

Quarterly Dairy Legal Update: January – March of 2024

Below is a listing of legal and regulatory developments impacting the dairy industry during the first calendar quarter of 2024. Additionally, recently published dairy resources of interest are included at the end of this update.

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

HPAI Confirmed in Dairy Herds in Eight States, USDA Relies upon PMO for Milk Supply and Dairy Consumer Protection

Beginning on March 29, 2024, the U.S. Department of Agriculture (USDA), the U.S. Food and Drug Administration (FDA), and Centers for Disease Control and Prevention (CDC) began [confirming](#) detections of highly pathogenic avian influenza (HPAI) in dairy herds across several states. As of April 17, 2024, the USDA [confirmed](#) a total of 32 cases of HPAI in dairy herds in eight states. These detections include Texas (12), New Mexico (6), Michigan (6), Kansas (4), South Dakota (1), Idaho (1), Ohio (1), and North Carolina (1). Additionally, the Texas Department of State Health Services first [reported](#) a confirmed human case of HPAI on April 1, 2024 in dairy farm worker. The CDC [followed up](#) with a press release confirming the finding. Texas Health officials stated the individual had “direct exposure to dairy cattle presumed to be infected with avian influenza.” Thus far, no quarantine orders have been issued by USDA to address this particular foreign animal disease outbreak in dairy cattle. Existing regulatory provisions mandated to be taken by dairy producers with regard to all milk production by the U.S. Department of Health and Human Services, United States Public Health Services’ [Grade “A” Pasteurized Milk Ordinance, 2019 Revision \(PMO\)](#) are being relied upon as controls from the federal government and individual states are invoking state quarantine orders, as each sees fit, to protect dairy herd health.

The U.S. Department of Agriculture (USDA) Announced 2024 Dairy Margin Coverage Program Enrollment

On February 23, 2024, the U.S. Department of Agriculture (USDA) Farm Service Agency (FSA) [announced](#) the opening of the enrollment period for the 2024 Dairy Margin Coverage (DMC) program, beginning February 28, 2024, through April 29, 2024. According to the announcement, FSA allowed small dairy farmers to adjust their established production history on a one-time basis. Additionally, FSA expanded coverage to include all of calendar year 2024, with coverage applying retroactively to January 1, 2024. FSA stated that some dairy farmers may receive payments for January 2024 as early as March 4, 2024.

- **Congressmembers Sent Letter Asking USDA to Open Dairy Margin Coverage Enrollment**

On January 16, 2024, a group of eleven Congressmembers [sent](#) a letter to U.S. Department of Agriculture (USDA) Secretary Tom Vilsack and USDA Administrator Zach Ducheneaux, urging the USDA Farm Service Agency (FSA) to “swiftly open” the enrollment period for the 2024 Dairy Margin Coverage (DMC) program. The letter noted that in 2023, margins for dairy producers reached their lowest levels since the start of the DMC program and raised



concerns about the delay in DMC enrollment, stating that the “delay in DMC enrollment coupled with the already unpredictable nature of the industry is concerning for the farm economy.”

Federal Milk Marketing Order Hearing Concluded, Briefing Deadline Set on April 1

On February 2, 2024, the U.S. Department of Agriculture (USDA) [issued](#) a Notification to the Hearing Clerk Pursuant to 7 CFR § 900.10, announcing the conclusion of the [hearing on proposed amendments to pricing formulas](#) across all 11 Federal Milk Marketing Orders (FMMOs). The hearing began on August 23, 2023, and concluded after 49 days, on January 30, 2024. The USDA [reported](#) a total of 551 exhibits introduced during the hearing. Furthermore, the USDA Agricultural Marketing Service (AMS) made all hearing transcripts available to the public on its website.

USDA Climate-Smart Grant Recipient Opened Application Period for Dairy Manure Management Incentive Program

As of January 22, 2024, Carbon A List, a climate consulting firm, [opened](#) applications for its Dairy Manure Management Incentive (DMMI) program, which is part of their larger [Transforming the Farmer to Consumer Supply Chain Project](#) (Transform F2C). The U.S. Department of Agriculture (USDA) granted a \$70 million award through its [Partnerships for Climate-Smart Commodities Project](#) to the Transform F2C project led by Carbon A List, which includes partnerships with Danone North America, the University of Wisconsin-Madison, and Sustainable Environmental Consultants. According to Carbon A List, the DMMI program will “compensate farmers for the cost of adopting new climate-smart manure management practices, including storage, handling, and cropland applications that fit their site-specific needs.” The program is available to producers in California, Idaho, Indiana, Kansas, Maryland, Michigan, Minnesota, New Mexico, New York, Ohio, Pennsylvania, Texas, Utah, and Wisconsin. The application deadline was March 29, 2024.

2. U.S. Food and Drug Administration

The U.S. Food and Drug Administration (FDA) Approved Qualified Health Claim for Yogurt and Reduced Type 2 Diabetes

On March 1, 2024, the U.S. Food and Drug Administration (FDA) [published](#) a letter of enforcement discretion addressing a qualified health claim petition submitted by Danone North America in April 2019 regarding the potential link between yogurt consumption and a reduced risk of type 2 diabetes ([FDA-2019-P-1594](#)). The FDA [concluded](#) that “there is some credible evidence supporting a relationship between yogurt intake and reduced risk of type 2 diabetes, but this evidence is limited.” Additionally, the FDA pointed out that “the evidence supports the health effects of yogurt as a food rather than related to any single nutrient or compound and thus is independent of fat or sugar content.” Consequently, the FDA recommends consuming at least 2 cups (3 servings) of yogurt per week to qualify for this health claim.

2. National Dairy Stakeholders’ Actions & Issues

Dairy Farmers of America, Athian Conducted First Carbon Credit Sale

On January 3, 2024, Dairy Farmers of America (DFA) [partnered](#) with carbon credit technology company Athian to achieve the first sale of verified carbon credits in the livestock carbon insetting marketplace. According to the announcement, Texas dairy farmer Jasper DeVos used Athian’s first approved protocol to generate carbon credits, which resulted in a reduction of nearly 1,150 metric tons of carbon dioxide equivalent (CO₂e). DFA highlighted that the adoption of this protocol across the U.S. dairy industry could potentially prevent 4.7 million metric tons of CO₂e emissions annually.



3. Regional Dairy Actions & Issues

Tennessee Governor Bill Lee Signed Law Allowing Whole Milk in School Meals

On April 11, 2024, Tennessee Governor Bill Lee [signed](#) into law Senate Bill 1914, also known as the “Whole Milk for Healthy Kids Act.” This legislation authorizes Tennessee public schools to offer whole milk to students via the following statutory wording, “Notwithstanding another law to contrary, each local board of education and public charter school governing body may establish policies for its public schools to offer students whole milk options, which are pasteurized dairy products as defined in § 53-3-103, through bulk milk dispensers.” The bill does not limit such offerings to the federally reimbursed school lunch program, nor does it attempt to address any potential loss of federal school lunch program funding as a result of such offerings.

Dairy Farmers Filed Complaint Against Oregon CAFO Interpretation Classifying Milking Process as Confinement

On January 23, 2024, four small dairy farmers in Oregon [filed](#) a lawsuit in the U.S. District Court for the District of Oregon, challenging the Oregon Department of Agriculture’s (ODA) interpretation of the state’s definition of “confined animal feeding operation” (CAFO), *King, et al. v. Hanson, et al.*, No. 3:24-cv-152. According to the complaint, this definition unfairly includes the plaintiff farmers’ small milking operations, which are typically exempt from state food safety and fluid milk licensing requirements ([Or. Admin. R. 603-074-010\(3\)](#)). The ODA [wrote](#), in a 2023 white paper, that “all animals are technically confined during the milking process, whether in pens, lots, or buildings.” As such, the complaint stated that “the mere act of milking an animal—in a sheltered location or on a prepared surface—constitutes confinement for purposes of triggering” CAFO permitting requirements. The plaintiffs, who stated that they milk only 2 to 9 animals per day, argued that the state’s CAFO permit requirements were “impermissibly overinclusive” and violated their Fourteenth Amendment rights to equal protection and due process.

Minnesota Attorney General (AG) Filed Complaint Against Minnesota Dairy Farm, Cited Numerous Wages, Housing Violations

On January 8, 2024, the Minnesota Attorney General (AG) [filed](#) a complaint in Minnesota state court against Evergreen Acres Dairy, LLC, its owners, and affiliated entities. The complaint alleged numerous wage and overtime violations along with unlawful pay and rent deductions for “squalid, substandard” housing that fails to meet Minnesota’s habitability standards. According to the complaint, Evergreen Acres Dairy “systematically” misrepresented employees’ work hours on paystubs, often deducting 12-24 hours per two-week pay period. The complaint further alleged that Evergreen routinely denied employees their earned wages when their employment ended and reportedly made unauthorized deductions from employee pay without obtaining required written authorization. Additionally, the AG Office [pointed out](#) that the company and its owners created “a workplace culture of fear, violence, and intimidation” to dissuade employees from raising concerns regarding their wages and housing conditions, including threats of violence and intervention of law enforcement.

Additional Dairy Resources of Interest

Dairy Management, Inc. (DMI)

- [Dairy Market Reports](#)
 - [January 2024](#)
 - [February 2024](#)
 - [March 2024](#)
 - [2023 Annual Report](#)

National Milk Producers Federation (NMPF)

- [Regulatory Register, Winter 2024](#)
- [News for Dairy Co-Ops: January 2024](#)
- [News for Dairy Co-Ops: February 2024](#)
- [News for Dairy Co-Ops: March 2024](#)



Authors

Victoria Dutterer, Research Assistant
Lonzie Helms, Research Assistant
Chloe Marie, Research Specialist
Audry Thompson, Staff Attorney
Brook Duer, Staff Attorney

This material is provided as part of a partnership with the National Agricultural Law Center and is based upon work supported by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture.

Follow us on Facebook and Twitter! @AgShaleLaw



**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

CENTER MISSION AND BACKGROUND

The Center for Agricultural and Shale Law conducts research and educational programs to serve a wide variety of stakeholders including agricultural producers, landowners, mineral interest and royalty owners, business professionals, judges, attorneys, legislators, government officials, community groups, and the general public. Center programs are funded in part by the Commonwealth of Pennsylvania through the Pennsylvania Department of Agriculture. The Center for Agricultural and Shale Law is a partner of the National Agricultural Law Center (NALC) at the University of Arkansas System Division of Agriculture, which serves as the nation’s leading source of agricultural and food law research and information.

This publication is available in alternative media on request. Penn State is an equal opportunity, affirmative action employer, and is committed to providing employment opportunities to all qualified applicants without regard to race, color, religion, age, sex, sexual orientation, gender identity, national origin, disability, or protected veteran status. UBR PSL 24-21.

