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## **Agricultural Marketing Service**

### **7 CFR Parts 1146 and 1147**

**[Doc. No. AMS-DA-25-0026]**

**RIN 0581-AE45**

### **Rescission of the Dairy Donation Program**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Direct final rule.

**SUMMARY:** This action removes from AMS' regulations the implementing regulations for the Dairy Donation Program and makes conforming amendments to the implementing regulations for the Milk Donation Reimbursement Program. The Dairy Donation Program is no longer funded by Congress; therefore, AMS has no authority to take further action under the Dairy Donation Program and its implementing regulations are obsolete. Removing the regulations will provide transparency and may reduce confusion for dairy processors and other stakeholders.

**DATES:** The rule will be effective on [INSERT DATE SIXTY DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further action, unless adverse comments are received on or before [INSERT DATE THIRTY DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If adverse comments are received, AMS will publish a document in the *Federal Register* withdrawing this rule before the effective date.

**ADDRESSES:** You may submit comments on the Internet at <http://www.regulations.gov> or to Lauren Becker, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Division, STOP 0231-Room 2530, 1400 Independence Ave, SW, Washington, D.C. 20250; email: [lauren.becker@usda.gov](mailto:lauren.becker@usda.gov); telephone: 202-720-0758. All comments should reference the docket number and the date and page number of this issue of the *Federal*

*Register*. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting comments will be made public on the Internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Lauren Becker, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Division, STOP 0231-Room 2530, 1400 Independence Ave, SW, Washington, D.C. 20250; email: lauren.becker@usda.gov; telephone: 202-720-0758.

**SUPPLEMENTARY INFORMATION:** This direct final rule will remove part 1147, “Dairy Donation Program,” from title 7 of the CFR and make conforming amendments to part 1146, “Milk Donation Reimbursement Program.” The Dairy Donation Program (DDP) was established in 2021 under the authority of section 762 of the Consolidated Appropriations Act of 2021 (Pub. L. 116-260) (86 FR 48887; Sept. 1, 2021). Under the program, eligible dairy organizations that accounted to a Federal milk marketing order and incurred a qualified expense related to certain dairy product donations could apply for and receive reimbursements for those donations. The DDP was run along with an existing Milk Donation Reimbursement Program (MDRP). The MDRP is a USDA dairy milk donation program that was established as part of the 2018 Farm Bill (Pub. L. 115-334) to facilitate the donation of fluid milk products and avoid food waste (84 FR 46653; Sept. 5, 2019).

Like the MDRP, the DDP was intended to encourage the donation of dairy products and to prevent and minimize food waste. It was also created to assist in balancing the supply chain during the COVID-19 pandemic. The DDP is no longer funded by Congress; therefore, AMS has no authority to take further action under the DDP and its implementing regulations are obsolete.

In the DDP rulemaking, AMS made conforming changes to the MDRP regulations in part 1146 to allow the two programs to operate simultaneously (86 FR 48887; Sept. 1, 2021). With this rescission of the DDP regulations, AMS is removing all references in part 1146 to “Dairy Donation and Distribution Plan” and replacing them with “Milk Donation and Distribution Plan”. AMS is also reverting the text of part 1146 to its form prior to the establishment of the DDP in September 2021 (the “2021 regulatory text”) - with three exceptions. First, rather than removing the definition of “qualified expense” (which was added to part 1146 when the DDP was established), AMS is revising the existing definition to remove the reference to dairy products, which are not eligible for reimbursement under MDRP.

Second, AMS is reverting the text of § 1146.102 to the 2021 regulatory text, except AMS is updating the words “new and continuing program participants” to “eligible partnerships,” which is the term currently used for participants, and eliminating the reference to published deadline.

Third, in § 1146.106, AMS is reverting to the 2021 regulatory text, with a few exceptions. In the paragraph (a) introductory text, AMS is reverting to the 2021 regulatory text but is removing the words “partner”, “qualified expenses,” and the term “report.” With this direct final rule, the term “report” is replaced with the term “Reimbursement Claim Form.” Removal of these words and the addition of “Reimbursement Claim Form” is in conformance with the current operation of MDRP. In the paragraph (a)(1) introductory text, AMS is retaining current regulatory text, aside from removing the reference to the DDP and replacing it with reference to the MDRP. AMS is doing so because the 2021 regulatory text required that participants submit a report for each month of the fiscal year. Under the current operation of the MDRP, eligible dairy organizations must submit the Form once; therefore, the retention of the current regulatory text will allow the current practice to continue. With respect to the

subparagraphs to paragraph (a)(1), AMS is reverting to the 2021 regulatory text; however, AMS is not adding paragraph (a)(1)(v) back to the CFR. This paragraph, which required that reimbursement claims include applicable announced Federal milk marketing order prices for the month the milk was pooled, is not necessary because the information is now programmed to be automatically included. Finally, AMS is not reverting § 1146.106(a)(2) to the 2021 regulatory text. Under the current regulatory text, the documents act to “verify” the donations were made. The reporting requirements of the two versions are identical, however the current regulatory text refers to the Reimbursement Claim Form and Eligible Distributor Certification Form by title.

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with prior notice and comment for rules when the agency for “good cause” finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under this section, an agency, upon finding good cause, may issue a final rule without first publishing a proposed rule. Removing the DDP regulations and amending the MDRP regulations will provide transparency and may reduce confusion for dairy processors and other stakeholders. Further, AMS views this action as noncontroversial and anticipates no adverse public comment. This rule will become effective, as published in this document, [INSERT DATE SIXTY DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further action, unless adverse comments are received on or before [INSERT DATE THIRTY DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Adverse comments are considered to be those comments that suggest the rule should not be adopted or suggest the rule should be changed.

If AMS receives adverse comments, we will publish a document in the *Federal Register* withdrawing this rule before the effective date. AMS will then publish a

proposed rule for public comment. Following the close of that comment period, the comments will be considered, and a final rule addressing the comments will be published.

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), AMS certifies that this direct final rule will not, if issued, have a significant economic impact on a substantial number of small entities. The DDP is no longer funded by Congress and is no longer in operation. The amendments made by the direct final rule will merely conform the CFR with AMS' current operating practices. This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by OMB. The information collection associated with the DDP, approved under the Paperwork Reduction Act (44 U.S.C. chapter 35) under the OMB Control Number 0581-0327, will be discontinued. The forms required for participation in MDRP will continue to be used and are exempt from the Paperwork Reduction Act, as explained in the final rule establishing MDRP (84 FR 46653, 46657; Sept. 5, 2019).

It is not the interest of the public or USDA to maintain regulations that are obsolete. USDA has determined that there is no current reliance on this regulation. Further, USDA has determined the benefits of rescinding the DDP regulations and amending the MDRP regulations outweigh any cost associated with rescission.

### **List of Subjects**

#### **7 CFR Part 1146**

Milk, Donations, Reporting and recordkeeping requirements.

#### **7 CFR Part 1147**

Dairy, Donations, Food waste, Emergency, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, AMS amends 7 CFR chapter X as follows:

### **PART 1146—MILK DONATION REIMBURSEMENT PROGRAM**

1. The authority citation for part 1146 continues to read as follows:

**Authority:** Sec. 1431, Pub. L. 113-79, 128 Stat. 695, as amended.

2. Amend § 1146.1 by revising the term “Qualified expense” to read as follows:

**§ 1146.1 Definitions.**

\* \* \* \* \*

*Qualified expense* means the cost incurred to purchase fresh fluid milk products.

\* \* \* \* \*

3. Revise § 1146.102 to read as follows:

**§ 1146.102 Milk donation and distribution plans.**

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

(a) Include the physical location(s) of the eligible dairy organization's processing plant(s) and the eligible distributor's distribution site(s);

(b) Include an affirmation signed by both eligible partners regarding the partnership's ability to supply, transport, store, and distribute donated milk products consistent with the commodity specifications under § 1146.3;

(c) Include an estimate of the quantity of eligible milk that the eligible dairy organization plans to donate each year, based on -

(1) Preplanned donations and

(2) Contingency plans to address unanticipated donations; and

(d) Describe the rate at which the eligible dairy organization will be reimbursed, not to exceed 100 percent of qualified expenses pursuant to § 1146.108.

4. Revise § 1146.106 to read as follows:

**§ 1146.106 Reimbursement claims.**

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

(1) Each Reimbursement Claim Form associated with an approved Milk Donation and Distribution Plan must include:

(i) The amount of eligible milk donated to the eligible distributor;

(ii) The location of the plant where the donated milk was processed;

(iii) The date the donated milk was shipped from the plant where the milk was processed; and

(iv) The date the donated milk was received by the eligible distributor.

(2) 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 Milk Donation and Distribution Plan and Eligible Distributor Certification Form and as reported on the Reimbursement Claim Form.

(b) Reimbursement requests may be submitted to AMS at any time during the fiscal year and for up to 90 days after the close of the fiscal year.

(c) AMS will review and process reimbursement requests on a quarterly basis, including those submitted by the last day of the month following the end of each quarter of the fiscal year.

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

5. Amend part 1146 by removing the words “Dairy Donation and Distribution Plan” wherever they appear and adding, in their place, the words “Milk Donation and Distribution Plan”.

**PART 1147—[Removed and Reserved]**

6. Under the authority of sec. 762, Pub. L. 116-260, 134 Stat. 1182, remove and reserve part 1147.

**Bruce Summers,**

*Administrator,*

*Agricultural Marketing Service.*

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