

Quarterly Dairy Legal Update: April – June of 2024

Below is a listing of legal and regulatory developments impacting the dairy industry during the second 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

The U.S. Department of Agriculture (USDA) Published WIC Food Packages Final Rule, Including Dairy Changes

On April 18, 2024, the U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS) [published](#) in the Federal Register a final rule, titled “Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Revisions in the WIC Food Packages” (89 FR 28488). Among other provisions, the rule introduced several changes for dairy products, including (1) reducing the maximum monthly allowances of milk from 16-24 quarts to 12-16 quarts; (2) allowing only unflavored milk; (3) allowing plant-based milk alternatives, yogurts, and cheeses as substitutes for milk; (4) requiring that yogurt contains 106 IU (2.67 micrograms) of vitamin D per 8 ounces; and (5) allowing 1-year old children to have reduced-fat yogurts without any restrictions. The rule became effective on June 17, 2024; however, WIC 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.

The U.S. Department of Agriculture (USDA) Issued Order Requiring Testing, Reporting for Interstate Dairy Cattle Movement

On April 24, 2024, the U.S. Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) [issued](#) an order requiring mandatory testing and reporting for the Highly Pathogenic Avian Influenza (HPAI) in dairy cows prior to the interstate movement of dairy cattle. The order lists the following requirements, effective April 29, 2024:

- (1) 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).
- (2) Owners of cattle testing positive for HPAI are required to submit epidemiological information, including animal movement records.
- (3) Interstate movement of dairy cattle must comply with all relevant [requirements and recommendations](#) established by the USDA Animal and Plant Health Inspection Service (APHIS).
- (4) Laboratories and state veterinarians must report all positive diagnostic results for HPAI in livestock to the USDA APHIS.

According to the order, the USDA APHIS will cover the costs of testing, including testing for (1) dairy cattle showing clinical signs of disease; (2) pre-movement testing; (3) producers inquiring about the disease status of their asymptomatic animals; and (4) testing conducted on livestock animals other than dairy cattle. The order states that “[s]hould th[e] Order be deemed a substantive rule, APHIS has determined that good cause exists to impose these requirements without notice and comment, as further delay would threaten to hasten the spread of the disease.” The USDA APHIS maintains a regularly updated [webpage](#) dedicated to HPAI detections in livestock.



The U.S. Department of Agriculture (USDA) Clarified HPAI Cattle Movement Order for Sale Barn Transportation

On May 7, 2024, the U.S. Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) [clarified](#) that their [previous order](#) restricting interstate cattle movement does not apply to the intrastate transportation of lactating dairy cows to a sale barn. The APHIS further clarified that lactating dairy cows going directly to slaughter after moving interstate from a sale barn only require a Certificate of Veterinary Inspection (CVI) confirming the animal's good health, without additional testing.

The U.S. Department of Agriculture (USDA) Published Final Rule Requiring Electronic Eartags for Dairy Cattle

On May 9, 2024, the U.S. Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) [published](#) in the Federal Register a final rule, titled "Use of Electronic Identification Eartags as Official Identification in Cattle and Bison" (89 FR 39540). The rule requires that official eartags must 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" and specifies that the eartag must be resistant to tampering and effectively remain attached to the animal. Additionally, the rule established recordkeeping requirements for veterinarians and entities that distribute eartags. This final rule will become effective on November 5, 2024.

The U.S. Department of Agriculture (USDA) Announced Additional Funding to Address HPAI

On May 10, 2024, the U.S. Department of Agriculture (USDA) [announced](#) additional funding and resources to address and prevent the spread of Highly Pathogenic Avian Influenza (HPAI) in dairy cattle, including payments up to:

- (1) \$2,000 per affected premises per month for producers who provide personal protective equipment (PPE) to employees and/or launder outwear uniforms, contingent upon their participation in the agency's workplace and farmworker study;
- (2) \$1,500 per affected premises for producers to develop biosecurity plans that meets existing secure milk supply plans;
- (3) \$2,000 per affected premises per month for producers who implement a system to heat treat all waste milk before disposal;
- (4) \$10,000 per affected premises for veterinary costs related to HPAI.

Additionally, the USDA announced that it will allocate \$98 million to the agency's Animal and Plant Health Inspection Service (APHIS) to assist states with affected herds in implementing movement restrictions within their borders. The USDA also stated that it will reimburse producers for lost milk production through the Emergency Assistance for Livestock, Honey Bees, and Farm-Raised Fish (ELAP) program.

The U.S. Department of Agriculture (USDA) Allocated \$300 Million for the Regional Agricultural Promotion Program

On May 21, 2024, the U.S. Department of Agriculture (USDA) Secretary Tom Vilsack [announced](#) that the agency allocated \$300 million under the [Regional Agricultural Promotion Program](#) (RAPP) to [66 U.S.-based organizations](#) to "build demand for American food and farm exports in high-potential markets around the globe." According to the announcement, the U.S. Dairy Export Council intends to increase its involvement in Africa by using RAPP funding to "develop dairy import regulations and regulatory frameworks in many markets."

The U.S. Department of Agriculture (USDA) Announced Additional Funding, New Voluntary Bulk Milk Testing Pilot Program

On May 30, 2024, the U.S. Department of Agriculture (USDA) [announced](#) an additional \$824 million in funding to prevent the spread of Highly Pathogenic Avian Influenza (HPAI) in livestock and poultry. Additionally, the USDA Animal and Plant Health Inspection Service (APHIS) introduced a new voluntary H5N1 Dairy Herd Status Pilot Program as an alternative to the mandatory testing and



reporting requirements from the [April 24, 2024, federal order](#). The USDA stated that participation in the pilot program will allow farmers to conduct weekly tests on bulk milk and move cows without needing individual animal tests, provided the herd tests negative for HPAI for three consecutive weeks. APHIS is currently identifying states for the program's pilot phase. Enrollment starts on June 3, 2024, and producers can sign up by contacting their APHIS Area Veterinarian in Charge or State Veterinarian to sign a Herd Monitoring Plan Agreement.

2. 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

On May 24, 2024, the U.S. Food and Drug Administration (FDA) Center for Veterinary Medicine (CVM) [issued](#) a letter to Elanco U.S., Inc., indicating that the agency had reviewed the data provided by Elanco concerning the safety, intended effects, and dosage of Bovaer® 10, a feed ingredient designed to reduce methane emissions in lactating dairy cattle. In the letter, FDA stated that Bovaer® 10 showed a "reduction of methane gas emissions per pound of dry matter intake when incorporated ... in the total mixed ration of lactating dairy cows" and that it has no concerns at this time about Bovaer® 10 achieving its intended effect. The FDA also noted that the product is considered low-risk for people and animals when used as intended. While Bovaer® 10 is not currently FDA-approved, the agency clarified that it will not take enforcement actions regarding the drug requirements. According to the announcement, "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 (CO_{2e}) emissions annually."

3. Regional Dairy Actions & Issues

The Pennsylvania Department of Agriculture (PDA) Issued HPAI Quarantine Order for Dairy Cattle

On April 6, 2024, the Pennsylvania Department of Agriculture (PDA) [published](#) an Interstate and International Quarantine Order titled "Restriction of Movement and Pre-Movement Influenza Testing of Dairy Cattle." The order states that animals coming from any state, Commonwealth, foreign nation, province or territory that has reported Highly Pathogenic Avian Influenza (HPAI) in dairy cattle within the last 30 days are not allowed to enter, stop over, or be unloaded in Pennsylvania unless they meet certain testing requirements detailed in the order. The order exempts the following three categories of dairy cattle from the testing requirements prior to entry into the state: (1) calves under one year old; (2) dairy cattle brought in for immediate slaughter at a licensed meat establishment, provided they are slaughtered within 72 hours of arrival and not mixed with other dairy cattle not intended for immediate slaughter; and (3) dairy cattle under a "formalized commuter agreement" where PDA has determined that there are adequate biosecurity measures and other risk mitigations to allow safe, predefined cattle movements. This order became effective immediately following the signature of the Pennsylvania Secretary of Agriculture.

The Maryland Department of Agriculture Issued Order Restricting Dairy Cattle Import to Prevent HPAI Spread

On April 10, 2024, the Maryland Secretary of Agriculture [issued](#) an order limiting the entry of dairy cattle into Maryland from states that have confirmed outbreaks of Highly Pathogenic Avian Influenza (HPAI) in their herds or where an operation is under investigation for HPAI. This restriction does not apply if the cattle are accompanied by a Certificate of Veterinary Inspection or an approved health certificate or permit, prepared and signed by an approved veterinarian within seven days of transport.

The New York Department of Agriculture and Markets Issued Temporary Prohibition on Import of HPAI-Affected Dairy Cattle

On April 22, 2024, the New York Department of Agriculture and Markets [implemented](#) a temporary ban on the import of dairy cattle from establishments with confirmed cases of Highly Pathogenic Avian Influenza (HPAI). According to the announcement, 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 CVIs must include 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." The New York Department of Agriculture and Markets recalled that there have been no confirmed cases of HPAI in New York livestock to date.

The Pennsylvania Department of Agriculture (PDA) Issued New Quarantine Order for Dairy Cattle Exhibition

On May 29, 2024, the Pennsylvania Department of Agriculture (PDA) [issued](#) a General Quarantine Order; Influenza A Viruses in Ruminants Exhibition of Dairy Cattle. This order prohibits both lactating and non-lactating dairy cattle from entering exhibition premises if the cattle show clinical signs of HPAI infection, have been on premises with confirmed HPAI cases in dairy cattle or domestic birds, or have been on premises within a three-kilometer radius of a location with confirmed HPAI in domestic birds. Additionally, all dairy cattle over 18 months old must be tested within seven days before they arrive on animal exhibition grounds. The quarantine order is effective immediately and will remain in effect. Until rescinded or modified by a later order.

Additional Dairy Resources of Interest

Dairy Management, Inc. (DMI)

- [Dairy Market Reports](#)
 - [June 2024](#)
 - [May 2024](#)
 - [April 2024](#)

National Milk Producers Federation (NMPF)

- [Regulatory Register, Spring 2024](#)
- [News for Dairy Co-Ops: April 2024](#)
- [News for Dairy Co-Ops: May 2024](#)
- [News for Dairy Co-Ops: June 2024](#)

Brook Duer, [HPAI in Dairy Cattle: Is Pasteurization Dairy's Only Reliable Protection?](#) Southern Ag Today (May 31, 2024)



Authors

Victoria Dutterer, 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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