

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

Below is a listing of legal and regulatory developments impacting the dairy industry during the third 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 Milk Marketing Board (PMMB) Conducts Hearing and Issues Adjudication on Pennsylvania Department of Agriculture’s Petition to Reconsider “Existence, Level, and Duration” of Pennsylvania Over-Order Premium**

On July 11, 2022, the Pennsylvania Milk Marketing Board (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 hearing concluded on August 30 and 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 current Pennsylvania OOP mandates a producer price premium over the federal order price through a calculation intended to approximate the volume a producers’ milk utilized as Class I fluid milk. The hearing aired recurring complaints that (1) the current OOP calculation allows retailers and wholesalers 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. The PMMB’s written decision states, “Section 801 of the 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 went on to explain 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 producer 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 of forms, but we first need the tools and framework House Bill 224 would provide to begin to develop those specifics.” Barring any further action by the Pennsylvania General Assembly and/or the PMMB, Pennsylvania’s current OOP will cease on January 1, 2023.

For additional information on the impact of PMMB’s decision on Pennsylvania milk marketing reform, please listen to the Center’s [Agricultural Law Podcast No. 226](#) hosted by our Staff Attorney Brook Duer and our Research Assistant Ethan Durand.



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

### **The U.S. Department of Agriculture (USDA) Announces \$300 Million for New Organic Transition Initiative, Including \$100 Million in Specified Markets, Such As Dairy**

On August 22, 2022, the U.S. Department of Agriculture (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 – including organic grain and feed– to improve organic capacity and infrastructure, market access, and supply organic ingredients.

### **The U.S. Department of Agriculture (USDA) Announces \$2.8 Billion for 70 Climate-Smart Partnership Projects, Including Project from the Dairy Farmers of America, Inc.**

On September 14, 2022, the U.S. Department of Agriculture (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. Many of these projects involve dairy.

## 3. 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, open September 1-30, 2022, 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, open September 1 through October 15, 2022, 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 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 farmers’ 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. Dairy industry stakeholders may [submit comments](#) on the standards until 5:00 PM EST on October 28, 2022. Any revised standards are proposed to become effective July 1, 2024, through June 30, 2027.

## 4. Regional Dairy Actions & Issues

### **Dairy Farmers of America, Inc. 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 United States 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., Case # 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. DFA's Northeast Area region includes Vermont, New Hampshire, Maine, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Maryland, Delaware, and most of Pennsylvania.

### Additional Dairy Resources of Interest

#### PSU Extension:

- [Dairy Revenue Protection – October 2022](#)
- [Dairy Sense: Making Sense of Hay and Grain Markets](#) (Sep. 28, 2022)
- [Dairy and Crop Insurance: Can I Insure Rainfall?](#) (Sep. 8, 2022)
- [Dairy Sense: Weather's Impact on Corn Silage Quality](#) (Sep. 8, 2022)
- [Thinking About Value-added Dairy? We Can Help!](#) (Jul. 26, 2022)
- [Dairy Sense: Troubleshooting Low Milk Components](#) (Jun. 29, 2022)
- [Dairy Financial Performance: How Did 2021 Compare to Previous Years?](#) (Jun. 29, 2022)
- [Precision Feeding in Dairy Cows: Increasing Efficiency and Profitability](#) (Jun. 29, 2022)

#### Dairy Management, Inc. (DMI):

- [Dairy Market Reports](#)
  - [September 2022](#)
  - [August 2022](#)
  - [July 2022](#)

#### National Milk Producers Federation (NMPF):

- [Regulatory Register, Summer 2022](#)
- [News for Dairy Co-Ops: September 2022](#)
- [News for Dairy Co-Ops: August 2022](#)
- [News for Dairy Co-Ops: July 2022](#)

#### Hoard's Dairyman:

- [Dairy Livestream, Let's talk Federal Order fixes](#) (Jun. 15, 2022)
- [Milk Check Outlook, Does fluid milk warrant a price premium?](#) (Jul. 13, 2022)
- [Milk Check Outlook, Do we need to revisit incentives to move milk?](#) (Sep. 10, 2022)
- [Milk Check Outlook, Global dairy deficit to buoy milk markets](#) (Sep. 25, 2022)

#### Progressive Dairy:

- [Policy proposals beginning to surface](#) (Jul. 21, 2022)
- [DFA named in another Northeast antitrust lawsuit](#) (Aug. 16, 2022)
- [What Happened/What's Next: NMPF lays out FMMO modernization timeline](#) (Aug. 22, 2022)
- [USDA funding 'climate-smart' dairy projects](#) (Sep. 16, 2022)
- [What Happened/What's Next: Manure emission models, milk check deductions](#) (Oct. 8, 2022)
- [Potential FMMO hearing not likely to directly address depooling, PPDs](#) (Oct. 17, 2022)

Dairy Stream (Edge Podcast), [Milk Pricing: Reform starts with farmer-processor relationship](#) (Aug. 8, 2022)



Dairy Stream (Edge Podcast), [Sustainability focus includes methane reduction, no-till and cover crops](#) (Sep. 14, 2022)

American Farm Bureau, [Overview of Dairy Programs in the Farm Bill](#) (Sep. 27, 2022)

Penn State Extension News, [Penn State Dairy Cattle Nutrition Workshop Is Packed with Information](#) (Sep. 28, 2022)

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**CENTER MISSION AND BACKGROUND**

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