



Quarterly Dairy Legal Update: October – December of 2023

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

1. Pennsylvania Milk Marketing Board (PMMB) Actions

The Pennsylvania Milk Marketing Board (PMMB) Issued Order Continuing \$1.00 Over-Order Premium until June 2024

On December 13, 2023, the Pennsylvania Milk Marketing Board (PMMB) [issued](#) Official General Order A-1018, continuing the \$1.00 per hundredweight over-order premium for all Class 1 milk produced, processed, and sold in Pennsylvania, effective January 1, 2024, until June 30, 2024. The order contains a dissent in opposition to the continued OOP that states, “[w]hile every Pennsylvania consumer pays the premium when they purchase fluid milk in Pennsylvania, every Pennsylvania dairy farmer does not receive a direct benefit from the premium.” The dissenter advocated for an OOP structure that would (1) “distribute over-order premium dollars uniformly among all Pennsylvania dairy farmers;” (2) “not charge consumers substantially more than what is paid to dairy farmers;” and (3) “not provide incentives by which payment of premium dollars can be avoided by moving milk across state lines.”

The Pennsylvania Milk Marketing Board (PMMB) Announced Cost Replacement Order Updates for All Six Milk Marketing Areas

On December 6, 2023, the Pennsylvania Milk Marketing Board (PMMB) issued cost replacement orders for areas [No. 3 \(Northeastern PA\)](#), [No. 5 \(Western PA\)](#), and [No. 6 \(West Central PA\)](#). Under the new orders, the rate of return to retailers remains at 2.7%, which remain unchanged for all three areas from the areas’ respective July 2023 orders. While the orders for areas No. 3 and No. 6 sustain the July 2023 rate of return for dealers at 3.4%, the area No. 5 increases the rate of return for dealers to 3.5%. All three orders became effective January 1, 2024. On January 3, 2024, the PMMB issued cost replacement orders for areas [No. 1 \(Southeastern PA\)](#), [No. 2 \(East Central PA\)](#), and [No. 4 \(South Central PA\)](#). Under the new orders, the rate of return for dealers and to retailers remain unchanged from the areas’ respective May and July 2023 orders. All three areas sustain a 3.5% rate of return for dealers while areas No. 1 and No. 4 maintain a 2.5% rate of return to retailers and area No. 2 maintains a 2.7% rate of return to retailers.

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

Federal Milk Marketing Order Hearing Reconvened January 16, 2024

On December 29, 2023, the U.S. Department of Agriculture (USDA) Agricultural Marketing Service (AMS) [announced](#) that the [National Federal Milk Marketing Order Pricing Formula Hearing](#), which paused on December 8, 2023, will reconvene on January 16, 2024, in Carmel, Indiana. According to the notice, if the hearing does not conclude by 5 p.m. ET on January 19, 2024, it will resume on January 29, 2024, and continue weekdays thereafter until completion. The hearing initially [started](#) on August 23, 2023, but paused once before on October 11, 2023, to [reconvene](#) briefly on November 27, 2023. The FMMO Hearing [ended](#) on January 30, 2024.



The U.S. Department of Agriculture (USDA) Granted More than \$1 Billion for 81 Conservation Programs

On November 1, 2023, the U.S. Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) [announced](#) that the agency had allocated more than \$1 billion towards 81 conservation projects throughout the country through the [Regional Conservation Partnership Program](#). Dairy Farmers of America and the Maryland & Virginia Milk Producers Cooperative Association were awarded \$22.8 million and \$10 million, respectively, for their climate-focused projects: Climate-Smart Dairies: A Partnership for Enteric Methane Reduction using Novel Feed Additives and Mid-Atlantic Dairy Farmers Producing Tangible Results Through Climate Smart Solutions.

The U.S. Department of Agriculture (USDA) Published Dairy Production, Consumption Annual Reports for 13 countries, European Union (EU)

In October 2023, the U.S. Department of Agriculture (USDA) released Dairy and Products Annual Reports for various countries, analyzing projected dairy production, consumption, and imports of [Algeria](#), [Brazil](#), [Canada](#), [Chile](#), [China](#), [European Union](#), [India](#), [Japan](#), [Mexico](#), [New Zealand](#), [Philippines](#), [South Korea](#), [Taiwan](#), and [Ukraine](#).

The U.S. Department of Agriculture (USDA) Extended Milk Loss Program Application Deadline until October 30, 2023

On October 13, 2023, the U.S. Department of Agriculture (USDA) Farm Service Agency (FSA) [extended](#) to October 30, 2023, the deadline for Milk Loss Program applications, which was initially scheduled until October 16, 2023. The announcement specifies that milk loss resulting from qualifying weather events is eligible for compensation.

The U.S. Department of Agriculture (USDA) Awarded \$23 Million to Dairy Business Innovation Program, Vermont Initiative Received \$7 Million

On October 3, 2023, the U.S. Department of Agriculture (USDA) Agricultural Marketing Service (AMS) [announced](#) \$23 million for its [Dairy Business Innovation \(DBI\) Initiatives](#). AMS granted funds to four DBI initiatives at the California State University Fresno, the University of Tennessee, the University of Wisconsin, and the Vermont Agency of Agriculture, Food & Markets (VAAFMM). VAAFMM's [Northeast Dairy Business Innovation Center \(NE-DBIC\)](#) [received](#) \$7,053,333 through the DBI Initiatives on October 5, 2023. NE-DBIC supports dairy production in 11 Northeast states: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Vermont.

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

The U.S. Food and Drug Administration (FDA) Published Small Entity Compliance Guidance for Yogurt Standards of Identity

On November 28, 2023, the U.S. Food and Drug Administration (FDA) [announced](#) a new guidance document to help small businesses understand and comply with recent changes ([86 FR 31117](#)) to the yogurt standard of identity, 21 CFR parts 130 and 131. The guidance, in a question-and-answer format, covers key aspects, including definition changes for yogurt, allowable pH levels, requirements for milkfat and milk solids not fat, guidelines for reduced-fat, low-fat, and nonfat varieties, and approved sweeteners for inclusion in yogurt products. Manufacturers must comply with the rule changes beginning January 1, 2024.

4. National Dairy Stakeholders' Actions & Issues

U.S. House of Representatives Passed Whole Milk for Healthy Kids Act of 2023

On December 13, 2023, the U.S. House of Representatives [passed](#) H.R. 1147, titled "Whole Milk for Healthy Kids Act of 2023." If enacted into law, the bill would allow schools participating in the National School Lunch Program (NSLP) (42 U.S.C. 1758) to offer students whole milk alongside flavored and unflavored reduced-fat, low-fat, and fat-free milk options. The bill provides that "[m]ilk fat included



in any fluid milk ... shall not be considered saturated fat for purposes of measuring compliance with the allowable average saturated fat content of a meal." Additionally, the bill would "prohibit" schools from purchasing or serving milk produced by Chinese state-owned enterprises. The bill was introduced in the Senate on December 14, 2023, and is currently waiting for further action.

Elanco Animal Health, Inc. and High Alpha Innovation Announced Athian's Carbon Marketplace for Dairy Farmers

On November 2, 2023, Elanco Animal Health Inc. and High Alpha Innovation [introduced](#) together the "first-of-its-kind voluntary livestock carbon insetting marketplace." This platform will enable dairy value chain companies to purchase credits towards their Scope 3 emission reduction goals. According to the announcement, this carbon marketplace is a key step towards realizing the U.S. dairy industry's 2050 carbon neutrality target.

U.S. Senate Introduced O DAIRY Act of 2023

On October 19, 2023, U.S. Senator Peter Welch [introduced](#) S. 3097, titled the "Organic Dairy Assistance, Investment, and Reporting Yields Act of 2023" or "O DAIRY Act of 2023." This proposed legislation would amend the Emergency Assistance for Livestock, Honey Bees, and Farm-Raised Fish (ELAP) Program to cover losses exceeding 10% due to rising organic feed and input costs; direct the Secretary of Agriculture to collect and publish data on organic milk production; and dedicate \$20 million to enhance organic dairy processing; and invest \$5 million to create regional organic dairy market specialist positions tasked with providing research and guidance to the dairy community.

Federal Court Dismissed Antitrust Suit Against Dairy Farmers of America

On October 5, 2023, the U.S. District Court for the District of Vermont [dismissed](#) with prejudice a [class action lawsuit](#) filed by a group of dairy farmers against Dairy Farmers of America (DFA) alleging anti-competitive practices in the Northeast raw milk market. *S.R.J.F., Inc. v. Dairy Farmers of America*, No. 2:22-cv-147. Previously, on September 26, 2023, the court [granted](#) partial summary judgment in favor of DFA, finding that the farmers' complaint violated a settlement agreement [approved](#) by the court in June 2016 and [upheld](#) by the Second Circuit Court in April 2017. *Allen v. Dairy Farmers of America*, No. 5:09-cv-230.

4. Regional Dairy Actions & Issues

The Center for Dairy Excellence Awarded Value-Added Marketing Grants

On October 24, 2023, the Center for Dairy Excellence [offered up](#) to eleven grants of \$5,000 each under its [Marketing, Branding, and Labeling Consultant Grant Program](#). Dairy value-added businesses in Pennsylvania, Maryland, Delaware, and New Jersey were eligible to apply for the grants until November 17, 2023.

5. International Dairy Issues

Panel Report Found Canada's Dairy Tariff-Rate Quotas "Not Inconsistent" with USMCA

On November 24, 2023, the dispute settlement panel formed under the United States-Mexico-Canada Agreement (USMCA) [published](#) its final report concerning Canada's dairy tariff-rate quota (TRQ) allocation measures. The U.S. Trade Representative (USTR) [concluded](#) that Canada's measures did not violate the USMCA provisions cited by the United States. However, one panelist agreed with the United States that "by excluding retailers and others, Canada was breaching its commitment to make its dairy TRQs available to all applicants active in the Canadian food or agriculture sector."

Additional Dairy Resources of Interest

Dairy Management, Inc. (DMI):

- [Dairy Market Reports](#)
 - [October 2023](#)
 - [November 2023](#)
 - [December 2023](#)



National Milk Producers Federation (NMPF):

- [Regulatory Register, Fall 2023](#)
- [News for Dairy Co-Ops: October 2023](#)
- [News for Dairy Co-Ops: November 2023](#)
- [News for Dairy Co-Ops: December 2023](#)

Southern Ag Today

Jack Myers, [Implications of Reverting to Dairy Policy in the 1948 Farm Bill](#) (November 16, 2023)
 Wyatt Haley, [Dairy Revenue Protection Historical Performance for Class Price](#) (October 4, 2023)

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CENTER MISSION AND BACKGROUND

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