



**PennState Law**

Center for Agricultural  
and Shale Law





# QUARTERLY DAIRY INDUSTRY LEGAL UPDATE





**PennState Law**

Center for Agricultural  
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# Quarterly Dairy Legal Webinar

**USDA Pandemic Market Volatility Assistance Program  
and Dairy Donation Program with Brook Duer**

Thursday, December 16, 2021

12:00pm – 1:00pm (EST)





# Quarterly Dairy Legal Webinar Series

## **#5 in the series – covering the 3rd quarter of 2021**

#4 in the series (2<sup>nd</sup> Q of 2021) is available for viewing [here](#).

#3 in the series (1<sup>st</sup> Q of 2021) - is available for viewing [here](#).

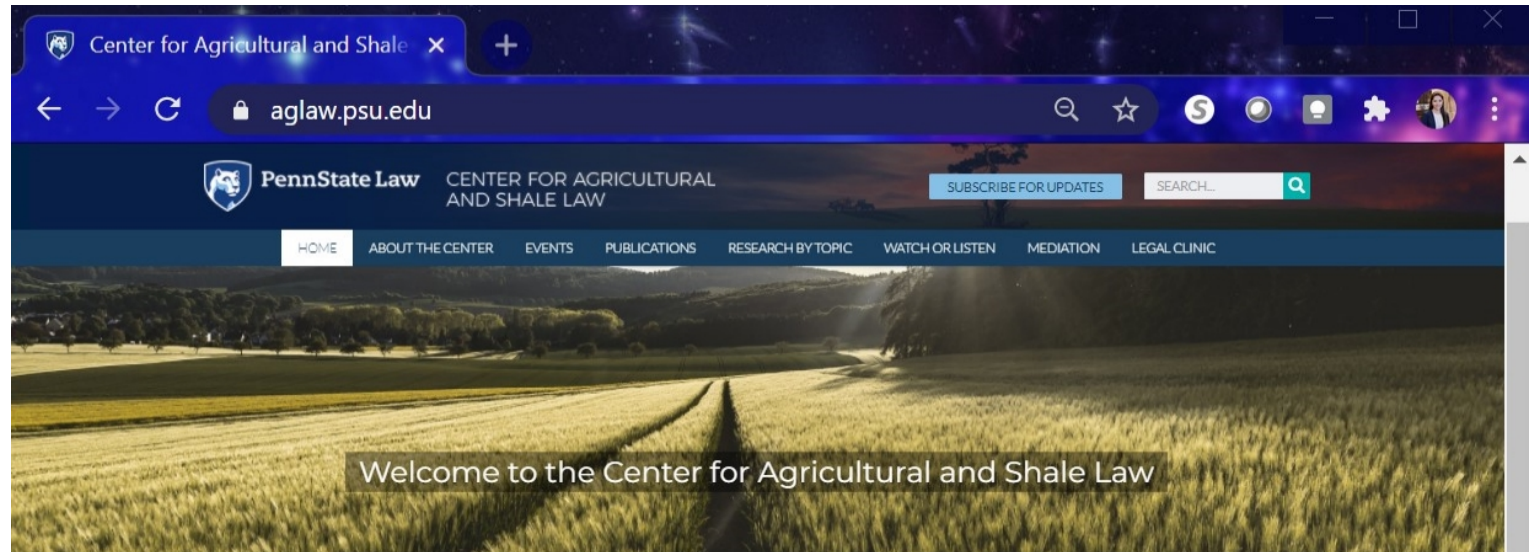
#2 in the series (4<sup>th</sup> Q 2020) - is available for viewing [here](#).

#1 in the series (3<sup>rd</sup> Q 2020) - is available for viewing [here](#).

**Thursday, December 16, 2021**

**12 noon – 1 pm EST**

# Our Website



## Agricultural Law Weekly Review

[SEE ALL AGRICULTURAL LAW WEEKLY REVIEWS >](#)

### Agricultural Law Weekly Review - Week Ending April 16, 2021

COVID-19: Farmer to Families Food Box Program Ends; Fresh Produce Box Purchases and Dairy Donation Program Planned 🌱 According to statements made by Secretary Vilsack posted to USDA's website on April 14, 2021, the Farmer to Families Food Box Program will be terminated at the close of April 2021 when the current funded vendor contracts end. On April 14, 2021, Reuters reported that USDA Communications Director Matt Herrick stated USDA is focused on different hunger initiatives, including expanding food stamp benefits and increasing food purchases through existing government food distribution programs. On April 9, 2021, USDA released a Pre-Solicitation Announcement [...]

April 21st, 2021

[Read More >](#)

### Agricultural Law Weekly Review - Week Ending April 9, 2021

Antitrust: Court Approves \$58 Settlement in Peanut Class Action Suit 🌱 On April 5, 2021, the U.S. District Court for the Eastern District of Virginia approved a \$58 million settlement agreement between the plaintiff peanut farmer Settlement Class and defendant peanut shellers Birdsong Corporation and Olam Peanut Shelling Company, Inc. in a civil antitrust class action suit alleging that the defendant companies over- and under-reported peanut inventories to the U.S. Department of Agriculture (USDA) to manipulate prices. In re Peanut Farmers Antitrust Litigation, No. 2:19-cv-00463. The approval follows the court's March 2021 back-to-back orders, absent accompanying explanatory opinions, approving the [...]

Tweets by @AgShaleLaw

PSU Ag & Shale Law @AgShaleLaw  
#ShaleLaw HotLink: "Unrestrained shale growth could trigger another price war" buff.ly/3xg9gF3 @APIenergy @BNNBloomberg #APISmartBrief #shale #oilandgas #shaleoil #OPEC

PSU Ag & Shale Law @AgShaleLaw  
#AgLaw HotLink: "Tyson Fresh Meats to join US CattleTrace" buff.ly/3eoxq7H @MeatPoultry #tyson #meats #freshmeat

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# Dairy Quarterly Legal Webinar – Standard Agenda

- Recent Legal Developments in the Dairy Industry
- Focused Topic of Importance to Dairy Industry
  - USDA Pandemic Market Volatility Assistance Program
  - Dairy Donation Program
- Questions



## Thanks to Our Partners

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.





# Upcoming Events

- **Pennsylvania Farm Show Agricultural Law Symposium**
  - **January 11 and 13**
- **Quarterly Dairy Legal Webinar**
  - **February 15**
  - **Dairy Industry Carbon Reduction Programs**





## **Today's Agenda:**

Round-up of the past quarter's legal and regulatory developments impacting the dairy industry

- **Presenter: Chloe Marie, Research Specialist**

Focused topic of interest to dairy producers and professionals:

- **Topic: USDA Pandemic Market Volatility Assistance Program and Dairy Donation Program**
- **Presenter: Brook Duer, Staff Attorney**



# Round Up – 3rd Quarter 2021

- Pennsylvania Milk Marketing Board (PMMB) Actions
- U.S. Department of Agriculture (USDA) Actions
- U.S. Regional Dairy Issues
- Dairy Labeling Issues
- International Issues





# PMMB & USDA Dispute over Milk Purchases for TEFAP

September 8, 2021 – the Pennsylvania Milk Marketing Board (PMMB) [issued](#) Bulletin No. 1597, “Wholesale Sales to the United State Department of Agriculture Minimum Price Enforcement Policy.”

- ***“Bids below the applicable minimum price will be referred for potential prosecution ...***
- *Board Staff will also refer for potential prosecution any sales made at below-minimum prices based on contracts awarded pursuant to illegal bids ...*
- *Contracts awarded pursuant to legal bids may be performed at the bid price plus the applicable economic price adjustment. If the bid price plus applicable economic price adjustment results in a price below the applicable minimum price for any month, Board Staff will not refer those transactions for potential prosecution.”*

This enforcement policy comes following an incident where Upstate Niagara Cooperative, a PA-licensed milk dealer sold USDA milk for The Emergency Food Assistance Program (TEFAP) at prices below PMMB minimum prices, in violation of Section 807 of the Milk Marketing Law.

August 11, 2021 – PMMB [voted](#) and [accepted](#) a Proposed Consent Order submitted by Upstate Niagara Cooperative, acknowledging the violation to Section 897 of the Milk Marketing Law and agreeing to settle the dispute for \$36,240.



# Pennsylvania Milk Marketing Board (PMMB) Maintained the Status-Quo on Over-Order Premium

September 22, 2021 – the Pennsylvania Milk Marketing Board [issued](#) Official General Order No. A-1012, continuing the current **\$1.00 per hundredweight** over-order premium (OOP) for all Class I milk produced, processed, and sold in Pennsylvania, effective October 1, 2021, through March 31, 2022.

- Continuation of status-quo since April 2019.



# USDA Established \$350 Million Pandemic Market Volatility Assistance Program and \$400 Million Dairy Donation Program

August 19, 2021 – USDA [announced](#) the upcoming availability of the [Pandemic Market Volatility Assistance Program](#).

*“Through the Pandemic Market Volatility Assistance Program, USDA will provide more than \$350 million in pandemic assistance payments to dairy farmers who received a lower value due to market abnormalities caused by the pandemic and ensuing Federal policies.”*

August 25, 2021 – USDA [established](#) the Dairy Donation Program.

*“Under the program, eligible dairy organizations that account to a Federal milk marketing order and incur a qualified expense related to certain dairy product donations may apply for and receive reimbursements for those donations. The program is intended to facilitate donation of eligible dairy products and prevent and minimize food waste.”*



# Small Class I Milk Distributing Plants Requested Exemption from FMMO Pooling Obligations

July 19, 2021 – a group of small Class I Milk Distributing Plants [petitioned](#) USDA requesting an **exemption for all Class I milk distributing plants with route distribution sales below three (3) million pounds per month from pooling obligations** under the Federal Milk Marketing Orders (FMMO). Exception comparable to the one granted to producer-handlers.

*“Over the past 10 month there has been so much volatility of the pricing in the manufacturing market that the Class III price exceeded the Class I price creating a negative [Producer Price Differential]. This created a condition by which the manufacturing plants would have to pay into the pool and Class I handlers would get a draw. However because of provisions under the law that allows Class III milk to be de-pooled from the market, Class I handlers still had to pay into the pool.”*

November 13, 2021 – USDA-AMS Dairy Program, Deputy Administrator Dana H. Cole [denied](#) petitioners’ exemption request.

*“Our analysis indicates that increasing the exempt limit to 3 million pounds of route disposition could impact milk prices received by dairy farmers. Therefore, the [Agricultural Marketing Agreement Act of 1937] prohibits the Secretary from granting your rulemaking request.”*



# California Milk Producer Quota Drama

June 8, 2018 – The handling of milk in California [became regulated](#) under a Federal Milk Marketing Order (FMMO). The California FMMO contains provisions recognizing the California Implementation Plan (QIP) for milk producers.

United Dairy Families of California's (UDFC) [Quota Reform Proposal](#):

- A **QIP sunset with the termination date of March 1, 2025**, i.e., 5 years from March 1, 2020
- **Regional quota adjusters** are equalized such that quota premium in all counties equals **\$1.43/cwt**
- A five-year sunset with equalized regional quota adjusters provides a **cumulative payment of \$300 per pound of quota, distributed over 60 months.**

July 2, 2021 – Most eligible California market milk producers [did not vote in favor](#) of terminating the statewide quota program effective March 1, 2025. The state government-run program thus remains in force for an indefinite period.

- Nearly 80% of eligible producers voted in favor of the referendum; however, termination of the QIP required an affirmative vote from either 65% of the voters who produce 51% of the total milk OR 51% of the voters who produce 65% of the total milk
- **Only 49.25% of the voters who produced 54.47% of the total milk voted to terminate the QIP.**



# Danone Terminated Organic Producer Contracts for Northeastern Organic Dairy Farms

August 25, 2021 – Maine Governor Janet Mills and the state Department of Agriculture, Conservation and Forestry (DACF) [condemned](#) recent actions from Horizon Organics **terminating milk contracts** with fourteen (14) organic dairy farmers in the state, effective August 2022:

*“This is a devastating setback for Maine’s organic dairy community ... The Department has begun the process of reaching out to the impacted farms, and its Bureau of Agriculture, Food and Rural Resources is exploring ways to assist these farms in response to this disappointing decision.”*

- Similar termination actions were reported in the state of Vermont, Maine, New York, and New Hampshire.

September 22, 2021 – a coalition of U.S. Senators and Members of Congress called for an “urgent action” from Secretary of Agriculture Tom Vilsack to support the aggrieved farmers.

- [Letter to USDA on behalf of the Maine Delegation](#)
- [Letter to USDA on behalf of members across the Northeast](#)

*“Danone appears to be consolidating their supply to prioritize more concentrated producers for transportation economies and abandoning smaller and more dispersed family farms. We believe this matter further underscores the long overdue need to close existing loopholes in the rules governing how livestock are transitioned to organic and strengthen enforcement of the pasture rule, particularly for large-scale complex dairies.”*





# Federal Court in California Ruled that Plant-Based Food Producer Can Use Dairy Terms to Describe Vegan Butter

December 2019 – the California Department of Food & Agriculture (CDFA) [requested](#) Miyoko’s Kitchen, Inc. to review the label for their vegan butter bearing the terms “butter,” “lactose free,” “hormone free,” “cruelty free,” and “revolutionizing dairy with plants” as well as website pictures of animal agriculture.

- “The product cannot bear the name ‘Butter’ because the product is not butter” as defined in 21 U.S.C. 321a as a product “made exclusively from milk or cream, or both, with or without common salt ... and containing no less than 80 per centum by weight of milk fat.”

February 2020 – Miyoko’s Kitchen, Inc. [filed](#) a lawsuit against CDFA, challenging the regulatory authority of the state and arguing speech suppression. *Miyoko’s Kitchen v. Ross, et al.*, USDC N.D. California, 3:20-cv-893.

August 2021 – the Federal district court [found](#) that:

*“... there is no denying that § 312a’s dairy and fat-content requirements exclude Miyoko’s ‘vegan butter’ ... this alone cannot doom commercial speech ...” “Quite simply, language evolves.”*

And determined that the state of California **may not regulate** Miyoko’s use of the terms “butter,” “lactose free,” “cruelty free,” and “revolutionizing dairy with plants” whereas the term “hormone free” is not constitutionally protected commercial speech.



# European Commission Extended Implementation Date for New Animal Health Certification Requirements to January 15, 2022

December 30, 2020 – [Commission Implementing Regulation \(EU\) 2020/2235](#), setting **new animal health certificate requirements** for certain categories of animals and goods exported to the European Union.

*“U.S. direct dairy exports to the EU are approximately \$100 million annually. The impact of the EU import requirements is significantly magnified due to the additional sales of U.S. dairy products to U.S. manufacturers that must ensure their composite products are EU-eligible. U.S. companies also export notable quantities of ingredients that are further processed in Canada and New Zealand before the final product is exported to the EU. U.S. dairy farmers and exporters are **deeply concerned about the impacts that the inability to ship to the EU market would have on our industry**”* – excerpt from a [letter](#) dated Apr. 16, 2021, sent by the U.S. Dairy Export Council and National Milk Producers Federation to USDA Secretary Tom Vilsack and U.S. Trade Representative Katherine Tai.

August 10, 2021 – [Commission Implementing Regulation \(EU\) 2021/1329](#), amending Regulation (EU) 2020/2235 and **extending the transitional period** for the implementation of the new animal health certificate requirements **from August 21, 2021 to January 15, 2022**.

*“Implementing Regulation (EU) 2021/1329, in order to avoid any unnecessary disruptions in trade, extends the transitional period to 15 March 2022, provided that the relevant certificate is signed before 15 January 2022 by the person authorised to sign it”* – [EU import conditions for composite products](#).



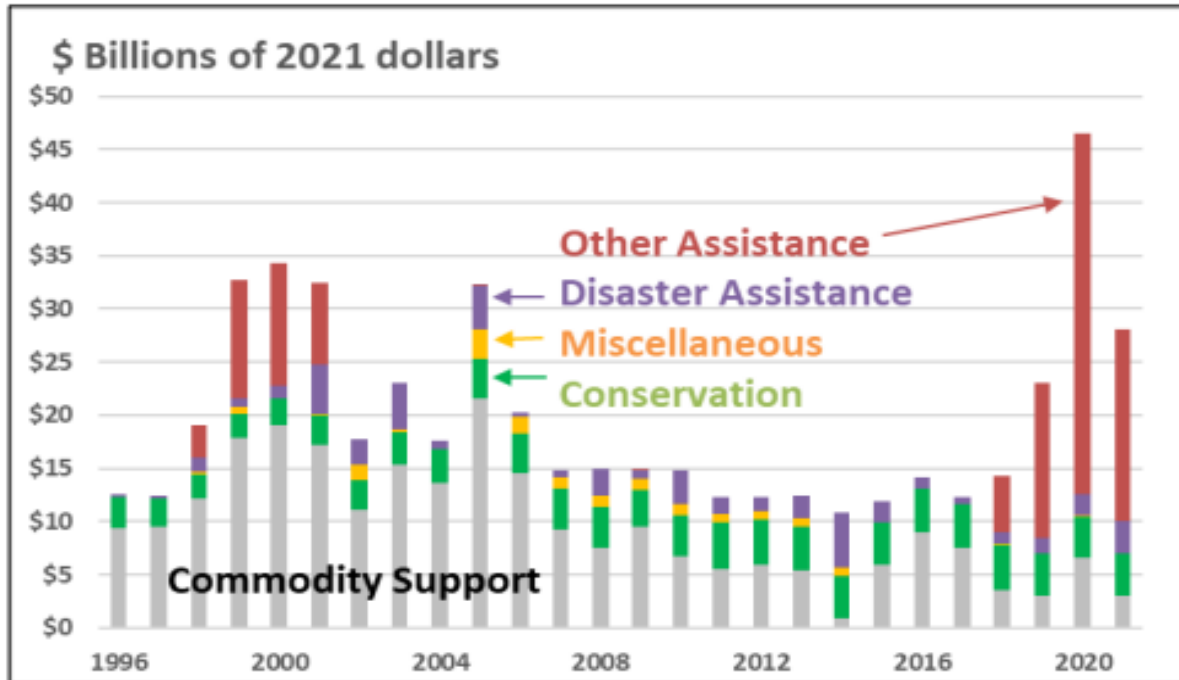
# **Pandemic Market Volatility Assistance Program (PMVAP) & Dairy Donation Program (DDP)**

*December 16, 2021*



# Farm income remains skewed by government payments

**Figure 4. Government Payments to Farmers, 1996-2021**



**Source:** CRS using data from USDA, ERS, “2021 Farm Income Forecast,” September 2, 2021.

**Notes:** 2021 data represent a forecast. Values are adjusted for inflation using the BEA chain-type GDP deflator where 2021 = 100.



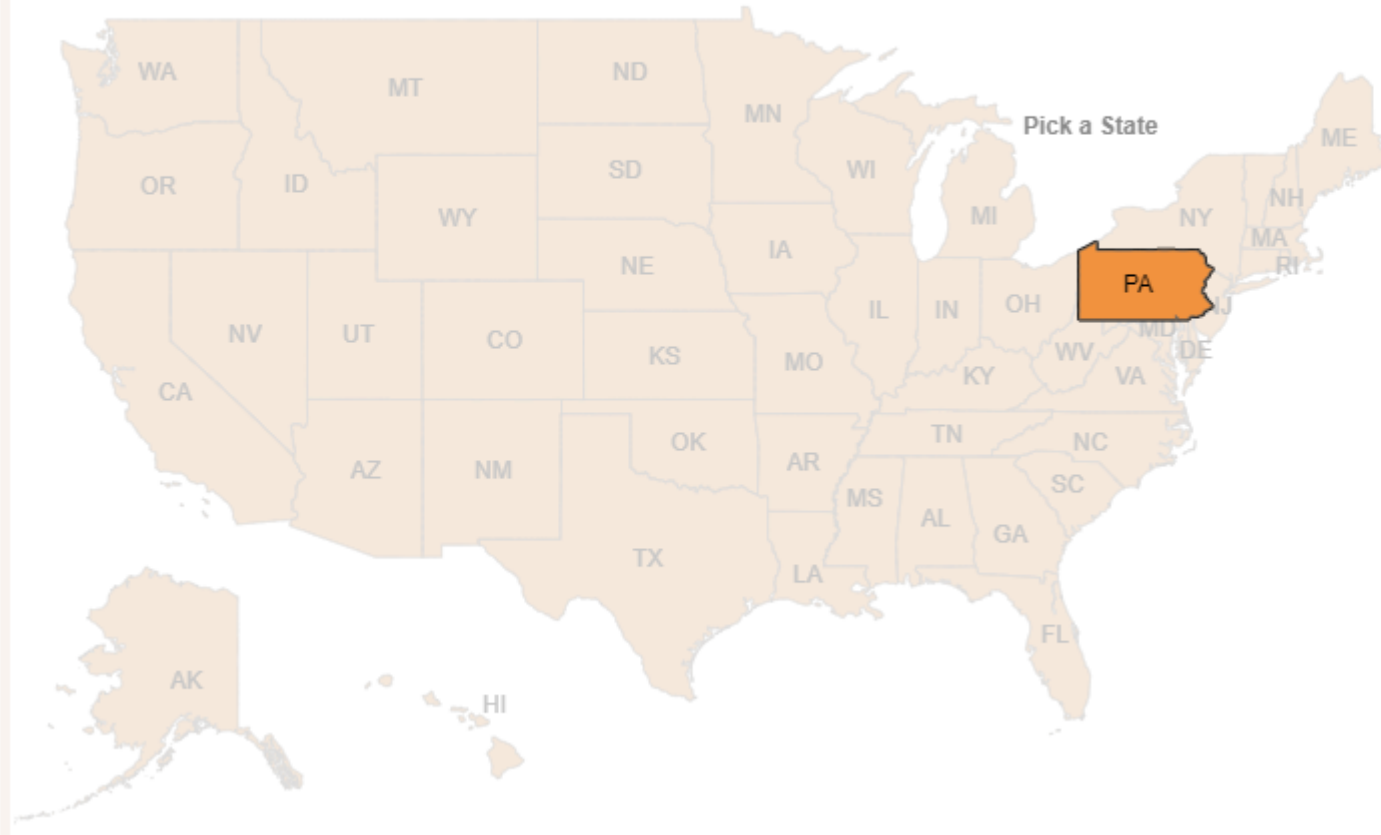
Supplemental and ad hoc disaster assistance in 2020 and 2021 includes assistance from COVID-19 pandemic assistance programs and other ad hoc and emergency programs that make direct payments to producers. USDA pandemic assistance includes payments from the Coronavirus Food Assistance Program (CFAP) and other pandemic assistance to producers, while non-USDA pandemic assistance includes loans from the Small Business Administration's Paycheck Protection Program (PPP).

Federal Government direct farm program payments, 2012-2021F  
Nominal (current dollars)

United States	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021F
	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000
<b>Direct government payments</b>	10,635,118	11,003,796	9,766,845	10,804,486	12,979,676	11,531,611	13,669,010	22,447,200	45,687,724	27,209,671
Fixed direct payments	4,687,021	4,288,531	18,733	-3,509	-5,348	818	-933	-1,327	-725	NA
Cotton Transition Assistance Payments (CTAP)	NA	NA	459,927	24,018	1,064	122	-43	-6	0	NA
Cotton Ginning Cost-Share (CGCS) Program	NA	NA	NA	NA	326,456	254	214,562	27	0	NA
Average Crop Revenue Election Program (ACRE)	41,395	206,896	255,084	13,738	122	-250	-63	-37	-31	NA
Price Loss Coverage (PLC)	NA	NA	NA	754,928	1,942,170	3,213,642	2,064,825	1,945,080	4,952,921	2,103,000
Agriculture Risk Coverage (ARC)	NA	NA	NA	4,376,892	6,061,419	3,797,083	1,109,009	710,107	1,268,776	95,000
Counter-cyclical payments	-1,234	-839	-527	-60	-189	59	NA	NA	NA	NA
Loan deficiency payments	-616	-331	61,894	154,844	165,850	8,459	-515	6,780	20,949	7,906
Marketing loan gains	0	0	32,955	53,528	40,158	3,440	0	695	78,374	8
Milk income loss payments	446,572	231,704	-129	-40	-64	-43	-20	-25	-26	NA
Dairy Margin Coverage Program	NA	NA	NA	686	10,394	19	250,013	294,551	185,393	1,070,367
Tobacco Transition Payment Program	652,933	647,974	646,399	2,574	0	6	0	0	0	NA
Conservation	3,695,063	3,679,896	3,561,396	3,618,928	3,763,963	3,824,171	3,986,516	3,830,392	3,814,693	3,964,000
Biomass Crop Assistance Program (BCAP)	12,266	7,078	5,444	7,364	6,879	1,236	236	83	54	NA
Supplemental and ad hoc disaster assistance	1,102,397	1,942,908	4,725,718	1,800,619	657,543	679,465	915,566	1,447,919	31,544,448	19,880,240
USDA pandemic assistance	NA	NA	NA	NA	NA	NA	NA	NA	23,527,864	8,040,248
Non-USDA pandemic assistance	NA	NA	NA	NA	NA	NA	NA	NA	5,983,498	8,728,158
Other supplemental and ad hoc disaster assistance	NA	NA	NA	NA	NA	NA	NA	NA	2,033,086	3,111,834
Market Facilitation Program	NA	NA	NA	NA	NA	NA	5,127,345	14,202,517	3,781,689	83,894
Miscellaneous programs	-680	-21	-49	-24	9,259	3,129	2,514	10,445	41,210	5,256



## Get to know farms in Pennsylvania, 2020



## Farm facts

**Number  
of farms**  
52,700

**Acres of  
farmland**  
7,300,000

**Net farm  
income**  
\$1,584,805,000

**Government  
payments**  
\$589,201,000

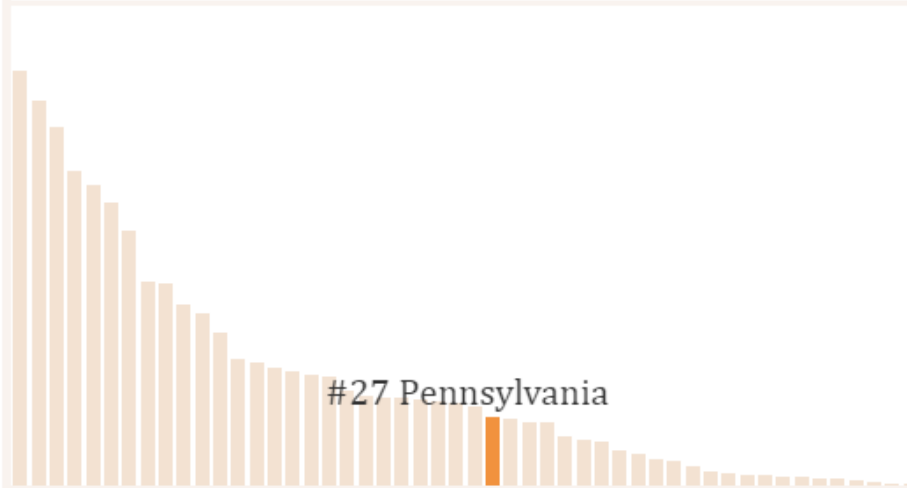
**Federal  
insurance  
premiums**  
\$19,659,000

**Federal  
insurance  
indemnities**  
\$39,044,000



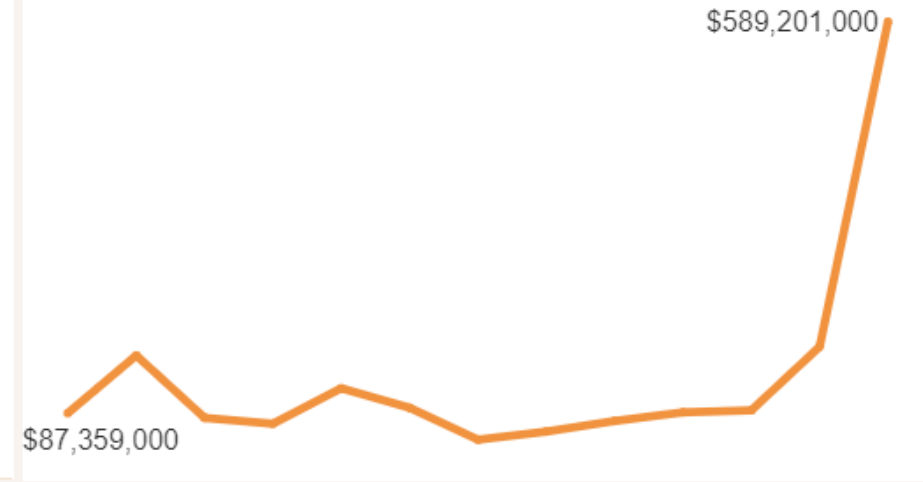
**Ranked by:** Government payments 2020

Government payments, 2020 dollars



## Government payments

2008-20 (current-year dollars)



## Top 5 cash receipts (2020 dollars)

1 Dairy products, milk	\$1,854,398,000
2 Miscellaneous crops	\$599,233,000
3 Cattle and calves	\$586,291,000
4 Corn	\$545,844,000
5 Mushrooms	\$530,209,000

## Top 5 production expenses (2020 dollars)

1 Feed	\$1,516,604,000
2 Miscellaneous*	\$949,127,000
3 Capital consumption*	\$601,340,000
4 Hired labor	\$511,314,000
5 Repair & maintenance*	\$438,839,000

\*Includes expenses associated with operator's dwellings.

\*\*Includes landlord capital consumption.

Created by: The ERS Farm Income Team.

Source: <https://www.ers.usda.gov/data-products/farm-income-and-wealth-statistics.aspx> data as of December 1, 2021. Number of farms and acres of farmland are from USDA, National Agricultural Statistics Service, *Farms and Land in Farms* (<https://usda.library.cornell.edu/concern/publications/5712m6524?locale=en>).



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U.S. DEPARTMENT OF AGRICULTURE



**Pandemic Market Volatility Assistance Program for Dairy**





# USDA Announces **Pandemic Market Volatility Assistance Program** for Dairy Producers

On August 19, 2021, the U.S. Department of Agriculture [announced](#) the [Pandemic Market Volatility Assistance Program](#).

The program will initially distribute \$350 million in dairy producer lost revenue reimbursement suffered in July-December 2020 due to:

- (a) dairy market and pricing abnormalities;
- (b) the unintended consequence of large negative Class I producer price differential calculations from a change in price formula made via the 2018 Farm Bill; and
- (c) and precipitous Class I and Class III federal pool revenue shortfalls under existing Federal Milk Marketing Orders (FMMO).



- USDA stated that it will ultimately provide over \$2 billion for dairy industry pandemic relief and will be administered under the umbrella of USDA-Agricultural Marketing Service's [Dairy Program](#).
- The initial eligible reimbursement will be for 80 percent of the revenue difference per month (based on annual production) on volume up to 5 million pounds.
- The payment rate will vary by FMMO based on the actual losses on pooled milk.
- USDA will make payments through agreements with independent handlers and cooperatives, who will be reimbursed for administrative costs and will distribute the monies on the same basis as July – December 2020 producer payments were made.
- USDA will communicate with eligible handlers and cooperatives on participation terms and will distribute payments within 60 days of entering into an agreement.
- Producer payments must be made in 30 days thereafter.



## A little more context from USDA Press Release:

- “ In June, Secretary Vilsack committed to providing additional pandemic assistance for dairy farmers in an exchange at a hearing with Senate Appropriations Committee Chairman Leahy.”
- “This targeted assistance is the first step in USDA’s comprehensive approach that will total over \$2 billion to help the dairy industry recover from the pandemic and be more resilient to future challenges for generations to come.”
- “The program is part of \$6 billion of pandemic assistance USDA announced in March to address a number of gaps and disparities in previous rounds of assistance. Other pandemic assistance to dairy farmers includes \$400 million for a new Dairy Donation Program to address food insecurity and mitigate food waste and loss; and \$580 million for Supplemental Dairy Margin Coverage for small and medium farms.”
- “Outside the pandemic assistance, USDA will also make improvements to the Dairy Margin Coverage safety net program updating the feed cost formula to better reflect the actual cost dairy farmers pay for high quality alfalfa. This change will be retroactive to January 2020 and is expected to provide additional retroactive payments of about \$100 million for 2020 and 2021. Unlike the pandemic assistance, this change will also be part of the permanent safety net and USDA estimates it will average about \$80 million per year or approximately \$800 million over ten years for dairy headed into the upcoming Farm Bill.”

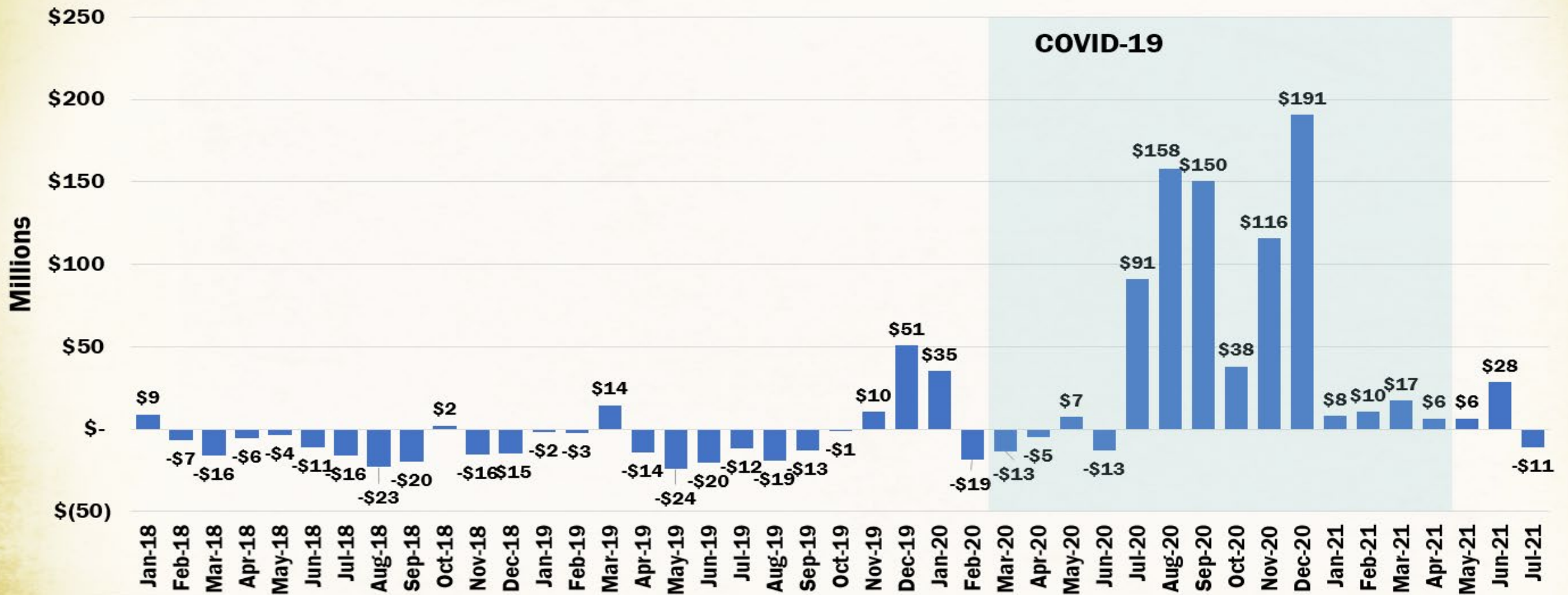


## A little more context from NMPF Press Release:

- “NMPF asked the department to reimburse dairy farmers for unanticipated losses created during the COVID-19 pandemic by a change to the Class I fluid milk price mover formula that was exacerbated by the government’s pandemic dairy purchases last year.”
- “When Congress changed the previous Class I mover, it was never intended to hurt producers. In fact, the new mover was envisioned to be revenue-neutral when it was adopted in the 2018 Farm Bill. However, *the government’s COVID-19 response created unprecedented price volatility* in milk and dairy-product markets that produced disorderly fluid milk marketing conditions that so far *have cost dairy farmers nationwide more than \$750 million from what they would have been paid under the previous system.*”
- “NMPF has been working on approaches to right this unintended wrong to dairy farmers by recouping as much of the loss as possible. Today’s announcement is an initial step in this effort that will help many producers, but it *unfortunately falls significantly short* of meeting the needs of dairy farmers nationwide.”
- “The *arbitrary low limits on covered milk production volume mean many family dairy farmers will only receive a portion of the losses they incurred* on their production last year.”
- “*Additional work lies ahead to more fully remedy this shortfall* for all dairy producers. We very much appreciate USDA’s persistence and efforts to find a way to cover some of these losses using existing authorities, but NMPF represents producers from all regions and of all sizes and believes that *losses incurred by producers must be addressed equitably. Consequently, NMPF will work with Congress to seek supplemental funding to close this gap.*”
- “NMPF also is *continuing discussions* about the current Class I mover to prevent a repeat of this problem. The COVID-19 *pandemic may be a once-in-a-lifetime occurrence, but a large spread between Class III and IV milk prices is not, making it necessary to fix the Class I mover and put this problem to rest.*”

# Figure 4: Difference in Class I Pool Revenue

Higher-of vs. Current System | Jan 2018 – Sep 2021



AMERICAN FARM BUREAU FEDERATION®

Source: USDA, Agricultural Marketing Service



# Can you tolerate a little more “context?”

**NMPF** on 9/2/21: “Dairy farmers welcomed assistance from USDA in August . . . That *doesn’t mean our work is over* – especially on the pandemic market program. The \$350 million in reimbursements is a *partial balm that begins to redress* policies that created unintended harm. But it *isn’t a fair deal for all* dairy farmers.”

- “USDA’s new program attempts to rectify two policy actions that left many in dairy on the wrong end of unplanned consequences. The immediate trigger was government food-box program purchases that were heavily weighted toward cheese. That over-emphasis sent Class III cheese prices to all-time highs and caused unusual and uneven impacts on milk checks, most commonly noticed via the record negative Producer Price Differentials (PPDs) seen during the pandemic. . . . The other culprit was an attempted good-faith policy change that inadvertently became a ticking time bomb, exploded by those same milk-price gyrations. A change to the Class I mover formula, which sets the price of Class I fluid milk, in the 2018 farm bill was originally proposed as a revenue-neutral adjustment . . . It turned out to be anything but that. Last year’s unprecedented discrepancies between Class III and Class IV prices, which are used to calculate the mover, pushed Class I skim milk prices dramatically lower . . . leaving dairy farmers with roughly \$750 million in losses.”
- “. . . [W]e voiced support for an *emergency Federal Milk Marketing Order hearing* focused specifically on addressing the problem. We have *held back on a formal hearing request*, choosing instead to work with USDA . . . [*“NMPF’s proposal would modify the current Class I mover, which adds \$0.74/cwt to the monthly average of Classes III and IV, by adjusting this amount every two years based on conditions over the prior 24 months, with the current mover remaining the floor.”*]
- “. . . *lack of fairness* is a major concern for NMPF . . . The payment is calculated based on only 5 million pounds of milk per farm during the period of July-December 2020. That level is well below the production of thousands of dairy farms, meaning many family dairy farmers will only receive a portion of the losses they incurred. . . . [W]e still *need to address the risk imbalance in the current Class I mover formula* that was exposed by the pandemic. The proposed adjustment to the mover NMPF developed last spring was designed to account for past losses and to restore needed balance for farmers going forward. ”



## How does PMVAP work? [Herbein & Company Blog \(10/7/21\)](#)

*“The program’s goal is to address the lost Class I value of milk due to the Class I skim value formula change. Before the formula change, the value of Class I milk was based on the “higher of” Class III or Class IV. Instead, the value of Class I milk is now based on the “average of” Class III and Class IV.”*

1. The USDA will establish individual agreements with each handler and cooperative.
2. Once the agreement is made, each handler and cooperative will provide total eligible milk data for the payment calculation, and each producer must attest that they meet the requirements.
3. Next, the USDA will distribute PVMAP monies to handlers and cooperatives who will in turn, distribute the funds to each individual dairy farmer.
4. Producers who are no longer in business or switch markets are still included.
5. Any dairy farmer in multiple markets during the window is included, and their payments could come from multiple handlers or cooperatives if milk was pooled by each handler or/cooperative.
6. All payment to individual producers must be made within 30 days of handlers or/cooperative receipt and must be a separate payment from the normal milk checks
7. Cooperatives can reblend the payments to members if it reblended all market proceeds originally.
8. Pool plants must pay the dairy cooperative at least the minimum amount due for milk received, but cooperatives do not have to pay their dairy farmers that same price.
9. PLAIN SECT PRODUCERS: For producers who do not wish to receive payment, their calculated payment amount will be deducted from the total in the agreement between the handler and USDA.



# How does PMVAP work? (cont.)

## Eligibility

- The producer’s milk was pooled during any of the months of July to December 2020.
- Producers must have either an average Adjusted Gross Income (AGI) of less than \$900,000 for tax years 2016, 2017, and 2018 or 75% of their adjusted gross income must come from farming, ranching or forestry-related activities. Farmers that previously qualified for CFAP 2 payments would also qualify for PMVAP since this is the same criterion.
- The amount of pooled milk to be paid for is capped at 5 million pounds per producer. For dairy farmers in multiple markets, their cap would be prorated based on volumes of milk pooled in each order.

## Calculation

- The goal of this program is to compensate the dairy farmer for the change in the Class I skim value formula. Therefore, the calculation will be based on the difference between the “higher of” and “average of” formulas. [See the table →](#)

Effective Price Date	Class I New Method Skim Milk	Class I Old Method Skim Milk	Difference
Jul-20	10.62	13.29	\$2.67
Aug-20	13.34	18.08	\$4.74
Sep-20	13.02	17.43	\$4.41
Oct-20	9.97	11.01	\$1.04
Nov-20	12.78	16.07	\$3.29
Dec-20	14.88	20.07	\$5.19





## How does PMVAP work? Herbein & Company [Blog \(10/7/21\)](#) (cont.)

### *Calculation (cont.)*

- Once the difference is determined, it is multiplied by the Class I skim utilization rate for that FMMO, and then reduced to 80 percent. For each farmer, the payment is calculated on the amount of their milk that was pooled in their Federal Milk Marketing Order, subject to the 5-million-pound cap per producer.
- **Education Requirement** – According to USDA, “As part of the program, handlers also will provide virtual or in-person education to dairy farmers on the program and other dairy topics, selecting from educational information available from USDA or other sources. A handler will have until March 1, 2022, to provide educational opportunities to dairy farmers.” See [Handler Education Resources](#). USDA will reimburse handlers and cooperatives for allowable administration costs which would mostly include expenses related to the education requirement.
- **Timeline (*Estimated as of 10/7/21*)** - Handlers should have notified the USDA of their intent to participate by September 10, 2021. The next step is for each handler and cooperative to have one on one meetings with the USDA.
  - By October, the cooperative agreements are signed and finalized.
  - By November, the USDA hopes to have distributed monies to handlers and cooperatives.
  - By December, the producers should receive assistance payments.
  - In January and February 2022, the Market administrators will start the payment verification audits.
  - Lastly, the education requirement should be administered by March 1, 2022.



**PMVAP funds will be available early in 2022.**

Throughout the fall, the PMVAP team has been working with handlers to gather and verify data needed to calculate and distribute PMVAP monies to eligible dairy farmers. Thank you to the handlers who have been diligently working to compile data and to producers who have been providing AGI attestations to their handlers so that the program can move forward. USDA has begun the next phase of sending out draft agreements to eligible handlers detailing the requirements of the program and how much PMVAP money they will be responsible for distributing to their eligible producers. When the signed agreements are returned, the internal USDA clearance process begins. Once the signed agreements have been approved, USDA will distribute the producer payment dollars to handlers who will then have 30 days to disburse monies to dairy producers.

USDA is striving to begin disbursing monies as soon as possible and plans to distribute monies at the beginning of 2022. Once a handler receives their PMVAP payment, they will have 30 days to disburse monies to producers. USDA anticipates that eligible dairy farmers will receive PMVAP payments during January and February 2022.



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**Agricultural Marketing Service**  
U.S. DEPARTMENT OF AGRICULTURE

## **Dairy Program**



# **Dairy Donation Program**



### USDA Publishes Notice of Dairy Donation Program

On April 14, 2021, USDA [published a notice](#) that it would soon implement a new \$400 million “Dairy Donation Program,” (DDP) authorized in the Consolidated Appropriation Act of 2021, to facilitate timely donation of dairy products to the charitable food system. Minimum key requirements are contained in the announcement including information on donor reimbursement which can be retroactive under the Act. Regarding reimbursement, USDA stated that “dairy organizations can plan on a rate of reimbursement equal to the minimum classified value of the milk when the donated product was processed.”

### USDA Announces \$400 Million Dairy Donation Program Details

On August 25, 2021, the U.S. Department of Agriculture’s (USDA) Agricultural Marketing Service (AMS) [announced](#) the Federal Register publication of an [interim final rule](#) providing details of the \$400 million [Dairy Donation Program](#) (DDP). [86 FR 48887](#), 9/01/21. Under the program, dairy cooperatives and processors who partner with the charitable food system for milk and dairy product discounts or donations may apply for processing, transportation, and other cost reimbursements. Due to the availability of reimbursement, tax deductibility of any amounts are uncertain. The rule will become effective one day after publication and will expire within two years (9/02/23) unless extended.



**FEDERAL REGISTER**

The Daily Journal of the United States Government



Ⓜ Rule

## Establishment of a Dairy Donation Program

A Rule by the Agricultural Marketing Service on 09/01/2021

PUBLISHED DOCUMENT

Start Printed Page 48887

AGENCY:

Agricultural Marketing Service, USDA.

ACTION:

Interim final rule; request for comments.

SUMMARY:

This rule establishes the Dairy Donation Program as required by the Consolidated Appropriations Act of 2021. Under the program, eligible dairy organizations that account to a Federal milk marketing order and incur a qualified expense related to certain dairy product donations may apply for and

DOCUMENT DETAILS

**Printed version:**  
[PDF](#)

**Publication Date:**  
09/01/2021

**Agencies:**  
Agricultural Marketing Service

**Dates:**  
Effective Date: This interim final rule is effective September 2, 2021 and expires September 1, 2023, unless extended by notification in the Federal Register.

**Effective Date:**  
09/02/2021



- This rule outlines the provisions of the new ***Dairy Donation Program*** (DDP) codified at [7 CFR part 1147](#).
- The DDP is an additional dairy donation program that overlays on existing USDA dairy milk donation activities such as the ***Milk Donation Reimbursement Program (MDRP)***.
  - The MDRP was established as part of the 2018 Farm Bill to facilitate the donation of fluid milk products and avoid food waste. The program was funded for \$9 million in fiscal year 2019, and \$5 million per fiscal year thereafter.
- In December 2020, Congress authorized an additional \$400 million until expended to establish the DDP.
- The donation program provides for reimbursement of certain costs for donations made between two private entities.
- Program eligibility is open to ***eligible dairy organizations (EDOs)***, defined as dairy farmers (either individually or as part of a cooperative) or dairy processors that meet the following conditions:
  - 1) *Account to a Federal milk marketing order (FMMO) marketwide pool; and*
  - 2) *incur a qualified expense.*
- An EDO could “account to” a FMMO marketwide pool by filing a report with a FMMO office. Consequently, this rule revises the definition of “eligible dairy organization” for MDRP by removing the requirement that the EDO be regulated under a FMMO.



- EDOs incur a qualified expense by either purchasing fresh fluid milk product (raw milk, skim milk, cream, or concentrated fluid milk products) for processing into an eligible dairy product or purchasing bulk dairy commodity product for further processing into an eligible dairy product. (This changes the MDRP requirement to delete any reference to paying FMMO minimum classified values.)
- Once these two above conditions—accounting to a FMMO and incurring a qualified expense—are met, EDOs participate in the program by forming partnerships with eligible distributors and then submitting a Dairy Donation and Distribution Plan (Plan) to AMS for approval.
- Upon Plan approval, EDOs can submit a Reimbursement Claim Form (Claim Form) to receive reimbursement for donations made. DDP will reimburse EDOs for the all or part of the following:
  - (1) Input costs—fresh fluid milk or bulk dairy commodity product milk equivalent used in the eligible dairy product;
  - (2) manufacturing costs; and
  - (3) transportation costs.
- Retroactive reimbursement back to 1/1/20; \$50 million cap per EDO.



# THANK YOU!

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