

AFBF DAIRY WORKING GROUP

BACKGROUND ON DAIRY IN NUTRITION PROGRAMS

Issue:

Milk and other dairy products provide vital nutrition to consumers of all ages. In terms of farm bill spending, Title IV, the nutrition title, dominates, accounting for over 80% of the bill's spending. Notably, while the bulk of dollars spent on nutrition move through the farm bill via programs like the Supplemental Nutrition Assistance Program (SNAP), funding for many of the programs with specific restrictions or focus on dairy does not. These include the National School Lunch Program (NSLP) and School Breakfast Program (SBP), which currently restrict the types of milk served in schools to flavored and unflavored low-fat (1%) and fat-free varieties.

AFBF strongly supports the inclusion of whole and 2% milk options in school nutrition programs but has an uphill battle in Congress given school food programs are under the jurisdiction of the Committee on Education and the Workforce rather than the Committee on Agriculture.

Additionally, Dairy Working Group members were interested in having background knowledge on the general role and status of milk and dairy in nutrition programs and dairy donation reimbursement programs.

Background:

Sources:

*[School Meals and Other Child Nutrition Programs: Background and Funding](#), Kara Clifford Billings, CRS
[Child Nutrition Programs: Transitional Standards for Milk, Whole Grains, and Sodium; Correction](#), Federal Register 87 FR 47331
[Establishment of a Dairy Donation Program](#), Federal Register 86 FR 48887
[Establishment of a Milk Donation Reimbursement Program](#), Federal Register 84 FR 46653
[A Primer on WIC: The Special Supplemental Nutrition Program for Women, Infants, and Children](#), Randy Alison Aussenberg, CRS*

The Supplemental Nutrition Assistance Program (SNAP) provides benefits to eligible low-income individuals for the purchase of eligible food in authorized retail food stores. SNAP is generally reauthorized with each farm bill and makes up the bulk of nutrition-related expenditures in the legislation.

Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)

The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) is not authorized through the farm bill and is more restricted on products that can be purchased by participants. Typically, WIC participants receive vouchers/checks or an electronic benefit transfer (EBT) card, which they redeem for specific supplemental foods, some of which may be tailored to the specific participant's needs. Federal regulations list seven food packages, including eligible foods and their quantities, based on participant characteristics such as pregnancy status, breastfeeding practices, the age of children or infants, and dietary needs. Food items within the seven food packages include milk, juice, cereal, eggs,

whole wheat bread, legumes and peanut butter, cheese, canned fish, infant formula, infant cereal, and infant fruits, vegetables, and meats. In addition to the foods listed here, the federal food package regulations give states certain substitution options such as yogurt as a substitute for milk.

National School Lunch Program (NLSP) and School Breakfast Program (SBP)

The child nutrition programs are currently authorized under the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966. Congressional jurisdiction over the underlying laws has typically been exercised by the Senate Agriculture, Nutrition, and Forestry Committee, the House Education and Labor Committee, and, to a limited extent, the House Agriculture Committee. The child nutrition programs were most recently reauthorized by the Healthy, Hunger-Free Kids Act (HHFKA) of 2010.

NSLP and SBP provide federal support for meals served in approximately 94,600 public and private elementary and secondary schools nationwide in a typical school year. Schools receive federal aid in the form of cash reimbursements for every meal they serve that meets federal nutritional requirements (limited to one breakfast and lunch per child daily).

Nutrition Standards and Food Service Nutrition Standards for School Meals Nutritional requirements for school meals have changed throughout the history of the school meal programs. The most recent child nutrition reauthorization, the HHFKA in 2010, required USDA to update the nutrition standards for school meals within 18 months of the law's enactment based on recommendations from the Food and Nutrition Board at the National Academies of Sciences, Engineering, and Medicine. The law also provided a "performance-based" bonus reimbursement of 6 cents per lunch for schools certified as compliant with the updated standards. USDA published the updated nutrition standards for school meals in 2012. They were based on the 2010 Dietary Guidelines for Americans (per an existing statutory requirement), as well as the recommendations from the National Academies of Sciences, Engineering, and Medicine. The standards required increased servings of fruits, vegetables, whole grains, and meats/meat alternates in lunches and breakfasts. They also restricted milk to unflavored low-fat (1%) and flavored and unflavored fat-free varieties, set limits on calories and sodium in school meals, and prohibited trans fats in school meals, among other changes. The revised nutrition standards largely took effect in school year 2012-2013 for lunches and in school year 2013-2014 for breakfasts. Some schools experienced difficulty implementing the new standards, and subsequent changes to the whole grain, sodium, and milk requirements were made through appropriations acts and USDA rulemaking. For school year 2019-2020 and onward, schools are operating under the regulations as amended by a final rule published by the Food and Nutrition Service on Dec. 12, 2018, which allows flavored 1% milk, requires at least 50% of grains offered weekly in school meals to be whole grain-rich, and delays the implementation of stricter sodium limits for school meals. Schools must offer 5 cups of fluid milk each school week (one per day).

All fluid milk must be fat-free (skim) or low-fat (1% fat or less). Milk may be unflavored or flavored, provided that unflavored milk is offered at each meal service. With milk and with other foods, schools must make substitutions for students who are considered to have a disability and whose disability restricts their diet, and may make substitutions for medical or special dietary needs. States and school districts are allowed to implement additional nutritional requirements for school meals, as long as they meet the federal standards.

Child and Adult Care Food Program (CACFP)

CACFP provides federal reimbursements for meals and snacks served in nearly 156,500 child care centers, day care homes, and adult day care centers nationwide in fiscal year 2019. For infants (under 12 months of age), the new meal patterns eliminated juice, encouraged breastfeeding, and set guidelines for the introduction of solid foods, among other changes. For children 1 and older and adult participants, the new meal patterns increased whole grains, fruits, and vegetables, **limited milk to unflavored 1% and unflavored or flavored fat-free varieties, limited sugar in cereals and yogurts**, and prohibited deep-fried foods. They also required that potable water be available to children throughout the day. Subsequent rulemaking by USDA allowed flavored 1% milk to be served to children 6 and older in CACFP in school year 2018-2019 and forward.

Summer Food Service Program (SFSP)

The Summer Food Service Program (SFSP) provides federal aid to school food authorities and other local public and nonprofit organizations that serve meals and snacks to children during the summer months. Federal aid is provided in the form of per-meal cash reimbursements and a smaller amount of commodity foods and administrative funds. The program serves roughly 2.7 million children annually at nearly 46,600 meal sites. Meals and snacks served through SFSP must meet federal nutrition standards. In contrast to the child nutrition programs discussed thus far, SFSP's nutrition standards are not required to align with the Dietary Guidelines for Americans, but are "prescribed by the Secretary on the basis of tested nutritional research." Program regulations outline the nutrition standards for breakfasts, lunches/suppers, and snacks. The standards prescribe minimum servings of fruits and vegetables, meats/meat alternatives, breads/bread alternatives, and milk. **Unlike school meals and CACFP, there are no limits on calories, saturated and trans fats, or milk varieties in SFSP.** Participating school food authorities may choose instead to use the NSLP and/or SBP nutrition standards for SFSP.

Special Milk Program (SMP)

The Special Milk Program (SMP) subsidized milk in approximately 3,000 schools, child care institutions, summer camps, and other institutions in fiscal year 2019. Generally, schools and other participating institutions may not participate in another child nutrition meal service program along with SMP. However, schools may administer SMP for pre-kindergartners and kindergartners who are in part-day sessions and do not have access to the school meal programs.

In SMP, participating institutions provide milk to children for free and/or at a subsidized price. Institutions are reimbursed differently based on whether they decide to provide milk for free to all children, sell milk to all children, or combine these options (providing free milk to eligible children and selling milk to other children) (see Table 10). If institutions choose the combined option, they must establish eligibility rules for free milk.

USDA updated the nutritional requirements for milk served in SMP alongside changes to the CACFP nutrition standards. The final rule, which took effect on Oct. 1, 2017, **required unflavored whole milk for 1-year-olds, unflavored low-fat (1%) or unflavored fat-free milk for children ages 2-5, and unflavored low-fat (1%) or flavored/unflavored fat-free milk for children ages 6 and older. The regulations also allowed for reimbursement of non-dairy milk substitutes in cases of medical or special dietary needs.** In 2017, USDA changed the milk requirements for 6-year-olds in SMP alongside corresponding changes to milk in school meals programs and CACFP. The change allowed the option of flavored low-fat (1%) milk for children 6 and older in SMP for school year 2018-2019 forward.

7 CFR § 210.10 – Code Language for Fluid Milk in Schools

(d) Fluid milk requirement -

(1) Types of fluid milk.

(i) Schools must offer students a variety (at least two different options) of fluid milk. All milk must be fat-free (skim) or low-fat (1 percent fat or less). Milk with higher fat content is not allowed. Low-fat or fat-free lactose-free and reduced-lactose fluid milk may also be offered. Milk may be unflavored or flavored, provided that unflavored milk is offered at each meal service.

(ii) All fluid milk served in the Program must be pasteurized fluid milk which meets State and local standards for such milk. All fluid milk must have vitamins A and D at levels specified by the Food and Drug Administration and must be consistent with State and local standards for such milk.

(2) Inadequate fluid milk supply. If a school cannot get a supply of fluid milk, it can still participate in the Program under the following conditions:

(i) If emergency conditions temporarily prevent a school that normally has a supply of fluid milk from obtaining delivery of such milk, the State agency may allow the school to serve meals during the emergency period with an alternate form of fluid milk or without fluid milk.

(ii) If a school is unable to obtain a supply of any type of fluid milk on a continuing basis, the State agency may approve the service of meals without fluid milk if the school uses an equivalent amount of canned milk or dry milk in the preparation of the meals. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, and the Virgin Islands, if a sufficient supply of fluid milk cannot be obtained, “fluid milk” includes reconstituted or recombined fluid milk, or as otherwise allowed by FNS through a written exception.

(3) Fluid milk substitutes. If a school chooses to offer one or more substitutes for fluid milk for non-disabled students with medical or special dietary needs, the nondairy beverage(s) must provide the nutrients listed in the following table. Fluid milk substitutes must be fortified in accordance with fortification guidelines issued by the Food and Drug Administration. A school need only offer the nondairy beverage(s) that it has identified as allowable fluid milk substitutes according to the following chart.

Nutrient	Per cup (8 fl oz)
Calcium	276 mg.
Protein	8 g.
Vitamin A	500 IU.
Vitamin D	100 IU.
Magnesium	24 mg.
Phosphorus	222 mg.
Potassium	349 mg.
Riboflavin	0.44 mg.
Vitamin B-12	1.1 mcg.

(4) Restrictions on the sale of fluid milk. A school participating in the Program, or a person approved by a school participating in the Program, must not directly or indirectly restrict the sale or marketing

of fluid milk (as identified in paragraph (d)(1) of this section) at any time or in any place on school premises or at any school-sponsored event.

Congressional Jurisdiction

[House Rule X](#) broadly outlines the jurisdiction of each of the standing committees of the House of Representatives. Most of Rule X was drawn from 19th and 20th century precedents and codified in the Legislative Reorganization Act of 1946. Although the rule underwent modest revisions in 1974 and 1980, as well as more extensive changes in the 104th Congress, topic omissions and a lack of clarity, as well as overlaps among committees in areas of jurisdiction, still exist. In the 109th Congress, Rule X was modified to create a standing Committee on Homeland Security with legislative and oversight jurisdiction.

Committee jurisdiction over measures introduced in the House, and the subsequent referral of those measures is a complex process. The formal provisions of the rule are supplemented by an intricate series of precedents and informal agreements governing the referral of legislation. Precedent dictates that once a measure is referred to a committee it remains the responsibility of that committee. After the legislation is enacted into law any amendments to that law are most often considered to be within the jurisdiction of that same committee. In addition, formal agreements, usually in the form of memorandums of understanding, between committees determining the boundaries of their respective jurisdictions are usually respected by the Parliamentarian and the Speaker in the referral process. These memorandums are sometimes memorialized through printing in the Congressional Record.

As proscribed by Rule X (particularly clause 1), committee jurisdictions that include topics related to human and child nutrition are as follows:

Committee on Agriculture

- Adulteration of seeds, insect pests, and protection of birds and animals in forest reserves.
- Agriculture generally.
- Agricultural and industrial chemistry.
- Agricultural colleges and experiment stations.
- Agricultural economics and research.
- Agricultural education extension services.
- Agricultural production and marketing and stabilization of prices of agricultural products, and commodities (not including distribution outside of the United States).
- Animal industry and diseases of animals.
- Commodity exchanges.
- Crop insurance and soil conservation.
- Dairy industry.
- Entomology and plant quarantine.
- Extension of farm credit and farm security.
- Inspection of livestock, poultry, meat products, and seafood and seafood products.
- Forestry in general and forest reserves other than those created from the public domain.
- **Human nutrition and home economics.**
- Plant industry, soils, and agricultural engineering.
- Rural electrification.

- Rural development
- Water conservation related to activities of the Department of Agriculture.

Committee on Education and the Workforce

- Child labor.
- Gallaudet University and Howard University and Hospital.
- Convict labor and the entry of goods made by convicts into interstate commerce.
- **Food programs for children in schools.**
- Labor standards and statistics.
- Education or labor generally.
- Mediation and arbitration of labor disputes.
- Regulation or prevention of importation of foreign laborers under contract.
- Workers' compensation.
- Vocational rehabilitation.
- Wages and hours of labor.
- Welfare of miners.
- Work incentive programs.

The child nutrition programs and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) are usually reauthorized by a child nutrition reauthorization law, not by the farm bill.

Background on Dairy Donation Reimbursement Programs

The following USDA reimbursement programs define an eligible dairy organization (EDO) 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) market wide pool; and (2) incur a qualified expense. Although the definition of EDO includes individual dairy farmers, many such farmers might not meet the other specified conditions to qualify as EDOs. For example, many such farmers would not incur qualified expenses because they do not donate eligible dairy products, since they do not have the infrastructure to process raw milk into such products.

Milk Donation Reimbursement Program (MDRP)

Under the Milk Donation Reimbursement Program, dairy organizations that participate in federal order pools and incur expenses related to fluid milk product donations may apply and receive some reimbursements to cover those expenses. Specifically, eligible handlers who account to an FMMO pool and donate packaged fluid milk products to eligible non-profit organizations may claim reimbursements for all or part of the FMMO cost difference between the Class 1 value and the plant and the lowest classified value for the month. Handlers cannot claim reimbursement for other costs related to donating fluid milk such as processing, bottling, and transporting the donated milk. MDRP is meant to encourage handlers to make donations to food assistance programs and reduce food waste.

The 2014 farm bill authorized the secretary of agriculture to create a program to reimburse eligible dairy organizations for a portion of the value of fluid milk products they donate. The program was to be administered through the Agricultural Marketing Service (AMS). In response, in 2014, the Dairy Product Donation Program was established but was subsequently repealed and replaced in the 2018 farm bill by

MDRP. Congress allotted \$9 million for the first year (2019) of the program and \$5 million for following years.

Dairy Donation Program (DDP)

The Dairy Donation Program was established as required by the Consolidated Appropriations Act of 2021 in response to increased prevalence of dumped milk in the early days of the COVID-19 pandemic. Under the program, eligible dairy organizations that account to an FMMO and incur qualified expenses related to certain dairy product donations may apply for and receive reimbursements for those donations. Qualified expenses are incurred by either purchasing fresh fluid milk products for processing into an eligible product or purchasing bulk dairy commodity product for further processing. Like the MDRP, this program is intended to facilitate donation of eligible dairy products and prevent and minimize food waste. It was also meant to help balance the supply chain during pandemic recovery. Congress authorized \$400 million until expended for the DDP.

The DDP is an additional dairy donation program that overlays existing USDA dairy donation activities such as the MDRP but differs in that it covers more than just fluid milk donations (see commodity specifications below).

Section 1147.3 defines the commodity specifications that must be met. Eligible dairy organizations must comply with all applicable federal, state, and local laws, executive orders, and rules and regulations related to its performance under this program. In addition, to qualify under the program eligible dairy products must:

1. Be made primarily from cow's (bovine) milk produced in the United States;
2. Be packaged in consumer-sized packaging;
3. Meet the applicable provisions for dairy products in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), as amended. Grade "A" dairy products shall meet the applicable provisions of the current edition of the Pasteurized Milk ordinance; and
4. Have a sell-by, best-by, or use-by date no sooner than 12 days from the date the eligible dairy product is delivered to the eligible distributor.

Program provisions specify donated dairy products must be in consumer-sized packaging. This provision should be interpreted by the eligible partnership as to whatever consumer-sized package format is agreeable to both entities.

Although program funds for the DDP and MDRP are statutorily prohibited from being consolidated, the two programs operate as one from a stakeholder standpoint. Dairy organizations making Class I fluid milk product donations—which are covered by both programs—will be reimbursed through MDRP funds at the difference between the Class I and lowest classified price and receive a supplemental reimbursement of the lowest classified price plus the manufacturing and transportation cost reimbursement through DDP funds. Total combined reimbursement will be capped at the Class I price in Dade County, Florida.

Dairy organizations already enrolled in MDRP will automatically be enrolled in the DDP and qualify to receive supplementary payments for fluid milk products donated under their currently approved MDRP Plans. As of July 2022 there were 30 eligible dairy organizations approved by the USDA. Four are in the

Western region, six are in the Central West region, 12 are in the Central East region and eight are in the Eastern region. The figure below displays the states designated in each region.



The table below summarizes the reimbursement value by product for DDP and MDRP between October 2019 and end of June 2022. During this timeframe nearly \$4 million in reimbursements have been made and over 15 million pounds of product donated. Note, this is only a small fraction of the authorized \$400 million amount.

MDRP & DDP Reimbursement Value by Product				
Product Type	Product Pounds	Milk Pounds	Reimbursement Value *	
1% Low Fat	1,894,234	1,894,229	\$	338,047.76
2% Reduced Fat	5,351,240	5,350,792	\$	1,122,113.77
Butter	145	290	\$	200.60
Buttermilk	47,212	47,212	\$	8,567.58
Cheddar Cheese	329,333	3,297,370	\$	656,234.06
Cottage Cheese	249,336	830,294	\$	109,772.58
Cream	4,371	4,371	\$	3,435.03
Eggnog	20,783	18,705	\$	4,291.74
Fat Free Skim	1,465,702	1,465,675	\$	241,088.16
Flav 1% Low Fat	1,092,536	983,431	\$	176,829.80
Flav 2% Reduced Fat	197,302	177,575	\$	36,878.10
Flav Fat Free Skim	650,824	586,881	\$	92,592.80
Flavored Whole Milk	356,891	321,208	\$	70,604.01
Half & Half	5,620	5,620	\$	1,702.75
Ice Cream/Frozen Dess	2,610	261	\$	75.90
Miscellaneous Class 2	30,606	30,606	\$	4,495.59
Miscellaneous Class 3	71,632	859,968	\$	158,644.43
Mozzarella Cheese	3,562	30,989	\$	6,357.26
Sour Cream/Dips	36,125	36,125	\$	15,946.71
Whole Milk	3,562,025	3,562,021	\$	768,636.82
Yogurt	2,999	2,551	\$	522.59
Total	15,375,088	19,506,174	\$	3,817,038.04

USDA clarifies that DDP and MDRP are separate and distinct from the USDA safety net program (Dairy Margin Coverage), indemnity and disaster assistance programs, risk management tools through the public-private partnership of the Federal Crop Insurance Program, or USDA purchases of commodities, which may include dairy products, depending on the market conditions and demand from school lunch or nutrition programs.

Related Farm Bureau Dairy Policy:

111 / School & Government Food Purchasing Programs

1. School food programs have helped to establish proper dietary habits among young people.
2. We support:
 - 2.1. School meals being balanced to provide no less than one-third of the recommended daily dietary allowances;
 - 2.2. The use of nutritional beverages such as milk, vegetable and fruit juices;
 - 2.3. Increased use of dairy products and increasing the selection of food products derived from U.S. agriculture.
 - 2.4. Requiring schools to offer all pasteurized fluid milk and milk products, including flavored and unflavored whole milk, as part of the school lunch program without losing federal subsidies;
 - 2.5. Tried and proven menus for school lunches containing fruits, vegetables, bread, meats and milk;
 - 2.7 The repeal of Public Law No: 111-296, the 2010 Healthy, Hunger-Free Kids Act, which removed all dairy except for no-fat and low-fat products from schools.
3. We oppose:
 - 3.1. Mandatory caloric limits and mandatory limits on lean meat, protein and dairy;
 - 3.2. The 12-ounce limit on milk sold in middle schools and high schools as a “competitive food” as regulated by the Healthy, Hunger Free Kids Act;

159 / Nutrition

1. We support:
 - 1.6. Changing the school lunch and WIC program to increase the number of eligible dairy products available to participants, including yogurt;
 - 1.7. WIC-approved dairy products being made available to all categories of WIC participants;
 - 1.10. The inclusion of whole milk in food and nutrition programs;
 - 1.11. The creation of a voucher program through the Milk Donation Program to facilitate the distribution of donated milk through grocery stores and other venues since some food banks are not geared for highly perishable products;
 - 1.12. Maintaining dairy as a distinct group in the Dietary Guidelines with a recommended three servings a day; and

238 / National Dairy Program

3. Milk in Schools

3.1. We support:

3.1.1. The placing of milk dispensing equipment in public schools; and

3.1.2. Whole milk being promoted and advanced through the special milk program through the schools, welfare groups and the U.S. military.

3.2. We oppose any regulations or legislation that will ban or limit flavored milk in schools.

344 Labeling

15. Lab-Produced Protein and Synthetic Food Production

16. We support:

16.7. The requirement that all processors and food distributors supply schools participating in any federal school nutrition program with milk and/or dairy products labeled in accordance with the FDA product labeling requirements in all schools participating in the federal school lunch program;