

111TH CONGRESS
1ST SESSION

S. 1645

To amend the Agricultural Adjustment Act to require the Secretary of Agriculture to determine the price of all milk used for manufactured purposes, which shall be classified as Class II milk, by using the national average cost of production, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 6, 2009

Mr. SPECTER introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To amend the Agricultural Adjustment Act to require the Secretary of Agriculture to determine the price of all milk used for manufactured purposes, which shall be classified as Class II milk, by using the national average cost of production, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Milk Mar-
5 keting Improvement Act of 2009”.

1 **SEC. 2. PRICES RECEIVED FOR MILK UNDER MILK MAR-**
 2 **KETING ORDERS.**

3 Section 8c(5)(B) of the Agricultural Adjustment Act
 4 (7 U.S.C. 608c(5)(B)), reenacted with amendments by the
 5 Agricultural Marketing Agreement Act of 1937, is amend-
 6 ed—

7 (1) in the first clauses (i) and (ii), by inserting
 8 “(based on the blended price of all milk covered by
 9 the order)” after “uniform prices” each place it ap-
 10 pears; and

11 (2) in clause (b) of the matter following the
 12 first clause (ii), by inserting “and the component
 13 value” after “quality”.

14 **SEC. 3. CLASS II MILK PRICING.**

15 Section 8c(5) of the Agricultural Adjustment Act (7
 16 U.S.C. 608c(5)), reenacted with amendments by the Agri-
 17 cultural Marketing Agreement Act of 1937, is amended
 18 by adding at the end the following:

19 “(P) CLASS II MILK PRICING.—

20 “(i) MINIMUM PRICE.—The Secretary
 21 shall base the minimum price for Class II
 22 milk on the average cost of producing all
 23 milk in the 48 contiguous States, as deter-
 24 mined by the Economic Research Service
 25 of the Department of Agriculture in ac-
 26 cordance with clause (ii) (referred to in

1 this subparagraph as the ‘national average
2 cost of production’).

3 “(ii) NATIONAL AVERAGE COST OF
4 PRODUCTION.—For purposes of this sub-
5 paragraph, the national average cost of
6 production shall equal the national average
7 of the operating cost and the allocated
8 overhead cost of producing all milk.

9 “(iii) SURVEY.—For purposes of
10 clause (ii), the Secretary shall survey pro-
11 ducers and associations of producers sub-
12 ject to Federal and State milk marketing
13 orders and in all unregulated areas appli-
14 cable to all milk.

15 “(iv) PRICE ANNOUNCEMENT.—

16 “(I) IN GENERAL.—Not later
17 than November 1 of each calendar
18 year, the Secretary shall announce the
19 minimum price for Class II milk for
20 the next calendar year, as determined
21 in accordance with clause (i).

22 “(II) ADJUSTMENTS.—Using the
23 most currently available national aver-
24 age cost of production, the Secretary
25 shall adjust the price announced

1 under subclause (I) for a calendar
2 year on April 1, July 1, and October
3 1 of the calendar year.

4 “(v) BASIC FORMULA PRICE.—

5 “(I) IN GENERAL.—The Sec-
6 retary shall use the Class II milk
7 price announced under clause (iv) as
8 the basic formula price for all Federal
9 and State milk marketing orders and
10 all unregulated milk production areas.

11 “(II) CLASS I MILK.—

12 “(aa) IN GENERAL.—The
13 price of Class I milk in all Fed-
14 eral and State milk marketing
15 orders and all unregulated milk
16 production areas shall be equal
17 to—

18 “(AA) the basic for-
19 mula price under subclause
20 (I); plus

21 “(BB) the applicable
22 Class I milk differential
23 under Federal and State
24 milk marketing orders.

1 “(bb) UNREGULATED
2 AREAS.—For purposes of item
3 (aa)(BB), the Secretary shall as-
4 sign comparable Class I milk dif-
5 ferentials to each unregulated
6 area.

7 “(vi) ESTIMATION OF ANNUAL MILK
8 PRODUCTION AND DOMESTIC CONSUMP-
9 TION.—Not later than November 1 of each
10 calendar year and taking into consideration
11 the import projections and export projec-
12 tions for all milk products, the Secretary
13 shall estimate the quantity of all milk to be
14 produced in the 48 contiguous States and
15 marketed by producers for commercial use
16 during the next 12 months.

17 “(vii) INVENTORY MANAGEMENT PRO-
18 GRAM.—

19 “(I) IDENTIFICATION AND DE-
20 TERMINATION OF DAIRY PRODUCTS.—

21 “(aa) IN GENERAL.—Not
22 less frequently than once each
23 quarter, the Secretary shall—

24 “(AA) identify all dairy
25 products (including cheeses,

1 curds, butter, butterfat, but-
2 ter oil, buttermilk, anhy-
3 drous milk fat, dairy
4 spreads, milk, cream, con-
5 centrated milk, condensed
6 milk, nonfat dry milk pow-
7 der, whole milk powder,
8 skim milk powder, all other
9 forms of powdered milk, yo-
10 gurt, ice cream, whey, whey
11 powder, dried whey, whey
12 protein concentrate, all other
13 forms of whey products,
14 milk protein concentrate,
15 milk protein isolate, casein,
16 caseinates, lactose, food
17 preps containing milk, and
18 milk chocolate) imported
19 into, or exported from, the
20 United States; and

21 “(BB) determine the
22 quantity of raw milk con-
23 tained in each such product.

24 “(bb) INCLUSIONS.—In
25 identifying dairy products under

1 item (aa)(AA), the Secretary
2 shall include any current or pro-
3 jected future imports or exports
4 of a product used for dairy, a
5 dairy substitute, or ingredient,
6 including any product that does
7 not have the status of ‘generally
8 recognized as safe’, as deter-
9 mined by the Commissioner of
10 Food and Drugs.

11 “(II) MILK PRODUCTION TO-
12 TALS.—Not later than February 1 of
13 each calendar year, the Secretary
14 shall determine the total quantity of
15 all milk produced by each producer or
16 farming operation during the pre-
17 ceding calendar year.

18 “(III) EXCESS PRODUCTION DE-
19 TERMINATION.—Not more than once
20 every 2 months, if the Secretary, act-
21 ing through the Commodity Credit
22 Corporation, has purchased the max-
23 imum quantity of milk and milk prod-
24 ucts as required by law to administer
25 programs including child nutrition

1 programs (as defined in section 25(b)
2 of the Richard B. Russell National
3 School Lunch Act (42 U.S.C. 1769f
4 (b)), feeding programs administered
5 by the Secretary of Defense, institu-
6 tional programs, and any other man-
7 dated Federal food or feeding pro-
8 grams, the Secretary shall determine
9 whether an excess quantity of milk
10 and milk products is being produced
11 for the national domestic market.

12 “(IV) REDUCTION IN PRICE RE-
13 CEIVED.—

14 “(aa) IN GENERAL.—Sub-
15 ject to item (bb), if the Secretary
16 determines under subclause (III)
17 that there is excess production,
18 the Secretary may provide for a
19 reduction in the price received by
20 producers for not more than 5
21 percent of all milk produced in
22 the 48 contiguous States and
23 marketed by producers for com-
24 mercial use.

1 “(bb) LIMITATION.—The
2 Secretary shall not provide for a
3 reduction in the price received by
4 a producer under item (aa) un-
5 less the Secretary determines
6 that there exists a positive trade
7 balance in dairy products de-
8 scribed in subclause (I)(aa)(AA)
9 that are imported into, or ex-
10 ported from, the United States,
11 based on—

12 “(AA) dollar value; and
13 “(BB) the quantity of
14 milk represented by imports
15 and exports, as determined
16 under subclause (I)(aa)(AA).

17 “(V) AMOUNT.—The amount of
18 the reduction under subclause (IV) in
19 the price received by producers shall
20 not exceed half the minimum price of
21 Class II milk.

22 “(VI) ADDITIONAL REDUC-
23 TION.—If the Secretary determines
24 that the reduction described in sub-
25 clause (IV) is insufficient to reduce

1 excess production, subject to sub-
2 clauses (VII) and (VIII), the Sec-
3 retary may reduce the price received
4 by any producer or farming operation
5 that has increased the production of
6 all milk in a calendar year, as com-
7 pared to the immediately preceding
8 calendar year.

9 “(VII) APPLICATION.—A reduc-
10 tion in price under subclause (VI)
11 shall apply only to the quantity of
12 milk produced in excess of the quan-
13 tity of milk produced during the pre-
14 vious calendar year.

15 “(VIII) NEW PRODUCER EXCEP-
16 TION.—A new producer, as defined by
17 the Secretary, shall—

18 “(aa) during the 1-year pe-
19 riod beginning on the date on
20 which the new producer com-
21 mences operation, be exempt
22 from any applicable price reduc-
23 tion relating to the first
24 3,000,000 pounds of milk pro-
25 duced by the new producer;

1 “(bb) in the case of any
2 milk produced in excess of
3 3,000,000 pounds during that 1-
4 year period, be subject to each
5 price reduction described in sub-
6 clauses (IV), (V), and (VI); and

7 “(cc) after that 1-year pe-
8 riod, be subject to each price re-
9 duction that applies to existing
10 producers.

11 “(IX) APPEALS.—

12 “(aa) IN GENERAL.—A pro-
13 ducer subject to an additional re-
14 duction under subclause (VI)
15 may appeal to the Federal or
16 State milk marketing adminis-
17 trator to provide evidence that
18 the producer did not increase
19 production in the calendar year
20 that the reduction was in effect
21 when compared to the imme-
22 diately preceding calendar year.

23 “(bb) SUBMISSION OF AP-
24 PEAL.—A producer that ships to
25 an unregulated milk handler may

1 submit any appeal of the pro-
2 ducer to the Secretary or to the
3 designated representative of the
4 Secretary.

5 “(X) EXTRAORDINARY CIR-
6 CUMSTANCES.—In deciding an appeal
7 submitted by a producer under sub-
8 clause (IX), a Federal or State milk
9 marketing administrator (or, in the
10 case of an appeal under subclause
11 (IX)(bb), the Secretary or the des-
12 ignated representative of the Sec-
13 retary) shall take into consideration
14 production losses due to, at a min-
15 imum, fire, severe weather conditions,
16 or severe disease outbreaks.

17 “(XI) COLLECTION.—Except as
18 provided in subclause (XII), reduc-
19 tions in price required under sub-
20 clause (IV) or (VI) shall be collected
21 by Federal and State milk marketing
22 administrators and timely remitted to
23 the Commodity Credit Corporation to
24 offset the cost of purchasing excess
25 milk products.

1 “(XII) COLLECTION IN UNREGU-
2 LATED AREAS.—Reductions in price
3 required for unregulated areas under
4 subclause (IV) or (VI) shall be col-
5 lected by the Secretary and timely re-
6 mitted to the Commodity Credit Cor-
7 poration to offset the cost of pur-
8 chasing excess milk products.

9 “(viii) PROHIBITION ON CERTAIN
10 CHARGES.—In carrying out this Act, the
11 Secretary shall not impose charges on pro-
12 ducers for the cost of the conversion of raw
13 milk to manufactured products.

14 “(ix) RESPONSIBILITIES OF MILK
15 PURCHASING HANDLERS.—A milk handler
16 that purchases milk from a producer shall
17 assume title for the milk at the time at
18 which the milk is pumped into a milk truck
19 provided by or otherwise delivered to the
20 milk handler.

21 “(x) APPLICABILITY.—This subpara-
22 graph applies to all producers and handlers
23 of milk in the 48 contiguous States.”.

1 **SEC. 4. AMENDMENTS TO FEDERAL MILK MARKETING OR-**
2 **DERS.**

3 Section 8c(17) of the Agricultural Adjustment Act (7
4 U.S.C. 608c(17)), reenacted with amendments by the Ag-
5 ricultural Marketing Agreement Act of 1937, is amended
6 by adding at the end the following:

7 “(H) ORDERS COVERING MILK AND MILK
8 PRODUCTS.—In the case of an order covering
9 milk or milk products, disapproval of an amend-
10 ment to the order shall not be considered to be
11 disapproval of—

12 “(i) the order; or

13 “(ii) other terms of the order.”.

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