



Quarterly Dairy Legal Update: July – September of 2024

Below is a listing of legal and regulatory developments impacting the dairy industry during the third 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) Announced Fund Availability to Support Dairy Initiatives

On June 25, 2024, the U.S. Department of Agriculture (USDA) [announced](#) the availability of \$12 million in grant funding available through the Dairy Business Innovation Initiatives (DBI). This funding is intended to help expand processing capacity, improve on-farm operations, and provide technical assistance to dairy producers. The funds will be allocated “noncompetitively” to the DBI Initiatives at California State University Fresno, the University of Tennessee, the Vermont Agency of Agriculture, Food & Markets, and the University of Wisconsin.

The U.S. Department of Agriculture (USDA) Allowed ELAP Payments for Milk Losses from Avian Influenza

On July 1, 2024, the U.S. Department of Agriculture (USDA) Commodity Credit Corporation (CCC) [amended](#) the [Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program \(ELAP\)](#) to provide financial assistance to dairy producers based on the milk production losses incurred during and after H5N1 outbreaks. To calculate the average milk production, the USDA will use the monthly national average milk production per cow. This average will be divided by 28 days to calculate a daily average. Then, the calculation assumes a 21-day period of no milk production when infected cows are removed from the herd, followed by a 7-day period of reduced production at 50% of normal levels. The total estimated milk loss per cow will then be multiplied by the national all-milk price to determine the per-cow payment rate. The USDA has set a deadline of January 30 of the following year for dairy producers to submit their notice of loss and payment application. The program launched on July 1, 2024, and applications opened immediately.

The U.S. Department of Agriculture (USDA) Published Proposed Rule to Amend Federal Milk Marketing Order Pricing

On July 15, 2024, the U.S. Department of Agriculture (USDA) Agricultural Marketing Service (AMS) [proposed](#) changes to the pricing provisions in the 11 Federal Milk Marketing Order (FMMOs) (89 FR 57580). The agency issued the proposal following a [hearing](#) held from August 2023 to January 2024 to discuss the FMMO pricing formula. The proposed rule recommends changes to the following five categories of milk pricing:

1. Milk Composition Factors—the USDA proposes to revise the milk composition percentages used in milk pricing calculations. Specifically, the USDA recommends increasing the standard levels to 3.3% protein, 6% other solids, and 9.3% nonfat solids.
2. Surveyed Commodity Products—the USDA proposes to modify the method used to calculate the monthly average cheese price used in the calculation of milk pricing, relying solely on the prices of 40-lb blocks of cheddar cheese instead of including both 40-lb blocks and 500-lb barrels.



3. Class III and Class IV Formula Factors—the USDA seeks to update the “make allowances,” which represent the costs associated with processing raw milk into dairy products. Additionally, the USDA proposes to adjust the butterfat recovery rate to 91%.
4. Base Class I Skim Milk Price—the USDA proposes returning to the “higher of” the Class III or Class IV prices in calculating the final uniform blend price in each FMMO region. Additionally, the USDA introduces a new adjustment method for the make allowance for Extended Shelf Life (ESL) milk products to ensure equitable pricing.
5. Class I and Class II Differentials—the USDA plans to modify the location-based adjustments applied to calculate the final uniform blend milk price in each FMMO region. The agency would maintain the base adjustment at \$1.60 but proposes updating specific values for different regions to reflect changes within the dairy industry.

According to the [USDA Regulatory Economic Impact Analysis](#), these proposed changes would increase producer revenue and pool values while better reflecting the costs that producers and processors face today. The public had until September 13 to submit their comments on the proposed changes. The proposed rule is now with USDA for the ultimate arrangement of a producer vote on adoption.

The U.S. Department of Agriculture (USDA) Accepting Submissions for Livestock HPAI Vaccine Field Studies

On August 28, 2024, the U.S. Department of Agriculture (USDA) Center for Veterinary Biologics (CVB) [announced](#) that it is now accepting applications for field studies to evaluate nonviable, non-replicating vaccines for Highly Pathogenic Avian Influenza (HPAI) in livestock. The notice clarifies that field studies for these HPAI vaccines can now be conducted outside of containment facilities without the need to dispose of milk or other commodities. Previously, CVB had required all studies, even those without virus exposure, to be conducted in containment facilities, regardless of risk profile.

The U.S. Department of Agriculture (USDA) Announced \$58 Million for 2024 Organic Dairy Marketing Assistance Program

On September 30, 2024, the Commodity Credit Corporation (CCC) and the U.S. Department of Agriculture (USDA) Farm Service Agency (FSA) [announced](#) in the Federal Register ([89 FR 79505](#)) the availability of \$58 million for the Organic Dairy Marketing Assistance Program (ODMAP). The ODMAP provides a lump-sum payment to eligible certified organic dairy operations, calculated based on their marketing costs for organic milk sold in either 2023 or estimated for 2024. The FSA also announced that the ODMAP 2024 payment rate has been increased to \$1.68 per hundredweight (cwt) from the previous \$1.10 per cwt. Additionally, the eligible production level for marketing cost-share assistance has been raised to nine million pounds from the previous five million pounds. The FSA will accept ODMAP applications from September 30, 2024, to November 29, 2024.

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

The U.S. Food and Drug Administration (FDA) Published Proposed Rule to Exempt Grade “A” Cottage Cheese from Food Traceability Rule

On June 17, 2024, the U.S. Food and Drug Administration (FDA) [published](#) a proposed rule in the Federal Register to exempt [Interstate Milk Shippers \(IMS\)-listed](#) Grade “A” cottage cheese from [Food Traceability Rule requirements](#). The FDA proposed this exemption due to strict processing requirements outlined in the Grade “A” Pasteurized Milk Ordinance, which address the risk factors that led to cottage cheese being included on the Food Traceability List. Additionally, the FDA highlighted the increased regulatory oversight in the manufacturing of these products as another justification for the exemption. The public comment period ended on September 16, 2024.



3. Regional Dairy Actions & Issues

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

On June 15, 2024, the Pennsylvania Department of Agriculture (PDA) [issued](#) a general quarantine order to prevent the spread of HPAI in dairy cattle at exhibitions (54 Pa.B. 3413). This quarantine order prohibits any cattle displaying symptoms of the virus or coming from farms with confirmed infections from taking part in these events. Furthermore, cattle must be tested for HPAI within seven days before the exhibition. For lactating cows, milk samples must be tested while nasal swabs are used to test non-lactating cows. Testing is mandatory and must be done by a USDA-approved veterinarian. The quarantine applies to all fairs and exhibitions across Pennsylvania.

The Pennsylvania Department of Agriculture (PDA) Published a Proposed Rule Allowing for Raw Milk Butter Permit

On June 15, 2024, the Pennsylvania Department of Agriculture (PDA) announced in the Pennsylvania Bulletin a proposed rule amending the state Milk Sanitation Law regulations ([54 Pa.B. 3318](#)). The amendment would expand the options available to raw milk producers and consumers in the state. Under the current state regulations—codified at 7 Pa. Code § 59a.402(a)—the sale of raw milk for human consumption is allowed but restricted to those who hold a permit from the Department of Agriculture. Additionally, the law allows raw milk producers to make and sell cheese products made from raw milk which have standard of identity promulgated by FDA. 7 Pa. Code § 59a.402(b). The proposed rule change would allow raw milk permitholders to obtain permits to produce raw milk butter. Additionally, the proposed rule would remove the need for preapproval of labels for milk, milk products, milk for manufacturing, and manufactured dairy products. However, raw milk labels must still be submitted to the USDA for approval.

Colorado Announced Statewide Mandatory Milk Testing

On July 22, 2024, Colorado Commissioner of Agriculture Kate Greenberg, acting through the Colorado state veterinarian, [issued](#) an order requiring all dairy cow farms licensed with the Colorado Department of Public Health and Environment (CDPHE) to submit weekly bulk-sampling. The purpose of this order is to find, identify, and separate cases of Highly Pathogenic Avian Influenza (HPAI) in dairy herds to stop the virus from spreading to other dairy and poultry farms. More specifically, the order requires that samples be collected by CDPHE-certified collection samplers from all CDPHE-licensed dairy cow farms in Colorado that are not currently under quarantine. Any dairy farm that receives a positive bulk tank test result will be placed under quarantine. The mandatory testing order is effective immediately and will remain in place until rescinded or modified by a subsequent order.

4. International Dairy Issues

Chile Approves Agreement on U.S. Meat and Cheese Imports, Terminology

On September 3, 2024, the Office of the U.S. Trade Representative (USTR) [announced](#) that the National Congress of Chile had approved an agreement addressing market access for various U.S. cheese and meat products and the protection of certain cheese terms used in Chile. According to some [exchange letters](#) between the United States and Chile, U.S. products would not be restricted in Chile based “on the mere use” of the following cheese and meat terms: American, blue, blue vein, brie, burrata, camembert, cheddar, chevre, Colby, cottage cheese, coulommiers, cream cheese, danbo, edam, Emmental, Emmentaler, gouda, limburger, mascarpone, Monterey/Monterey jack, mozzarella, pecorino, pepper jack, provolone, ricotta, saint-paulin, samso, tilsiter, tomme, black forest ham, bratwurst, chorizo, kielbasa, mortadella, pancetta, prosciutto, and salami. The USTR stated that the agreement would be considered an integral part of the U.S.-Chile Free Trade Agreement, including for dispute settlement purposes.

Colombia Imposes 4.86% Tariff on U.S. Milk Powder Imports

On September 26, 2024, the U.S. Department of Agriculture (USDA) Foreign Agricultural Service (FAS) [reported](#) in a trade policy monitoring report that Colombia’s Ministry of Commerce, Industry and Tourism (MINCIT) had put in place a provisional duty of 4.86 percent on U.S. milk powder coming



into the country, which would last for a maximum of four months. Prior to this action, U.S. milk powder exports entered Colombia duty-free under U.S.-Colombia Trade Promotion Agreement. According to the FAS report, MINCIT [launched](#) a countervailing duty investigation into U.S. milk powder imports on July 4, 2024. Subsequently, on September 17, 2024, MINCIT [issued](#) Resolution 271, imposing the provisional duty. As stated in the resolution, MINCIT's investigation concluded that there was sufficient evidence to establish "(i) the existence of subsidies for the production of liquid milk in the United States, (ii) the existence of damage to the domestic raw milk production sector resulting from a significant increase in subsidized imports and a relevant undervaluation of domestic raw milk prices, and (iii) a causal link between these two elements." The FAS report states that Colombia's dairy industry primarily focuses on producing fluid milk, and heavily depends on imported milk powder for food manufacturing. It also indicates that more than half of the milk powder Colombia imports comes from the United States.

Additional Dairy Resources of Interest

Dairy Management, Inc. (DMI)

- [Dairy Market Reports](#)
 - [July 2024](#)
 - [August 2024](#)
 - [September 2024](#)

National Milk Producers Federation (NMPF)

- [Regulatory Register, Fall 2024](#)
- [News for Dairy Co-Ops: July 2024](#)
- [News for Dairy Co-Ops: August 2024](#)

USDA Economic Research Service (ERS), [Structure, Costs, and Technology Used on U.S. Dairy Farms](#) (July 25, 2024)

USDA Agricultural Research Service (ARS), [Cow "Challenge" Study Should Help Turn Tables on H5N1 in Dairy Herd](#) (July 29, 2024)

USDA Economic Research Service (ERS), [U.S. Certified Organic Dairy Production: Three Decades of Growth](#) (September 2024)



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