

## Quarterly Dairy Legal Update: July – September of 2023

Below is a listing of legal and regulatory developments impacting the dairy industry during the third 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) Commenced Hearing on Federal Milk Marketing Order (FMMO) Reform**

On June 24, 2023, the U.S. Department of Agriculture (USDA) Agricultural Marketing Service (AMS) [announced](#) in the Federal Register that it would hold a public hearing commencing on August 23, 2023, to take testimony and evidence on proposals to amend the pricing formula for all eleven Federal Milk Marketing Orders (FMMOs). AMS received 40 proposals but will only consider 21 proposals that “directly impact the uniform pricing formulas.” The proposals aim to revise “the milk composition factors, commodity product prices, Class III and IV formula factors, base Class I skim milk, and Class I and Class II differentials.” The hearing, officially titled [2023 National Federal Milk Marketing Order Pricing Formula Hearing](#), commenced on August 23, 2023, in Carmel, IN, and continued daily until an October 11, 2023, recess. The hearing will reconvene at 1:00 pm ET on November 27, 2023, in Zionsville, IN. A Federal Register notice re: the reconvened hearing has yet to be published.

#### **The U.S. Department of Agriculture (USDA) Economic Research Service (ERS) Published Dairy Econometric Model**

On July 13, 2023, the U.S. Department of Agriculture (USDA) Economic Research Service (ERS) [published](#) a report titled “Documentation for the USDA Economic Research Service Annual U.S. Dairy Sector Econometric Model.” The report uses data from several USDA agencies, as well as the U.S. Department of Labor, Bureau of Labor Statistics, and the U.S. Department of Commerce, Bureau of the Census and Bureau of Economic Analysis, to provide a ten-year projection for prices, supply, and demand for U.S. dairy products.

#### **The U.S. Department of Agriculture (USDA) Published Proposed Rule Amending Appalachian, Southeast, Florida Federal Milk Marketing Orders (FMMOs)**

On July 18, 2023, the U.S. Department of Agriculture (USDA) Agricultural Marketing Service (AMS) [published](#) a proposed rule in the Federal Register that would amend federal milk marketing orders (FMMOs) in the Appalachian, Southeast, and Florida marketing areas. Additionally, the proposed rule would 1) amend the transportation credit balancing fund (TCBF) language for the Appalachian and Southeast areas to revise the mileage rate calculation, months of mandatory and discretionary payments, and the non-reimbursed mileage factor; 2) increase the Class I milk maximum rate; and 3) allow for distributing plant delivery credits (DPDCs) in all three areas. The comment period closed on September 18, 2023.



### **The U.S. Department of Agriculture (USDA) Established Milk Loss Program for 2020, 2021, and 2022 Disaster Events**

On September 11, 2023, the U.S. Department of Agriculture (USDA) Farm Service Agency (FSA) [published](#) a final rule in the Federal Register, effective immediately, establishing funding for the Milk Loss Program (MLP) for dairy producers impacted by “qualifying disaster events” in 2020, 2021, and 2022. The MLP helps “dairy operations for milk dumped or removed without compensation from the commercial milk market due to qualifying disaster events, including droughts, wildfires, hurricanes, floods, derechos, excessive heat, winter storms, freeze, and smoke exposure.” Producers can apply for MLP funding through their local FSA county office.

### **The U.S. Department of Agriculture (USDA) Announced \$5 Million for Second Round of Organic Dairy Marketing Assistance Payments**

On September 20, 2023, the U.S. Department of Agriculture (USDA) Farm Service Agency (FSA) [announced](#) \$5 million in second round of payments under the Organic Dairy Marketing Assistance Program (ODMAP). Participating producers will automatically receive the second payment without taking further action.

### **The U.S. Department of Agriculture (USDA) Published “2020 Report to Congress on Dairy Promotion and Research Program and Fluid Milk Processor Promotion Program”**

On September 25, 2023, the U.S. Department of Agriculture (USDA) Agricultural Marketing Service (AMS) [published](#) its 2020 Report to Congress on the Dairy Promotion and Research Program and the Fluid Milk Processor Promotion Program, as required by 7 U.S.C. § 4514. The publication of the 2020 report follows a September 22, 2023, [letter](#) from nine Congressmembers calling for the publication of the 2020, 2021, and 2022 reports, which had not been published. The 2021 and 2022 reports have yet to be published on the AMS Report to Congress on Dairy & Fluid Milk Promotion & Research Programs [webpage](#).

### **August 2023 Margin Triggered Eighth Dairy Margin Coverage Payment (DMC) for 2023**

On September 29, 2023, the U.S. Department of Agriculture (USDA) Farm Service Agency (FSA) [announced](#) that the “August milk margin triggered the eighth consecutive payment for dairy producers” under the Dairy Margin Coverage (DMC) program for 2023. According to the announcement, “August’s income over feed margin is \$6.46 per hundredweight with projected DMC payments totaling \$120 million.”

## **2. National Dairy Stakeholders’ Actions & Issues**

### **The U.S. Environmental Protection Agency (EPA) and Hershey Co. Announced \$2 Million in Funding for Local Dairy Farmers**

On August 22, 2023, the U.S. Environmental Protection Agency (EPA) and the Hershey Company [announced](#) a \$2 million partnership to support local dairy farmers. EPA states that the funds will be distributed by the National Fish and Wildlife Foundation and used by the Alliance for the Chesapeake Bay, in collaboration with Land O’Lakes, Inc., “to promote the adoption of practices that support local and regional environmental goals with dairy farmers in Land O’Lakes’ eastern regions milk shed.” Hershey, Land O’Lakes, and the Alliance have been working together since June 2021 to “implement on-farm best management practices to reduce greenhouse gas emissions and help improve water quality in the Chesapeake Bay watershed.”

## **3. Regional Dairy Actions & Issues**

### **The California Department of Food and Agriculture (CDFA) Accepted Pre-Proposals for Methane Emission Reduction Program**

On July 6, 2023, the California Department of Food and Agriculture (CDFA) [announced](#) that the agency is accepting pre-proposals for the Livestock Enteric Methane Emission Reduction Research Program (LEMER-RP), a new program funded by the California Budget Act of 2022. The program will award a total of \$10 million for “demonstration trials evaluating additives and dietary



modifications that have the potential to reduce enteric methane emissions in the dairy and livestock sectors.” Pre-proposals were due August 7, 2023.

### **Penn State Study Examined Impact of FMMO Pricing Policy Change on Dairy and Water Quality in Chesapeake Bay Watershed**

On May 15, 2023, Professors Zeya Zhang and David Abler from Penn State University College of Agricultural Sciences [published](#) a study titled “Dairy Pricing Policy, Production, and Water Quality: Application to the Chesapeake Bay Watershed.”

- The report describes the study’s purpose as follows: “[T]o assess the economic and water quality impacts of implementing a dairy pricing policy designed to prevent the sudden plummet in milk prices that occurred at the outset of the COVID-19 pandemic, both by itself and in combination with higher livestock production costs similar to what has happened since 2021. The model estimates impacts on the sizes of six livestock sectors (dairy cows, beef cattle, hogs, broilers, layers, and turkeys), production level, net income, and water quality outcomes under two policy scenarios: a stand-alone milk price increase scenario, and a scenario with a milk price increase accompanied by a rise in livestock feed costs.”
- The specific dairy pricing policy change studied was an FMMO pricing change requested by dairy producer cooperatives in 2020. The history of that request is described as follows: “The onset of the COVID-19 pandemic in spring 2020 caused milk prices to plummet as food service demand from restaurants, schools, and hotels collapsed. From February to May 2020, the United States monthly uniform milk price dropped from \$17.51 per hundred pounds (cwt) to \$12.81/cwt, which was its lowest level since September 2009 ... In response to the sudden price drop in spring 2020, the Dairy Cooperative Marketing Association (DCMA), together with other cooperatives from the 11 FMMOs, submitted a request to USDA for an emergency national hearing, in which they asked that USDA establish a minimum Class I milk price mover of \$15.68 for the months of June-August 2020 ... The request was then rejected by USDA, but establishment of a minimum pricing policy under the current FMMO system continues to be a major appeal from U.S. dairy farmers and cooperatives.”
- The report concluded, “We find that such a pricing policy induces a significant expansion in the dairy sectors as farmers reallocate resources from other livestock sectors into dairy. On the other hand, despite the fact that the dairy sector is one of the most feed-intensive sectors in our model, rising livestock feed costs generally have a limited impact on production, as their effects are overwhelmed by higher milk prices. Percentage changes in total net revenue across all livestock sectors are heterogenous across regions, with the regions having a large base-period dairy sector showing the highest percentage increases in total net revenue. For water quality, we find that the shift in resources from other livestock sectors to the dairy sector in response to a milk price increase leads to an increase in nitrogen emissions but a decrease in phosphorus emissions for the livestock industry as a whole. The same result—more nitrogen, less phosphorus—also holds for nutrient deliveries to the Chesapeake Bay.”

### **Additional Dairy Resources of Interest**

Dairy Management, Inc. (DMI):

- [Dairy Market Reports](#)
  - [July 2023](#)
  - [August 2023](#)
  - [September 2023](#)

National Milk Producers Federation (NMPF):

- [Regulatory Register, Summer 2023](#)



- [News for Dairy Co-Ops: July 2023](#)
- [News for Dairy Co-Ops: August 2023](#)
- [News for Dairy Co-Ops: September 2023](#)

Southern Ag Today:

- [More Dairy Cow Culling](#) (July 11, 2023)
- [Dairy Margin Coverage Provides Some Help in Challenging Milk Market](#) (July 18, 2023)

National Agricultural Law Center

- Samantha Capaldo, [USDA Publishes Final Dairy Donation Program Rule](#) (September 7, 2023)

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**CENTER MISSION AND BACKGROUND**

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