

QUARTERLY DAIRY LEGAL WEBINAR

2nd Quarter 2024
July 16, 2024

Focus Topic:
*U.S. State Milk Pricing & Supports,
Part 2—Western States*



PennState Law

Center for Agricultural
and Shale Law



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



Quarterly Dairy Legal Webinar Series

#16 in the series – covering the 2nd quarter of 2024

1. October 2020: Federal Milk Marketing Order 51
2. January 2021: International Trade with Becky Rasdall
3. April 2021: Federal Milk Marketing Order Reform
4. July 2021: Geographical Indications
5. December 2021: USDA's Pandemic Assistance Programs
6. February 2022: Dairy Industry Carbon Reduction Programs
7. April 2022: Animal Welfare
8. July 2022: Labeling Standards
9. October 2022: 2023 Farm Bill and the Potential Implications for the Dairy Industry
10. January 2023: Interstate Regulation of Milk Production and Processing
11. April 2023: International Dairy Trade
12. July 2023: Federal Milk Marketing Order Administrative Process
13. October 2023: Risk Management/Income & Revenue Protection
14. February 2024: Pennsylvania Milk Marketing Law (Beyond the OOP)
15. April 2024: U.S. State Milk Pricing Systems, Part 1—Eastern States

Find upcoming topics at <https://aglaw.psu.edu/quarterly-dairy-legal-webinar/>





Past Quarterly Dairy Legal Webinars and Materials

April 18, 2023 (1st Quarter of 2023) 12 noon ET. In addition to a round-up of quarterly legal developments, the focus topic will be the **International Dairy Trade: Canada-U.S. USMCA Arbitration Round 2**. Almost immediately upon entering the USMCA trade pact with Canada and Mexico in 2020, the U.S. trade relationship with Canada hit a rough patch over potential dairy exports to Canada, specifically the eligibility criteria for Canadian importers' potential use of a quota of favorable dairy tariff rates on U.S. dairy products. The U.S. took Canada to arbitration in 2021 and won. Nevertheless, Canada held steadfast to its dairy tariff rate quota system and made minimal changes. As a result, we are now headed to a second round of USMCA arbitration between the U.S. and Canada over the same, and some newly added, tariff rate eligibility issues. All will be explained as we examine the details of this dispute between international neighbors.

- [PowerPoint – April 2023 Quarterly Dairy Legal Webinar](#)
- [January-March 2023 Quarterly Dairy Legal Update](#)
- [Recording: April 2023 Quarterly Dairy Legal Webinar – Industry Round Up](#)
- [Recording: April 2023 Quarterly Dairy Legal Webinar – International Dairy Trade](#)

January 17, 2023 (4th Quarter of 2022) 12 noon ET. In addition to a round-up of quarterly legal developments, the focus topic will be the *Interstate Regulation of Milk Production and Processing: An Overview of the Pasteurized Milk Ordinance and Interstate Milk Shippers Program*. The federal government's current role in the creation and maintenance of a federal milk pricing system is recognized. The historical state-by-state regulation of milk production and processing as a food safety function of government is sometimes said to be historically "left to the states." However, the reality is much more complex. Learn the nuts and bolts of how this most perishable of agricultural commodities has been freely flowing across state lines through a combination of federal and state regulatory authority and a large amount of voluntary industry contribution and compliance.

- [2022 Annual Dairy Legal Update](#)
- [October-December 2022 Quarterly Dairy Legal Update](#)
- [PowerPoint – January 2023 Quarterly Dairy Legal Webinar](#)
- [Recording: January 2023 Quarterly Dairy Legal Webinar](#)

Shale Law Weekly Review

A WEEKLY UPDATE ON IMPORTANT
SHALE LAW DEVELOPMENTS



AG LAW PODCAST



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<https://aglaw.psu.edu/quarterly-dairy-legal-webinar/>



More upcoming programs from the Ag Law Center.

Understanding Agricultural Law Webinar Series:

July 26 *Understanding the Basics of Agritourism Laws*

Aug. 23 *Understanding the Basics of the H-2A Temporary Agricultural Worker Program*

PENNSYLVANIA DEPARTMENT OF AGRICULTURE  AGRICULTURAL BUSINESS DEVELOPMENT CENTER

Understanding Agricultural Law Webinar Series



Partner Webinars with the National Agricultural Law Center

July 17, 2024 HPAI in Poultry and Cattle: How Can We Miss You if You Won't Go Away?

Sept. 18, 2024 Right to Repair and Agriculture

Mark Your Calendar:

Thurs. Sept. 19, 2024—Pennsylvania Agricultural Law Symposium!

Register at <https://aglaw.psu.edu/events/>



HOUSEKEEPING

- **This webinar will be recorded.**
- Use the Q&A feature for questions.
- **CLE credits:**
- Link will be posted in the chat
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 - Email: aet17@psu.edu

QUARTERLY DAIRY LEGAL WEBINAR

2nd Quarter—2024
July 16, 2024

Round Up—2nd Quarter 2024



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Industry Round-up—2nd Quarter 2024

- **U.S. Department of Agriculture (USDA) Actions**

- The U.S. Department of Agriculture (USDA) (1) Issued Order Requiring Testing, Reporting for Interstate Dairy Cattle Movement; (2) Clarified HPAI Cattle Movement Order for Sale Barn Transportation; Announced Additional Funding to Address HPAI; Announced New Voluntary Bulk Milk Testing Pilot Program
- The U.S. Department of Agriculture (USDA) Published WIC Food Packages Final Rule, Including Dairy Changes
- The U.S. Department of Agriculture (USDA) Published Final Rule Requiring Electronic Ear Tags for Dairy Cattle
- The U.S. Department of Agriculture (USDA) Allocated \$300 Million for the Regional Agricultural Promotion Program

- **U.S. Food and Drug Administration (FDA) Actions**

- The U.S. Food and Drug Administration (FDA) Completed Review of Dairy Cattle Methane-Reducing Feed Supplement

- **Regional Dairy Actions & Issues**

- The Pennsylvania Department of Agriculture (PDA) Issued HPAI Quarantine Order for Dairy Cattle; Issued Quarantine Order for Dairy Cattle Exhibitions
- The Maryland Department of Agriculture Issued Order Restricting Dairy Cattle Import to Prevent HPAI Spread
- The New York Department of Agriculture and Markets Issued Temporary Prohibition on Import of HPAI-Affected Dairy Cattle



USDA Issued Order Requiring Testing, Reporting for Interstate Dairy Cattle Movement

- [Federal Order Requiring Testing for and Reporting of Highly Pathogenic Avian Influenza \(HPAI\) in Livestock](#) (effective April 29, 2024)
 - Prior to interstate movement, all dairy cattle must receive a negative HPAI test at a laboratory accredited by the National Animal Health Laboratory Network (NAHLN).
 - Owners of dairy cattle testing positive for HPAI are required to submit epidemiological information, including animal movement records.
 - Interstate movement of dairy cattle must comply with all relevant requirements and recommendations established by the USDA Animal and Plant Health Inspection Service (APHIS).
 - Laboratories and state veterinarians must report all positive diagnostic results for HPAI in livestock to the USDA APHIS.
- APHIS will cover the costs of testing including for (1) dairy cattle showing clinical signs of disease; (2) pre-movement testing; (3) producers who want to know the disease status of their animals; and (4) testing conducted on livestock animals other than dairy cattle.
- [USDA Webpage; HPAI Confirmed Cases in Livestock](#)
- [Technical Notes: Clarification to Inquiries Received on April 24 Federal Order](#) (May 7, 2024)



USDA Announced Additional Funding to Address HPAI Spread

- [Media Release; USDA, HHS Announce New Actions to Reduce Impact and Spread of H5N1](#) (May 10, 2024)
 - « ... up to \$2,000 per affected premises per month ... for producers who supply PPE to employees and/or provide outwear uniform laundering, for producers of affected herds who facilitate the participation of their workers in USDA/CDC workplace and farmworker study. »
 - « ... up to \$5,000 per affected premises ... to develop biosecurity plans based on existing secure milk supply plans. »
 - « If a producer establishes a system to heat treat all waste milk before disposal, USDA will pay the producer up to \$2,000 per affected premises per month. »
 - « Veterinary costs are eligible to be covered from the initial date of positive confirmation at NVSL for that farm, up to \$10,000 per affected premises. »
 - Additionally, the USDA will allocate \$98 million to the APHIS to assist states in implementing movement restrictions within their borders; will compensate producers for lost milk production through the Emergency Assistance for Livestock, Honey Bees, and Farm-Raised Fish (ELAP) program.



USDA Announced New Voluntary Bulk Milk Testing Pilot Program

- [Press Release; USDA Announces \\$824 Million in New Funding to Protect Livestock Health; Launches Voluntary H5N1 Dairy Herd Status Pilot Program](#) (May 30, 2024)
 - ***Emergency Funding***
 - « To help ensure the Animal and Plant Health Inspection Service (APHIS) can continue to provide critical rapid response activities, Secretary Vilsack approved the transfer of \$824 million ... to APHIS to directly support the response efforts. This funding allows APHIS to continue its critical work with state and local partners to quickly identify and address cases of HPAI/H5N1 in poultry and livestock. »
 - ***Voluntary Dairy Herd Status Pilot Program***
 - « The main benefit for farmers who choose to enroll in the Voluntary H5N1 Dairy Herd Status Pilot Program is that once they can demonstrate their herds are free of H5N1 with results from a National Animal Health Laboratory Network (NAHLN) facility, they will then need to conduct weekly tests on bulk milk from that herd to confirm that status and will be able to ship their cows at the time they prefer and without testing individual animals. »



Pennsylvania Issued HPAI Quarantine Order for Dairy Cattle; Issued Quarantine Order for Dairy Cattle Exhibitions

- [Interstate and International Quarantine Order; Restriction of Movement and Pre-Movement Influenza Testing of Dairy Cattle](#), 54 Pa. B. 2095 (effective April 20, 2024)
 - « ... dairy cattle from a State, Commonwealth, foreign nation, province or territory where [HPAI] has been confirmed in dairy cattle within the past 30 days may not be imported into, stopped off in, or unloaded in Pennsylvania ... » unless they meet certain testing requirements.
 - There are a few exceptions to the testing requirements for (1) calves under one year old; (2) dairy cattle brought in for immediate slaughter at a licensed meat establishment within 72 hours of arrival; and (3) dairy cattle with a « formalized commuter agreement » approved by PDA.
- [General Quarantine Order; Influenza A Viruses in Ruminants Exhibition of Dairy Cattle](#) (effective May 29, 2024)
 - Dairy cattle are prohibited from entering exhibition premises if (1) the cattle show clinical signs of HPAI infection; (2) have been on premises with confirmed HPAI cases in dairy cattle or domestic birds; or (3) have been on premises within a three-kilometer radius of a location with confirmed HPAI in domestic birds.
 - Dairy cattle over 18 months old must be tested within 7 days prior to their arrival on exhibition grounds
 - There is an exception to the testing requirement for dairy cattle less than 18 months prior to exhibition.



Maryland Issued Order Restricting Dairy Cattle Import

- [Order No. AH 01-2024; Governing the Movement of Dairy Cattle Infected with or Exposed to HPAI into the State of Maryland](#) (effective April 10, 2024)
 - « A person may not import, ship, or otherwise move dairy cattle into Maryland from another state or territory of the United States that has had a confirmed detection of HPAI in cattle or has an operation that is currently under investigation as a suspected premises » unless the cattle are accompanied by a certificate of veterinary inspection (CVI) or an approved health certificate or permit prepared and signed by an approved veterinarian within 7 days of transport.



New York Issued Temporary Ban on Import of HPAI-Affected Dairy Cattle

- [State Department of Agriculture Announces Temporary Import Requirements for Dairy Cattle Coming Into New York](#) (April 22, 2024)
 - Temporary ban on the import of dairy cattle from premises with confirmed cases of HPAI.
 - However, dairy cattle brought in from states affected by HPAI must show a certificate of veterinary inspection (CVI) issued within 10 days before entering New York.
 - The certificate of veterinary inspection must bear the following statement:
 - *« All animals identified on the Certificate of Veterinary (CVI) have been examined and do not originate from a premises with a confirmed detection of Highly Pathogenic Avian Influenza, or that is currently under investigation as a suspect premises. »*



USDA Published WIC Food Packages Final Rule, Including Dairy Changes

- [Special Supplemental Nutrition Program for Women, Infants, and Children \(WIC\): Revisions in the WIC Food Packages \(89 FR 28488\) \(effective June 17, 2024\)](#)
 - Reduces the maximum monthly allowances of milk from 16-24 quarts to 12-16 quarts;
 - Allows only unflavored milk;
 - Allows plant-based substitution options for milk;
 - Establishes an added sugars limit for yogurts and plant-based milk alternatives;
 - Requires that yogurt contains 106 IU (2.67 micrograms) of vitamin D per 8 ounces;
 - Allows 1-year old children to have reduced-fat yogurts without any restrictions
- State agencies have until **April 20, 2026**, to fully implement the rule and until **April 19, 2027**, to meet the yogurt minimum vitamin D requirement.



USDA Published Final Rule Requiring Electronic Ear Tags for Dairy Cattle

- [Use of Electronic Identification Eartags as Official Identification in Cattle and Bison](#) (89 FR 39540) (effective November 5, 2024)
 - Requires official eartags to be visually and electronically readable for interstate transport of all dairy cattle
 - The rule states that the “design, size, shape, color, and other characteristics of the official eartag will depend on the needs of the users, subject to approval of the Administrator.”
 - "These changes will enhance the ability of Tribal, State and Federal officials, private veterinarians, and livestock producers to quickly respond to high-impact diseases currently existing in the United States, as well as foreign animal diseases that threaten the viability of the U.S. cattle and bison industries.”



USDA Allocated \$300 Million for the Regional Agricultural Promotion Program

- [USDA Awards \\$300 Million to Diversify Export Markets for U.S. Agriculture](#) (May 21, 2024)
 - Allocated \$300 million under the Regional Agricultural Promotion Program (RAPP) to 66 U.S. organizations to “build demand for American food and farm exports in high-potential markets around the globe,” including dairy markets.
 - “Secretary Vilsack launched RAPP in October 2023, authorizing \$1.2 billion in Commodity Credit Corporation funding to help U.S. exporters expand their customer base beyond traditional and established markets, focusing on regions such as Africa, Latin America and the Caribbean, and South and Southeast Asia, where consumer demand and purchasing power are growing.”
 - [FY 2024 RAPP Funding Allocations](#)



FDA Completed Review of Dairy Cattle Methane-Reducing Feed Supplement

- [U.S. FDA Review](#) (May 24, 2024)
 - “Based on a review of your data and characteristics of your product, FDA has no questions at this time regarding whether Bovaer® 10 will achieve its intended effect and is expected to pose low risk to humans or animals under the conditions of its intended use. »
 - “This product demonstrated a reduction of methane gas emissions per pound of dry matter intake when incorporated at 27.2-36.3 mg 3-NOP per pound (60-80 mg per kilogram) of [dry matter] in the total mixed ration of lactating dairy cows.”
 - “Although Bovaer® 10 is an unapproved drug, at this time we do not intend to initiate enforcement action with respect to the drug requirements listed above for Elanco’s marketing Bovaer® 10 or use provided FDA continues to have no questions or public health concerns about Bovaer® 10.”
- [Elanco Announces FDA Has Completed Review of Bovaer®, First-in-Class Methane-Reducing Feed Ingredient, for U.S. Dairy Industry](#) (May 28, 2024)
 - “Feeding one tablespoon of Bovaer per lactating dairy cow per day can reduce methane emissions [by] about 30% or about 1.2 metric tons of carbon dioxide equivalent (CO₂e) emissions annually.”



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