

Agricultural Marketing Service, USDA

§ 1146.102

**PART 1146—MILK DONATION
REIMBURSEMENT PROGRAM**

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Subpart A—General Provisions

§ 1146.1 Definitions.

AMS means the Agricultural Marketing Service of the United States Department of Agriculture.

Eligible dairy organization means a dairy farmer, either individually or as part of a cooperative, or a dairy processor that:

(1) Accounts to a Federal Milk Marketing Order; and

(2) Incurs a qualified expense described in § 1146.1.

Eligible distributor means a public or private non-profit organization that distributes donated eligible milk.

Eligible milk means Class I fluid milk products produced and processed in the United States that meet the specifications referenced in § 1146.3.

Eligible partnership means a partnership between an eligible dairy organization and an eligible distributor.

Fiscal year means the twelve-month period beginning October 1 of any year and ending September 30 of the following year.

Participating partnership means an eligible partnership for which AMS has

approved a Dairy Donation and Distribution Plan (Plan) for eligible milk under § 1146.104.

Program means the Milk Donation Reimbursement Program established in this part.

Qualified expense means the cost incurred to purchase fresh fluid milk product or bulk dairy commodity product for processing into eligible dairy products.

Secretary means the Secretary of the United States Department of Agriculture or a representative authorized to act in the Secretary's stead.

[84 FR 46658, Sept. 5, 2019, as amended at 86 FR 48897, Sept. 1, 2021; 88 FR 60105, Aug. 31, 2023]

§ 1146.3 Commodity specifications.

(a) Eligible milk donations must meet the commodity specifications pursuant to (b) in effect on the date the milk products are shipped from the plant.

(b) AMS shall maintain on its website current commodity specifications for fluid milk products eligible for donation and reimbursement under the Milk Donation Reimbursement Program.

Subpart B—Program Participation

§ 1146.100 Program eligibility.

An eligible dairy organization must be a member of a participating partnership pursuant to § 1146.1 to be eligible to receive reimbursements for qualified expenses related to voluntary fluid milk donations, subject to the requirements and limitations specified in §§ 1146.102 and 1146.104.

§ 1146.102 Dairy donation and distribution plans.

Eligible partnerships must submit a completed Dairy Donation and Distribution Plan to AMS in the form and manner established by AMS to be eligible for program consideration. The completed Dairy Donation and Distribution Plan must include:

(a) The physical address(es) of the eligible dairy organization's processing plant(s), co-pack facility(ies), and distribution center(s), and the eligible distributor's distribution site(s);

(b) The entity type and contact information for the eligible dairy organization;

(c) Banking information and tax identification number for the eligible dairy organization;

(d) An affirmation signed by the eligible dairy organization regarding the type(s) of products to be donated and its ability to process and transport eligible dairy products consistent with the commodity specifications under § 1146.3; and

(e) An Eligible Distributor Certification Form signed by the eligible distributor regarding its ability to store and distribute donated eligible dairy products to recipient individuals and families.

[86 FR 48897, Sept. 1, 2021, as amended at 88 FR 57872, Aug. 24, 2023; 88 FR 60105, Aug. 31, 2023]

§ 1146.104 Review and approval.

(a) *Program application and review.* Within 45 days of the announced application deadline, AMS will review all timely submitted applications and notify applicants regarding approval or disapproval for program participation during the applicable fiscal year. AMS's review will include the following considerations:

(1) Total annual funds available for program administration, including an appropriate reserve to cover costs related to increases in milk prices and emergencies including, but not limited to, natural disasters;

(2) The feasibility of the Dairy Donation and Distribution Plan;

(3) The extent to which the Dairy Donation and Distribution Plan—

(i) Promotes the donation of eligible milk,

(ii) Provides nutrition assistance to individuals in low-income groups, and

(iii) Reduces food waste; and

(4) The amount of funding and in-kind contributions the eligible dairy organization plans to provide to the eligible distributor in addition to the donations for which it will seek reimbursements.

(b) *Continued program participation.* Within 45 days of the announced application deadline, AMS will review and notify applicants regarding approval or disapproval of all timely submitted re-

quests for continued program participation. AMS's review of requests for continued program participation will be based on consideration of the factors in paragraphs (a) and (b)(1) through (3) of this section:

(1) Eligible partnerships requesting continued program participation for a subsequent fiscal year can include information about the extent to which they provided funding and in-kind contributions in addition to eligible milk donations for which they were reimbursed through the program for the previous fiscal year.

(2) If there are no changes to the eligible partnership's approved Dairy Donation and Distribution Plan from the previous fiscal year, the eligible partnership must request that AMS consider the partnership's previously approved Plan and provide the additional information described in paragraph (b)(1) of this section, if applicable.

(3) If there are changes to the eligible partnership's approved Dairy Donation and Distribution Plan from the previous fiscal year, the eligible partnership must submit a new Plan as described in paragraph (a) and provide the additional information described in paragraph (b)(1) of this section, if applicable.

(c) *Plan approval.* Subject to the provisions in paragraph (a) of this section, AMS will determine whether to approve new and continuing dairy donation and distribution plans for all or a proportion of each Plan's proposed donations and reimbursements. For each approved Plan, AMS will determine:

(1) A reimbursement rate applicable to each claim for reimbursement during the fiscal year, and

(2) A total dollar amount available for reimbursement during the fiscal year.

(d) *Adjustments.* AMS will review the activity of approved dairy donation and distribution plans during the fiscal year to determine whether adjustments should be made to the reimbursement amounts approved under paragraph (c) of this section.

(1) Determinations about adjustments will be based on –

(i) The participating partnership's performance,

(ii) Availability of program funds, and

(iii) Demand for eligible milk donations.

(2) AMS will provide 30 days' notice to participating partnerships prior to adjusting reimbursement amounts in their respective approved dairy donation and distribution plans.

(e) *Request for increase.* Eligible partnerships with approved dairy donation and distribution plans during any fiscal year may request an increase in the amount of reimbursement approved under paragraph (c) of this section based on changes in conditions.

(1) Requests for an increase must be submitted to AMS in the manner and form established by AMS, and must –

(i) Describe the change in conditions that would warrant an increase in reimbursement,

(ii) Indicate whether the requested increase is intended to be a long-term revision to the eligible partnership's approved Dairy Donation and Distribution Plan or a short-term increase to respond to temporary conditions, and

(iii) Specify the amount of increased reimbursement requested.

(2) Within 30 days of receipt, AMS will review the request for an increase and will notify the requester regarding approval or disapproval of the request. AMS's determination about whether such an increase is feasible will be based on its evaluation of the factors described in paragraph (e)(1) of this section and the availability of funds.

(3) Based on the change in conditions identified by the requester, AMS will determine whether to provide interim approval of an increase requested under paragraph (e)(1) of this section and an incremental increase to the amount of reimbursement approved under paragraph (c) of this section prior to making a final determination regarding approval of the requested increase.

§ 1146.106 Reimbursement Claims.

(a) In order for the eligible dairy organization to receive reimbursement pursuant to § 1146.108, the eligible partnership must submit a Reimbursement Claim Form and appropriate supporting documentation to AMS.

(1) *Required information.* Each Reimbursement Claim Form associated with

an approved Dairy Donation and Distribution Plan must include:

(i) The type and amount of eligible dairy products donated to the eligible distributor;

(ii) The physical address(es) of the plant(s) or co-pack facility(ies) that processed and, if applicable, distribution center(s) that stored the donated dairy products;

(iii) The date the eligible dairy products were processed;

(iv) The date the eligible dairy products were shipped to the eligible distributor;

(v) The respective sell-by, best-by, or use-by date(s) for the donated dairy products; and

(vi) Other information as needed on the Reimbursement Claim Form to calculate reimbursement.

(2) *Appropriate verifying documentation.* Each Reimbursement Claim Form must be accompanied by documents verifying that the donation(s) reported in the form were made. Such documentation may include, but is not limited to, copies of processing records, shipping records, bills of lading, warehouse receipts, distribution records, or other documents demonstrating the reported amount of eligible dairy products were processed, donated, and distributed in accordance with the approved Dairy Donation and Distribution Plan and Eligible Distributor Certification Form and as reported on the Reimbursement Claim Form.

(3) *Deadline for funding.* To be considered for reimbursement, eligible dairy products must be donated from January 1, 2020, until program funds are expended.

(b) Incomplete reimbursement requests will be returned to the submitter for revision or completion and resubmission as necessary.

[86 FR 48898, Sept. 1, 2021, as amended at 88 FR 57872, Aug. 24, 2023; 88 FR 60105, Aug. 31, 2023]

§ 1146.108 Reimbursement calculation.

(a) For each reimbursement claim submitted by a participating partnership, the amount of reimbursement under § 1146.106 shall be the product of:

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(1) The quantity of eligible milk donated by the eligible dairy organization to the eligible distributor member of the participating partnership;

(2) The rate described in the approved Dairy Donation and Distribution Plan under §1146.102(d); and

(3) The difference between the FMMO Class I price at the plant location and the lowest classified price (either Class III or Class IV), for the month in which the donation was pooled on a Federal Milk Marketing Order.

(b) Expenses eligible for reimbursement under §1146.106 shall not exceed the value that an eligible dairy organization incurred by accounting to the Federal milk marketing order pool at the difference between the announced Class I milk price at the location of the plant where the milk was processed and the lower of the Class III or Class IV milk price for the applicable month.

(c) Claim reimbursements are subject to the limitations specified in paragraph (b) of this section.

(d) Total plan reimbursements are subject to the limitations specified in §1146.104(c)(2).

Subpart C—Administrative Provisions

§ 1146.200 Opportunities to participate.

(a) AMS will announce opportunities to participate in the Milk Donation Reimbursement Program and the amount of program funding available for each fiscal year on the AMS website. The announcements will include invitations for interested parties to submit new or revised dairy donation and distribution plans and will specify the manner and form in which program applications should be submitted.

(b) If, after making approval determinations for the fiscal year about each submitted program application, AMS determines that additional reimbursement funds are available, AMS will publish an announcement to that effect and invite further requests for Plan approvals pursuant to §1146.104(a) through (c) or for increases in reimbursement amounts pursuant to §1146.104(e).

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§ 1146.202 Rollover of fiscal year funds.

If reimbursement monies remain after all fiscal year reimbursement claims have been approved and distributed, the remaining monies will be available to fund reimbursement claims in subsequent fiscal years.

§ 1146.204 Prohibition on resale of products.

(a) *Prohibition in general.* An eligible distributor that receives eligible milk products donated under the Milk Donation Reimbursement Program may not sell the donated milk products back into commercial markets.

(b) *Prohibition on future participation.* An eligible distributor that AMS determines has violated the prohibition in paragraph (a) of this section shall not be eligible for any future participation in the Milk Donation Reimbursement Program.

§ 1146.206 Enforcement.

AMS will verify the donated milk for which reimbursement is sought was pooled on a FMMO. AMS will also conduct spot checks, reviews, and audits of the reports and documentation submitted pursuant to §1146.106(a) to verify their accuracy and to ensure the integrity of the Milk Donation Reimbursement Program.

§ 1146.208 Confidentiality.

AMS will collect only that information deemed necessary to administer the Milk Donation Reimbursement Program and will use the information only for that purpose. AMS will keep all proprietary business information collected under the program confidential.

§ 1146.210 Milk for other programs.

Milk sold or donated under other commodity or food assistance programs administered by the United States Department of Agriculture is not eligible for reimbursement under the Milk Donation Reimbursement Program in this part.