

Quarterly Dairy Legal Update: January – March of 2023

Below is a listing of legal and regulatory developments impacting the dairy industry during the first calendar quarter of 2023. Additionally, recently published dairy resources of interest are included at the end of this update.

1. U.S. Department of Agriculture (USDA) Actions

The U.S. Department of Agriculture (USDA) Publishes Proposed Rule for Child Nutrition Programs, Containing New Added Sugars Standards for Dairy Products

On February 7, 2023, the U.S. Department of Agriculture's (USDA) Food and Nutrition Service (FNS) [published](#) a proposed rule in the Federal Register, titled "Child Nutrition Programs: Revisions to Meal Patterns Consistent With the 2020 Dietary Guidelines for Americans." The public comment period closes on April 10, 2023. Among other things, the proposed rule contains new added sugar standards for the school lunch and breakfast programs. The proposed added sugars standards target limiting added sugars in grain-based desserts, breakfast cereals, yogurts and flavored milks. Added sugars limits would be both product-specific and based on weekly dietary limits. There are currently no added sugars standards for school meal programs. In the comment solicitation, FNS states that it plans to publish a final rule in time for school districts to plan for the 2024-2025 school year.

The U.S. Department of Agriculture (USDA) Announces Second Round of Pandemic Market Volatility Assistance and New Organic Dairy Marketing Assistance

On January 23, 2023, the U.S. Department of Agriculture's (USDA) Farm Service Agency (FSA) [announced](#) additional funding for dairy farmers through a second round of [Pandemic Volatility Assistance Program \(PMVAP\)](#) payments and the new Organic Dairy Marketing Assistance Program (ODMAP). PMVAP payments are now available to producers with fluid milk sales from 5 to 9 million pounds between July through December 2020, up from the initial 5-million-pound cap. Forthcoming details about ODMAP will be available at farmers.gov following the release of the program's Notice of Funds Availability.

2. U.S. Food and Drug Administration (FDA) Actions

The U.S. Food and Drug Administration (FDA) Publishes Draft Guidance on Labeling Plant-Based Milk Products

On February 22, 2023, the U.S. Food and Drug Administration (FDA) [published](#) draft guidance for industry, titled "Labeling of Plant-Based Milk Alternatives and Voluntary Nutrient Statements." This draft guidance aims to provide the public with FDA's view on labeling plant-based milk alternatives under the Food, Drug, and Cosmetic Act (FDCA), 21 U.S.C. § 343(a)(1) and § 343(i)(1) and provides recommendations on how to use voluntary nutritional statements. The public comment period ends on April 24, 2023.



3. National Dairy Stakeholders' Actions & Issues

The National Milk Producers Federation Establishes Position on Federal Milk Marketing Order Reform

On March 7, 2023, the National Milk Producers Federation (NMPF) announced its plan for petitioning the U.S. Department of Agriculture (USDA) to reform the Federal Milk Marketing Order (FMMO) system. On March 28, 2023, the [International Dairy Food Association](#) (IDFA), the largest national dairy processors' trade association, and the [Wisconsin Cheese Makers Association](#) (WCMA) separately filed FMMO reform petitions solely seeking revisions to "make allowances" in the federal order price calculation. The National Milk Producers Federation (NMPF), Edge Dairy Cooperative and American Farm Bureau Federation all wrote [letters](#) to USDA opposing the reform petitions and the limited nature of the relief requested by IDFA and WCMA. NMPF has yet to file its reform petition.

The U.S. Court of Appeals for the Fourth Circuit Holds "Gruyere" Generic, Not Eligible for Trademark Registration

On March 3, 2023, the U.S. Court of Appeals for the Fourth Circuit [issued](#) an opinion holding that the term "gruyere" is generic and thus ineligible for registration with the U.S. Patent and Trademark Office (USPTO). *Interprofession du Gruyere v. U.S. Dairy Export Council*, No. 22-1041; *Interprofession du Gruyere v. Int'l Dairy Foods Ass'n*, No. 1:20-cv-1174 (E.D., Virginia). The appellants, Swiss and French consortiums of dairy producers, sought to limit the use of the term "gruyere" to cheese produced in the Gruyère region of Switzerland and France. The court upheld the lower court's decision that the USPTO correctly denied registration for the term, stating "the Consortiums cannot overcome what the record makes clear: cheese consumers in the United States understand 'gruyere' to refer to a type of cheese, which renders the term generic."

The Food and Agriculture Climate Alliance (FACA) Publishes 2023 Farm Bill Recommendations

On February 22, 2023, the Food and Agriculture Climate Alliance (FACA) [announced](#) its [recommendations](#) for the [2023 Farm Bill](#). FACA's membership includes more than 80 entities in the agriculture and food sectors, including a steering committee of American Farm Bureau Federation, Food Industry Association, National Association of State Departments of Agriculture, National Farmers Union, National Council of Farmer Cooperatives, Environmental Defense Fund, Nature Conservancy National Alliance of Forest Owners. FACA's 2023 Farm Bill recommendations were formed by 23 committee members and covers the areas of 1) conservation risk management and credit, b) energy, c) food waste, d) forestry, e) livestock and dairy, f) research, extension, and innovation.

4. Regional Dairy Actions & Issues

The Pennsylvania Senate Passes a Resolution to Allow Whole Milk in State Schools

On March 6, 2023, the Pennsylvania Senate [passed](#) Resolution 48, urging the U.S. Department of Agriculture (USDA) to add 2% and whole milk to the [National School Lunch Program \(NSLP\)](#). Whole milk was removed from the NSLP in 2010. The resolution has no legal effect.

5. International Dairy Developments & Issues

The United States Requests Second USMCA Arbitration over Canada's Dairy Tariff-Rate Quotas

On January 31, 2023, the Office of the U.S. Trade Representative (USTR) [announced](#) that the United States has requested—for the second time—that an arbitration panel adjudicate their claim that Canada's administration of its dairy tariff-rate quotas (TRQs) violate the United States-Mexico-Canada Agreement (USMCA). A January 2022 arbitration panel decision found Canada's TRQ eligibility criteria were in violation of the USMCA. According to the United States, Canada's resulting minimal change to TRQ eligibility does not remedy the underlying violation. The [new arbitration request](#) reasserts TRQ eligibility and adds TRQ allocation as Canadian USMCA violations. The USTR



also published a [collection of quotations](#) from U.S. Congress members and dairy industry stakeholders supporting USTR's arbitration request.

French Company Danone Announces Plan to Reduce Carbon Emissions by 30%

On January 17, 2023, French-based company Danone [announced](#) plans to reduce methane emissions from the production and processing of milk used in its dairy products by 30% by 2023. Danone is one of the world's leading dairy product manufacturers and claims that its methane emissions reduction plan will avoid the production of the methane equivalent of 1.2 million tons of carbon dioxide. To achieve these goals, Danone announced a partnership with Environmental Defense Fund.

Additional Dairy Resources of Interest

Dairy Management, Inc. (DMI):

- [Dairy Market Reports](#)
 - [March 2023](#)
 - [February 2023](#)
 - [January 2023](#)

National Milk Producers Federation (NMPF):

- [Regulatory Register, Winter 2023](#)
- [News for Dairy Co-Ops: March 2023](#)
- [News for Dairy Co-Ops: February 2023](#)
- [News for Dairy Co-Ops: January 2023](#)

Southern Ag Today:

- [A Cheese by Any Other Name](#), Rusty Rumley, The National Agricultural Law Center (March 24, 2023)
- [Dairy Margin Coverage Program Begins 2023 with Payment](#), Kenny Burdine, University of Kentucky Extension (March 14, 2023)

Ohio State University Extension, Farm Office Blog, [The Ag Law Roundup: leases, zoning, line fences, milk insurance, and popcorn](#), Peggy Kirk Hall (February 21, 2023)

Rabobank, [Reducing Greenhouse Gas Emissions in the Dairy Value Chain](#), Richard Scheper and Claudia Cammack (January 2023)

USDA, Foreign Agricultural Service, [Dairy: World Markets and Trade](#) (December 2022)

Farm Bureau Federation/Market Intel, [New Report Lays Out Priorities for Dairy Reform](#) (December 22, 2022)

Farm Journal's AgWeb, [Suspects Caught in an Unbelievable Milk Scandal in Miami](#), Karen Bohnert (Apr.10, 2023).

Quartz, [Why is the world's top milk producer looking to import more dairy products?](#), Niharika Sharma (Apr. 6, 2023).



Authors

Dillon Lightfoot, Research Assistant
Megan Guess, Research Assistant
Chloe Marie, Research Specialist
Audry Thompson, Staff Attorney
Brook Duer, Staff Attorney

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**PENN STATE CENTER FOR
AGRICULTURAL AND SHALE LAW**

329 Innovation Blvd., Suite 118
University Park, PA 16802
Phone: 814-865-4290
Website: AgLaw.psu.edu

PROFESSIONAL STAFF

Center Director

Ross H. Pifer
rpifer@psu.edu

Staff Attorney
Brook Duer
dhd5103@psu.edu

Staff Attorney
Audry Thompson
aet17@psu.edu

Staff Attorney
Jackie Schweichler
jks251@psu.edu

Research Specialist
Chloe Marie, LL.M.
cjm445@psu.edu

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