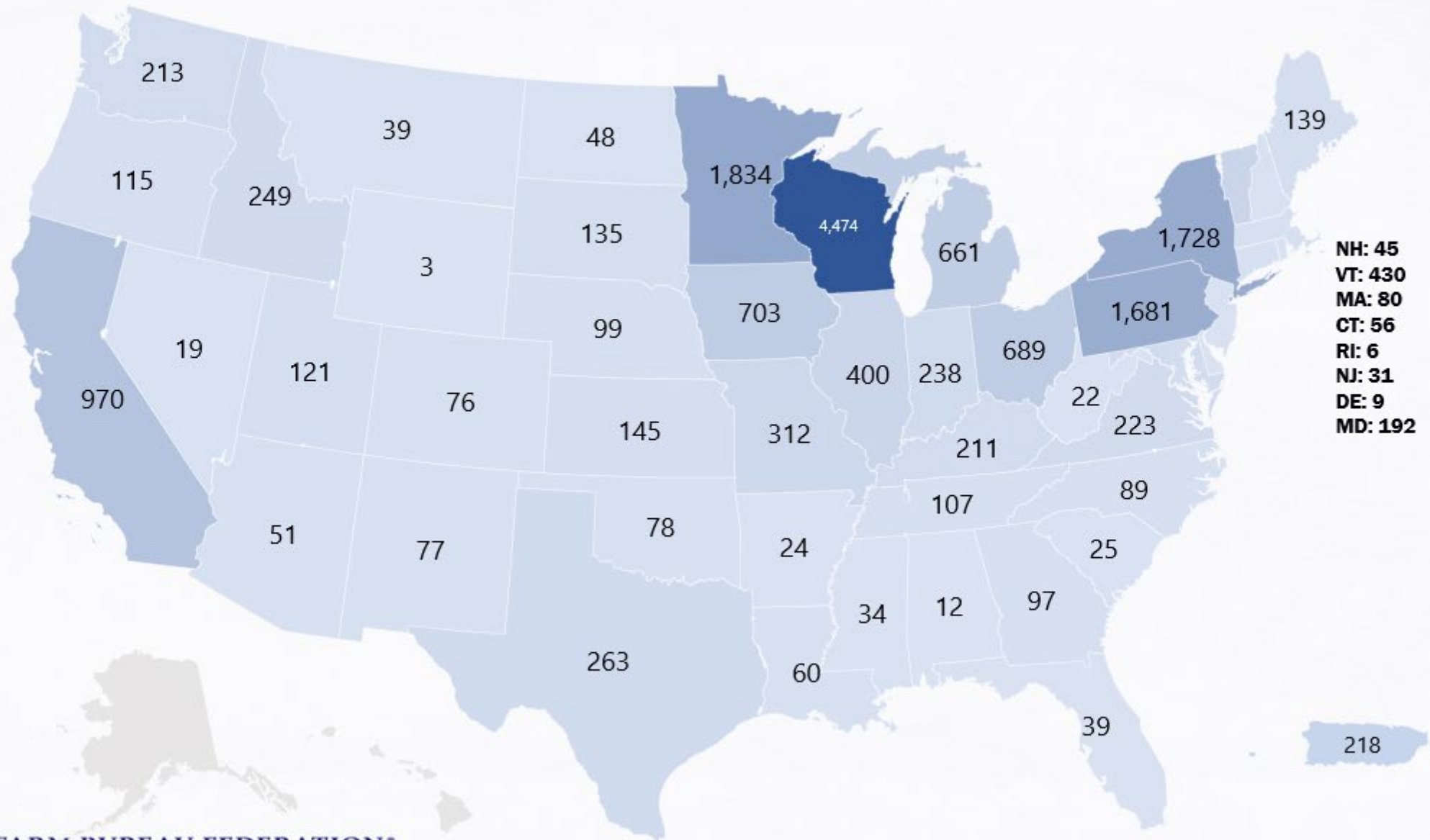


# Table 1. MPP and DMC Premiums

Margin coverage threshold	Tier 1		Tier 2	
	MPP-Dairy 2016-17	DMC 2019-Current	MPP-Dairy 2016-18	DMC 2019-Current
	<4 million pounds	<5 million pounds	>4 million pounds	>5 million pounds
\$4.00	\$ -	\$ -	\$ -	\$ -
\$4.50	\$ 0.0100	\$ 0.0025	\$ 0.2000	\$ 0.0025
\$5.00	\$ 0.0250	\$ 0.0050	\$ 0.0400	\$ 0.0050
\$5.50	\$ 0.0400	\$ 0.0300	\$ 0.1000	\$ 0.1000
\$6.00	\$ 0.0550	\$ 0.0500	\$ 0.1550	\$ 0.3100
\$6.50	\$ 0.0900	\$ 0.0700	\$ 0.2900	\$ 0.6500
\$7.00	\$ 0.2170	\$ 0.0800	\$ 0.8300	\$ 1.1070
\$7.50	\$ 0.3000	\$ 0.0900	\$ 1.0600	\$ 1.4130
\$8.00	\$ 0.4750	\$ 0.1000	\$ 1.3600	\$ 1.8130
\$8.50	NA	\$ 0.1050	NA	NA
\$9.00	NA	\$ 0.1100	NA	NA
\$9.50	NA	\$ 0.1500	NA	NA

# FIGURE 3: DISTRIBUTION OF DMC ENROLLED FARMS BY STATE

2022 | Including Puerto Rico





## **DMC (cont.)**

- Other dairy programs exist, administered by private insurance companies through revenue insurance products administered under Title XI – **Dairy Revenue Protection (DRP)** and **Livestock Gross Margin (LGM)**. Not likely to be “on the table” in 2023 Farm Bill negotiations.
- **2023 Farm Bill Points for Negotiation on DMC?**
  - 5M lbs. Tier 1 threshold – does it represent avg. dairy farm?
  - More regular updates to production history?
  - Feed costs only? What about labor, fuel, equipment?



# Dairy Revenue Protection (DRP) (not a Farm Bill Program)

- Available since 2018, DRP is an area-based federal crop insurance product that provides quarterly revenue coverage for dairy farmers. The quarters available for coverage correspond to the quarters of the calendar year, i.e., January to March, October to December. Under DRP, an indemnity is paid to a dairy farmer if an operation's actual milk revenue falls below the final revenue guarantee. The final revenue guarantee is the product of the farmer's chosen coverage level, from 70% to 95% in 5% increments, based on futures values. The final milk revenue is the product of the final class- or component-based value of the producer's milk and the amount of covered milk production elected by the dairy farmer.
- Under DRP, farmers can determine how their milk is priced by selecting the class- or component-based pricing option. The class-pricing option uses a weighted average of a three-month average of Chicago Mercantile Exchange Class III and Class IV milk futures prices based on the insured's declared class price weighting factor and corresponding to the months of the quarter. The component-pricing option uses three-month averages of Chicago Mercantile Exchange butter, cheese and dry whey futures to derive implied values for butterfat, protein and other milk solids. The farmer then selects a component value of milk by declaring an amount of butterfat and protein in the milk.



## **Livestock Gross Margin (LGM) (not a Farm Bill Program)**

- LGM-Dairy is another option that can be used to protect against risk. An older product, LGM-Dairy was first available in 2008 and provides protection against a loss in gross margin as opposed to total revenue protection in DRP.
- Using CME futures prices for feed commodities like corn and soybean meal and the value of Class III milk to calculate a guaranteed gross margin, farmers can hedge against unanticipated declines in average income-over-feed-cost margins. This risk management style is considered bundled hedging, in which both the output price (milk) and input price (feed) are hedged at the same time. Farmers can purchase a single month or combination of months (12 periods each year) during a rolling 11-month insurance period with multiple contracts as long as no more than 100% of milk marketed is insured.
- Flexibility and customizable options are available for farmers who rely on their own feed production, purchase feed from outside sources or who may only want to protect against milk revenue volatility rather than feed cost risk.
- An indemnity is paid out under the program if the difference between the total guaranteed gross margin and the actual gross margin (over the insured period) is positive after accounting for any deductibles.
- Actual margins are based on simple averages of CME group futures contract daily settlement prices and are not based on individual farm-level prices farmers receive in the market.





# Class I Price Calculation Change in 2018 Farm Bill – the PPD problem

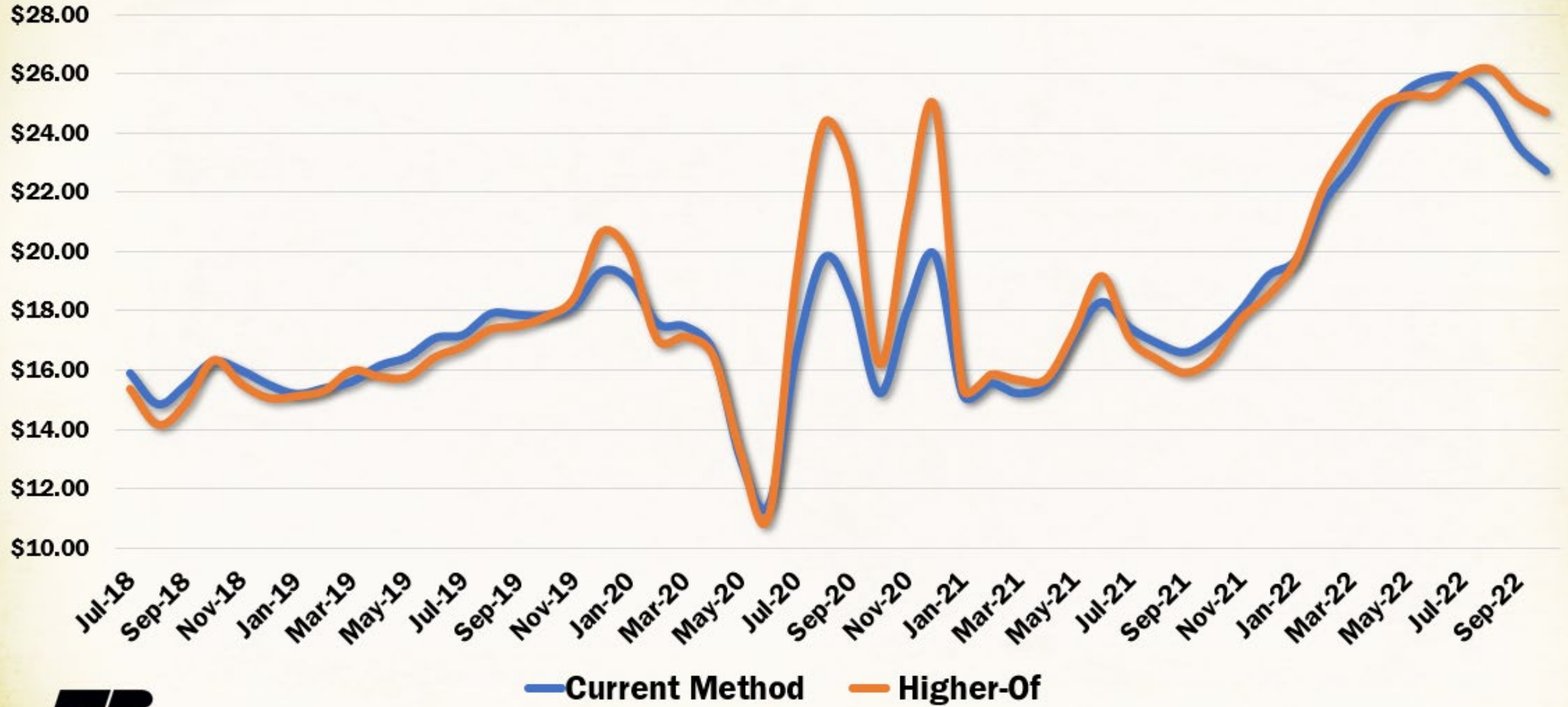
- Since the 2018 farm bill, the price for Class I milk has been calculated using the **simple average** of advanced Class III (cheese) and Class IV (milk powders) skim milk prices plus 74 cents. In years prior, the formula was the **higher of** advanced Class III and Class IV skim milk prices.
- Between July and December 2020, the formula change resulted in \$744 million less in the federal order pool, causing widespread negative producer price differentials.
- USDA provided a buffer to these losses through the Pandemic Market Volatility Assistance Program (PMVAP), which provided \$350 million in pandemic assistance payments to dairy farmers who received lower value for their milk (primarily Class I suppliers) due to market abnormalities (widespread de-pooling) caused by the pandemic.



- More recently, the Class III price has drifted apart from the Class IV price once again, which will result in pool losses once class utilization and pool volumes are updated for August and September 2022.
- Figure 1 on the following slide displays a comparison of Class I prices between the current formula and the higher-of option (if it was in place) from July 2018 to the present, all else held constant.
- To estimate the impact on dairy farmer revenue, the difference in the Class I milk price between the current system and higher-of was multiplied by the Class I pool volume across all FMMOs. These calculations are presented in Figure 2 in the next slide.

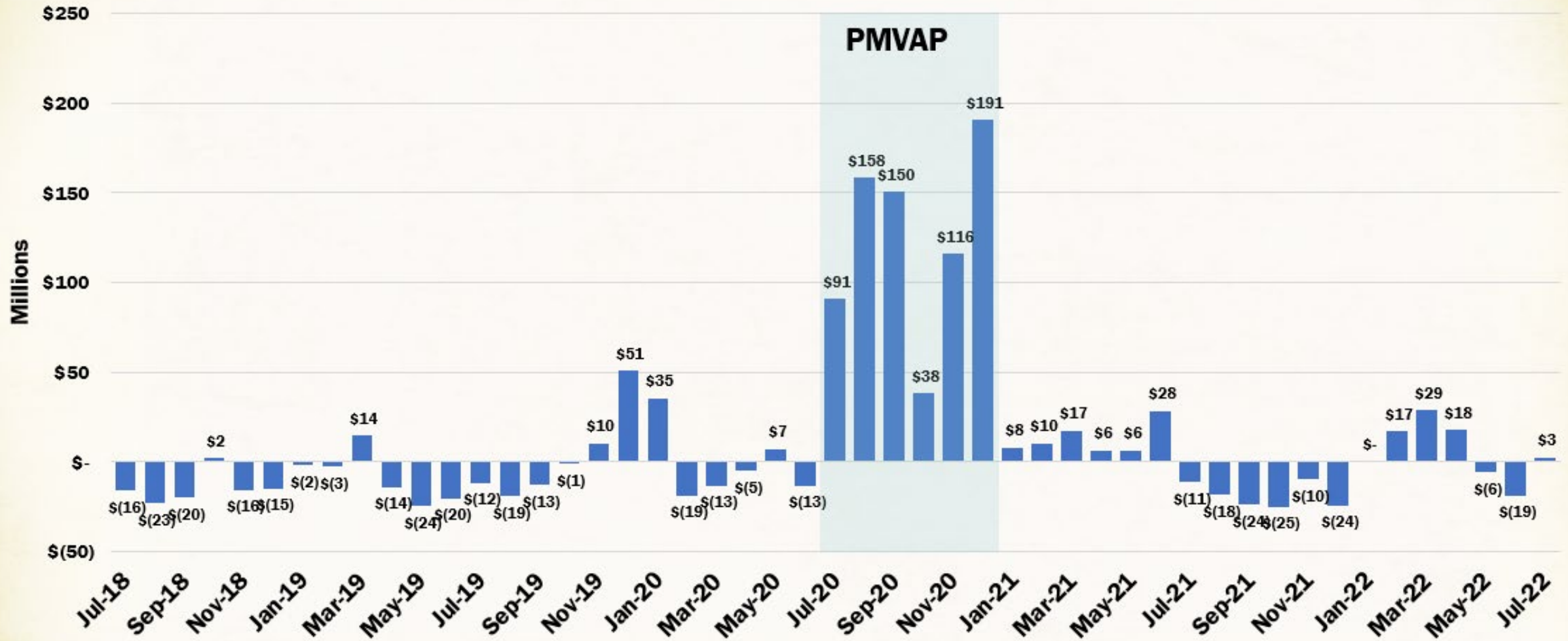
# FIGURE 1: AVERAGE-OF VS. HIGHER-OF CLASS I PRICE FORMULA

Dollars per Hundredweight | 2018 - Present



# FIGURE 2: DIFFERENCE IN CLASS I POOL REVENUE

Higher-of vs. Current System | Jul 2018 – Jul 2022







# Other Farm Bill Programs re: Dairy

- **Dairy Forward Pricing Program (DFPP)**

The Dairy Forward Pricing Program allows milk handlers to pay producers or cooperatives a negotiated price for producer milk, rather than the federal order minimum blend price for non-fluid classes of milk (Class II, III, IV). It does not allow for forward contracting of fluid milk (Class I), though this is defined rather flexibly.

The program is voluntary for dairy farmers, cooperatives and handlers; handlers cannot require producer participation in a forward pricing program in order to accept milk. Regulated handlers must still account to the Federal Milk Marketing Order pool for the classified use value of their milk.

Each forward contract made under the program must be submitted to the regional market administration and contain a disclosure to ensure producers understand the program and the method in which they would be paid. Prior to the 2018 farm bill, the DFPP expired on Sept. 30, 2018, meaning new contracts under the program were prohibited.

**The 2018 farm bill reauthorized the program to allow handlers to enter into new contracts until Sept. 30, 2023, for milk delivered through 2026.**





- **Dairy Indemnity Payment Program (DIPP)**

The Dairy Indemnity Payment Program (DIPP) allows the Secretary of Agriculture to indemnify affected farmers and manufacturers of dairy products who, through no fault of their own, suffer income losses with respect to milk or milk products containing **harmful pesticide residues, chemicals, or toxic substances**, or that were contaminated by nuclear radiation or fallout. **The program was extended under the 2018 farm bill until Sept. 30, 2023.** This includes PFAS. DIPP should not be confused with the Livestock Indemnity Program (LIP) since chemical residues are not an eligible cause of loss under LIP.

- **Milk Donation Reimbursement Program (MDRP)**

Under the Milk Donation Reimbursement Program, dairy organizations that participate in federal order pools and incur expenses related to fluid milk product donations may apply and receive **partial reimbursement to cover the FMMO cost difference between the Class I value at the plant and the lowest classified value for the month.** MDRP is meant to encourage handlers to make donations to food assistance programs and reduce food waste. In 2018 Farm Bill, Congress appropriated \$9 million for the first year (2019) of the program and \$5 million for each of the following years.



- **Dairy Donation Program (DDP)**

The DDP is an additional dairy donation program that overlays existing USDA dairy donation activities such as the MDRP but differs in that it **covers more than just fluid milk donations**. And the **government payments are greatly expanded**.

Qualified expenses are incurred by either purchasing fresh fluid milk products for processing into an eligible product or purchasing bulk dairy commodity product for further processing. Program provisions specify donated dairy products must be in consumer-sized packaging.

Although program funds for DDP and MDRP are statutorily prohibited from being consolidated, the two programs operate as one from a stakeholder standpoint.

Dairy organizations making Class I fluid milk product donations—which are covered by both programs—will be reimbursed through MDRP funds at the difference between the Class I and lowest classified price **and receive a supplemental reimbursement of the lowest classified price plus the manufacturing and transportation cost reimbursement through DDP funds.**

Total combined reimbursement will be capped at the Class I price in Dade County, Florida.



### Table 2: MDRP & DDP Reimbursement Value by Product

Product Type	Product Pounds	Milk Pounds	Reimbursement Value
1% Low Fat	1,894,234	1,894,229	\$ 338,047.76
2% Reduced Fat	5,351,240	5,350,792	\$ 1,122,113.77
Butter	145	290	\$ 200.60
Buttermilk	47,212	47,212	\$ 8,567.58
Cheddar Cheese	329,333	3,297,370	\$ 656,234.06
Cottage Cheese	249,336	830,294	\$ 109,772.58
Cream	4,371	4,371	\$ 3,435.03
Eggnog	20,783	18,705	\$ 4,291.74
Fat Free Skim	1,465,702	1,465,675	\$ 241,088.16
Flav 1% Low Fat	1,092,536	983,431	\$ 176,829.80
Flav 2% Reduced Fat	197,302	177,575	\$ 36,878.10
Flav Fat Free Skim	650,824	586,881	\$ 92,592.80
Flavored Whole Milk	356,891	321,208	\$ 70,604.01
Half & Half	5,620	5,620	\$ 1,702.75
Ice Cream/Frozen Dessert	2,610	261	\$ 75.90
Miscellaneous Class 2	30,606	30,606	\$ 4,495.59
Miscellaneous Class 3	71,632	859,968	\$ 158,644.43
Mozzarella Cheese	3,562	30,989	\$ 6,357.26
Sour Cream/Dips	36,125	36,125	\$ 15,946.71
Whole Milk	3,562,025	3,562,021	\$ 768,636.82
Yogurt	2,999	2,551	\$ 522.59
<b>Total</b>	<b>15,375,088</b>	<b>19,506,174</b>	<b>\$ 3,817,038.04</b>



## • Dairy Business Innovation (DBI) Initiatives

The Dairy Business Innovation (DBI) initiatives were authorized under the 2018 farm bill to support dairy businesses in:

- Diversifying dairy product markets to reduce risk and develop higher value uses for dairy products.
- Promoting business that diversifies farmer income through processing and marketing innovation.
- Encouraging the use of regional milk production.

\$22.9 million was announced for fiscal year 2022 appropriation and on March 2, 2022, USDA announced the availability of an additional \$80 million for DBI initiatives through the American Rescue Plan

<b>Grantee</b>	<b>FY19</b>	<b>FY20</b>	<b>FY21</b>	<b>Total</b>
<b>University of Tennessee</b>	\$ 454,392	\$ 6,133,333	\$ 6,133,333	\$ 12,721,058
<b>Vermont Agency of Food &amp; Markets</b>	\$ 454,392	\$ 6,133,333	\$ 6,133,333	\$ 12,721,058
<b>University of Wisconsin</b>	\$ 454,392	\$ 6,133,333	\$ 6,133,333	\$ 12,721,058
<b>California State University, Fresno</b>	NA	NA	\$ 1,799,778	\$ 1,799,788
<b>Total FY Awards</b>	<b>\$ 1,363,176</b>	<b>\$ 18,399,999</b>	<b>\$ 20,199,777</b>	



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# QUARTERLY DAIRY LEGAL WEBINAR



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