



## Quarterly Dairy Legal Update: October – December of 2022

Below is a listing of legal and regulatory developments impacting the dairy industry during the fourth calendar quarter of 2022. Additionally, recently published dairy resources of interest are included at the end of this update.

### 1. Pennsylvania Milk Marketing Board (PMMB) Actions

#### **Pennsylvania State Senators Oppose Expanding Milk Marketing Board Authority, Demand Continued Over-Order Premium**

On October 26, 2022, Pennsylvania State Senators Elder Vogel, Jr. and Judith Schwank sent a [letter](#) to the Pennsylvania Milk Marketing Board (PMMB) “implor[ing]” the PMMB to extend beyond December 31, 2022, the expiration date of its state-mandated “over order” producer price premium (OOP), currently \$1.00 per hundredweight over the federal order price for fluid milk volumes “produced, processed and sold at wholesale” in Pennsylvania. On September 21, 2022, the PMMB ordered the December 31, 2022, expiration date in [OGO No. A-1014](#) as part of the adjudication of a petition to reexamine OOP administration. The PMMB historically sets the OOP in six-month increments, but this order only carries a 90-day term. The expiration date is part of PMMB’s overall approach to changing the OOP’s administration, which includes gaining additional statutory authority through Senate passage of HB 224 by the simultaneous expiration date of the Pennsylvania General Assembly’s 2021-2022 Legislative Session. Senators Vogel and Schwank are the majority and minority chairs of the Pennsylvania Senate Agriculture and Rural Affairs Committee where HB 224 has been pending since April 2022 (following passage by a 198-0 vote in the Pennsylvania House). The letter articulates various reasons for Senators Vogel and Schwank’s opposition to HB 224 and states “it is imperative that this premium be maintained until further examination and consideration may be made” during the 2023-2024 Legislative Session commencing after January 1, 2023. On November 2, 2022, in response to a petition filed by Pennsylvania Grange, the PMMB entered an [order](#) scheduling a hearing “concerning the level and duration” of the OOP for December 7, 2022.

#### **Pennsylvania Milk Marketing Board (PMMB) Continues \$1 Over-Order Premium Until June 30, 2023**

As the result of a hearing conducted on December 7, 2022 on a petition by Pennsylvania State Grange to extend the expiration date of Pennsylvania’s Over Order Premium, on December 14, 2022, the Pennsylvania Milk Marketing Board (PMMB) [published](#) General Order No. A-1015, extending the expiration of its over-order premium (OOP) of \$1.00 per hundredweight for fluid milk produced, processed, and sold at wholesale in Pennsylvania from January 1, 2023, through and including June 30, 2023.



## 2. U.S. Department of Agriculture (USDA) Actions

### Enrollment Begins for 2023 Dairy Margin Coverage

On October 17, 2022, the U.S. Department of Agriculture (USDA) Farm Service Agency (FSA) [announced](#) the opening of enrollment in the 2023 [Dairy Margin Coverage](#) (DMC) Program. FSA administers DMC as “a voluntary risk management program that offers protection to dairy producers when the difference between the all-milk price and the average feed price (the margin) falls below a certain dollar amount selected by the producer.” A variety of coverage levels are offered by the DMC, including that “catastrophic coverage” option free to producers and “buy-up” supplemental coverages. USDA’s Risk Management Agency (RMA) also offers traditional dairy insurance products, such as the [Dairy Revenue Protection](#) (DRP) and the [Livestock Gross Margin](#) (LGM), available through [private crop insurance agents](#).

### The U.S. Department of Agriculture (USDA) Receives Petition from Dairy Cooperative Marketing Association to Amend Federal Milk Marketing Orders 5, 6, and 7

On October 27, 2022, the U.S. Department of Agriculture’s (USDA) Agricultural Marketing Service (AMS) received a [Federal Milk Marketing Order \(FMMO\) Petition](#) from the Dairy Cooperative Marketing Association (DCMA) requesting a hearing to amend FMMOs 5, 6, and 7, and listing five proposed amendments. According to the submitted materials, the proposed amendments would “update the cost reimbursement factors in the current transportation credit balancing funds in Orders 5 and 7” and “add Distributing Plant Delivery Credits through a Distributing Plant Delivery Credit Fund to be established in Orders 5, 6, and 7,” which would “reimburse costs of delivery to distributing plants from in-area farms and year-round supplying farms which currently are not eligible for reimbursement from the Transportation Credit Balancing Funds.” DCMA members and their corresponding FMMOs are as follows:

- Appalachian Dairy Farmers Cooperative (5)
- Cobblestone Milk Cooperative, Inc. (5 & 7)
- Cooperative Milk Producers Assoc. (5)
- Dairy Farmers of America, Inc. (5, 6, & 7)
- Lanco Dairy Farms Co-op (5 & 7)
- Lone Star Milk Producers, LC (5 & 7)
- Maryland and Virginia Milk Producers Cooperative Assoc., Inc. (5 & 7)
- Select Milk Producers Inc. (5 & 7)
- Southeast Milk, Inc. (5, 6, & 7)

### 2023 Dairy Margin Coverage Deadline Extended – Jan. 31, 2023, Last Day to Enroll

On December 8, 2022, the U.S. Department of Agriculture (USDA) [announced](#) an extension of the deadline to enroll in the Dairy Margin Coverage (DMC) program for the year 2023. The deadline has been extended to January 1, 2023. The DMC is a risk management program for dairy producers that provides protection when the all-milk price and average feed price drop below a set dollar amount.

## 3. Regional Dairy Actions & Issues

### Additional Farms Join Organic Valley Cooperative, Organic Dairy Organizations Request USDA Assistance

On September 20, 2022, Organic Valley Cooperative [announced](#) the addition of “nearly a dozen” farms who lost their organic milk markets in August 2022. According to a [media account](#) of a statement from Travis Forgues, Executive Vice President of Membership for Organic Valley/CROPP Cooperative, the twelve producers were dropped by [Amish Country Farms](#) of Totowa, New Jersey. This addition follows Organic Valley’s [August 3, 2022, announcement](#) of fifty (50) new cooperative members and fifteen (15) additional new members earlier in 2022, all stemming from the August 2021 announcement by Horizon Organic, owner of Danone, of its termination of the organic dairy producers. Additionally, on September 13, 2022, the Northeast Organic Dairy Producers Alliance and several other organic dairy organizations sent a [letter](#) to Scott Marlow, U.S. Department of



Agriculture (USDA) Farm Service Agency (FSA) Deputy Administrator for Farm Programs, and Zach Ducheneaux, FSA Administrator, requesting emergency payments to offset the cost of production continuing in excess of producer prices in the organic dairy sector.

### **Pennsylvania Enacts \$120 Million in Tax Credits for New Dairy Processing Facilities**

On November 3, 2022, Pennsylvania Governor Tom Wolf signed into law [H.B. 1059](#), amending the Pennsylvania Tax Code to, among other actions, provide \$15 million per year for eight years – up to \$120 million – in first come, first-served tax credits for the operation of a new milk processing facility built with at least a \$500 million capital investment and subject to several other conditions, including creating “1,200 new jobs and permanent jobs.” The credits may not be applied to receive a refund, or carried back or forward, but may be assigned or sold. After the facility begins operations, the company may claim the tax credit at the rate of five cents per gallon of milk “purchased and produced from sources exclusively within” Pennsylvania.

### **California Dairies to Acquire DairyAmerica, Inc.**

On November 29, 2022, California Dairies, Inc. (CDI), a California-based farmer-owned cooperative – [announced](#) the acquisition of DairyAmerica, Inc., a leading supplier of skim milk powder, co-owned by Agri-Mark and O-AT-KA Milk Products. CDI acquired all ownership rights. In a press release, CDI clarified that “[u]nder the new structure, DairyAmerica will continue to market milk powders produced by Agri-Mark, Inc. and O-AT-KA Milk Products.” The acquisition will be effective on January 1, 2023.

## **4. International Dairy Issues**

### **New Zealand Submits Formal Request for Panel Hearing on Canada’s Tariff Rate Quota Dispute**

On November 7, 2022, New Zealand’s Ministry of Foreign Affairs and Trade [submitted](#) formal notification to Canada requesting the establishment of a panel to hear New Zealand’s challenge to Canada’s practice of reserving its dairy tariff rate quotas (TRQs) for Canadian dairy processors, which New Zealand claims violates the [Comprehensive and Progressive Agreement for TransPacific Partnership \(CPTPP\)](#). Previously, on May 12, 2022, New Zealand [announced](#) that it had [requested formal consultations](#) with Canada, which the countries held in June 2022, but which New Zealand states, “did not resolve matters.” Also [announced](#) by the New Zealand government, New Zealand’s panel request notice described the trade effects of Canada’s dairy TRQ allocation practices, stating that they “encourage chronic underfill of [Canada’s] dairy TRQs, reduce their commercial value for exporting CPTPP Parties, and undermine the market access negotiated under CPTPP.” The United States is also in dispute with Canada over its dairy TRQ practices as violative of the United States-Mexico-Canada Agreement (USMCA), which remains unresolved.

### **The U.S. Trade Representative (USTR) Expands USMCA Dispute Resolution Consultation Request Challenging Canada’s Dairy Tariff-Rate Quotas (TRQs)**

On December 20, 2022, the U.S. Trade Representative (USTR) [announced](#) an expanded [request](#) for new dispute resolution consultations with Canada under the United States-Mexico-Canada Agreement (USMCA) to address Canada’s administration of its dairy tariff rate quotas (TRQs). This new request broadens a [previously pending consultation request](#) from May 2022 to address claims that Canada violates the USMCA by favoring dairy processors over other potential importers in its market-share allocation of TRQs among entities eligible for the reduced tariff rates on imported U.S. dairy products. In 2021, the United States first challenged Canada’s administration of its dairy TRQs by restricting eligible entities to processors. In that initial dispute resolution proceeding, a USMCA arbitration panel, in January 2022, [determined](#) that Canada’s restriction of eligibility to processors violated [Article 3.A.2.11\(b\)](#) of the USMCA. Following this finding, Canada implemented one change by adding distributors as eligible parties, but not retailers or other potential importers. This change in eligible importing parties has remained unsatisfactory to the United States and spurred the May 2022 request. The latest request includes the same grounds as the May 2022 request but also includes the market-share allocation challenge.



### Additional Dairy Resources of Interest

PSU Extension:

- [Daniela Roland Appointed as New Dairy Extension Educator in Franklin County](#) (Dec. 14, 2022)
- [Penn State Dairy Cattle Nutrition Workshop Is Packed with Information](#) (Sep. 28, 2022)

Lancaster Farming:

- [Pennsylvania Dairy Groups Differ on How Long to Extend Over-Order Premium](#) (Dec. 1, 2022)
- [Pennsylvania Gov. Tom Wolf Oks \\$15 M Dairy Processing Tax Credit](#) (Nov. 23, 2022)

Dairy Market Reports:

- [December 2022](#)
- [November 2022](#)
- [October 2022](#)

American Farm Bureau:

- [New Report Lays Out Priorities for Dairy Reform](#) (Dec. 22, 2022)
- [Overview of Dairy Programs in the Farm Bill](#) (Sep. 27, 2022)

Penn State News, [Some no-till crop rotations on dairy farms could benefit from strategic tillage](#) (Dec. 22, 2022)

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#### CENTER MISSION AND BACKGROUND

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