

112TH CONGRESS
1ST SESSION

S. 1640

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

OCTOBER 3, 2011

Mr. CASEY 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 2011”.

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) DEFINITION OF NATIONAL AVER-
 21 AGE COST OF PRODUCTION.—In this sub-
 22 paragraph, the term ‘national average cost
 23 of production’ means the amount, as deter-
 24 mined by the Economic Research Service
 25 of the Department of Agriculture, equal to
 26 the difference between—

1 “(I) the national average of the
2 operating cost and the allocated over-
3 head cost of producing all milk in the
4 48 contiguous States; and

5 “(II) the opportunity cost for un-
6 paid labor of producing all milk in the
7 48 contiguous States.

8 “(ii) MINIMUM PRICE.—The Secretary
9 shall base the minimum price for Class II
10 milk on the national average cost of pro-
11 duction.

12 “(iii) SURVEY.—For purposes of de-
13 termining the national average cost of pro-
14 duction under clause (i), the Secretary
15 shall survey dairy producers and associa-
16 tions of dairy producers subject to Federal
17 and State milk marketing orders and in all
18 unregulated areas applicable to all milk.

19 “(iv) PRICE ANNOUNCEMENT.—

20 “(I) IN GENERAL.—Not later
21 than November 1 of each calendar
22 year, the Secretary shall announce the
23 minimum price for Class II milk for
24 the next calendar year, as determined
25 in accordance with clause (ii).

1 “(II) ADJUSTMENTS.—Using the
2 most currently available national aver-
3 age cost of production, the Secretary
4 shall adjust the price announced
5 under subclause (I) for a calendar
6 year on April 1, July 1, and October
7 1 of the calendar year.

8 “(III) NOTIFICATION.—Not later
9 than 15 days prior to the effective
10 date of a price adjustment under this
11 clause, the Secretary shall submit no-
12 tification of the adjusted price to—

13 “(aa) the Committee on Ag-
14 riculture of the House of Rep-
15 resentatives;

16 “(bb) the Committee on Ag-
17 riculture, Nutrition, and Forestry
18 of the Senate;

19 “(cc) each administrator of
20 a Federal milk marketing order;

21 “(dd) each State agency
22 that oversees the pricing of milk
23 paid to dairy producers; and

24 “(ee) other applicable Fed-
25 eral and State agencies.

1 “(IV) PUBLICATION.—After re-
2 ceiving notification under subclause
3 (III)(cc), each administrator of a Fed-
4 eral milk marketing order shall pub-
5 lish the decision of the Secretary in all
6 bulletins and publications of the Fed-
7 eral milk marketing order.

8 “(v) BASIC FORMULA PRICE.—

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

15 “(II) CLASS I MILK.—

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

22 “(AA) the basic for-
23 mula price under subclause
24 (I); plus

1 “(BB) the applicable
2 Class I milk differential
3 under Federal and State
4 milk marketing orders.

5 “(bb) UNREGULATED
6 AREAS.—For purposes of item
7 (aa)(BB), the Secretary shall as-
8 sign comparable Class I milk dif-
9 ferentials to each unregulated
10 area.”.

11 **SEC. 4. INVENTORY MANAGEMENT PROGRAM.**

12 Section 8c(5) of the Agricultural Adjustment Act (7
13 U.S.C. 608c(5)), reenacted with amendments by the Agri-
14 cultural Marketing Agreement Act of 1937, as amended
15 by section 3, is amended by adding at the end the fol-
16 lowing:

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

19 “(i) MILK PRODUCTION TOTALS.—Not
20 later than February 1 of each calendar
21 year, the Secretary shall determine the
22 total quantity of all milk produced by each
23 dairy producer or farming operation during
24 the 3 preceding calendar years.

25 “(ii) PRODUCTION BASE.—

1 “(I) IN GENERAL.—The starting
2 production base of a dairy producer
3 shall be the average quantity of milk
4 produced by the dairy producer during
5 the 3 calendar years immediately pre-
6 ceding the date of enactment of this
7 subparagraph.

8 “(II) ADJUSTMENT.—The pro-
9 duction base of a dairy producer shall
10 be adjusted on January 1st of each
11 year.

12 “(III) LIMITATION.—The produc-
13 tion base of a dairy producer shall be
14 based on the dairy producer, not the
15 farming operation, and may not be
16 sold, transferred, bartered, or do-
17 nated.

18 “(IV) NEW DAIRY PRODUCER EX-
19 CEPTION.—A new dairy producer, as
20 defined by the Secretary, shall—

21 “(aa) during the 1-year pe-
22 riod beginning on the date on
23 which the new dairy producer
24 commences operation, be exempt
25 from any applicable price reduc-

1 tion relating to the first
2 3,000,000 pounds of milk pro-
3 duced by the new dairy producer;

4 “(bb) in the case of any
5 milk produced in excess of
6 3,000,000 pounds during that 1-
7 year period, be subject to each
8 price reduction described in
9 clauses (vi) and (vii); and

10 “(cc) after that 1-year pe-
11 riod, be subject to each price re-
12 duction that applies to existing
13 dairy producers.

14 “(iii) ESTIMATION OF ANNUAL MILK
15 PRODUCTION AND DOMESTIC CONSUMP-
16 TION.—Not later than November 1 of each
17 calendar year and taking into consideration
18 the import projections and export projec-
19 tions for all milk products, the Secretary
20 shall estimate the quantity of all milk to be
21 produced in the 48 contiguous States and
22 marketed by dairy producers for commer-
23 cial use during the next 12 months.

24 “(iv) IDENTIFICATION AND DETER-
25 MINATION OF DAIRY PRODUCTS.—

1 “(I) IN GENERAL.—Not less fre-
2 quently than once each quarter, the
3 Secretary shall—

4 “(aa) identify all dairy prod-
5 ucts (including cheeses, curds,
6 butter, butterfat, butter oil, but-
7 termilk, anhydrous milk fat,
8 dairy spreads, milk, cream, con-
9 centrated milk, condensed milk,
10 nonfat dry milk powder, whole
11 milk powder, skim milk powder,
12 all other forms of powdered milk,
13 yogurt, ice cream, whey, whey
14 powder, dried whey, whey protein
15 concentrate, all other forms of
16 whey products, milk protein con-
17 centrate, milk protein isolate, ca-
18 sein, caseinates, lactose, food
19 preps containing milk, and milk
20 chocolate) imported into, or ex-
21 ported from, the United States;
22 and

23 “(bb) determine the quantity
24 of raw milk contained in each
25 such product.

1 “(II) INCLUSIONS.—In identi-
2 fying dairy products under subclause
3 (I)(aa), the Secretary shall include
4 any current or projected future im-
5 ports or exports of a product used for
6 dairy, a dairy substitute, or ingre-
7 dient, including any product that does
8 not have the status of ‘generally rec-
9 ognized as safe’, as determined by the
10 Commissioner of Food and Drugs.

11 “(v) EXCESS PRODUCTION DETER-
12 MINATION.—Not more than once every 2
13 months, if the Secretary, acting through
14 the Commodity Credit Corporation, has
15 purchased the maximum quantity of milk
16 and milk products as required by law to
17 administer programs including child nutri-
18 tion programs (as defined in section 25(b)
19 of the Richard B. Russell National School
20 Lunch Act (42 U.S.C. 1769f(b)), feeding
21 programs administered by the Secretary of
22 Defense, institutional programs, and any
23 other mandated Federal food or feeding
24 programs, the Secretary shall determine
25 whether an excess quantity of milk and

1 milk products is being produced for the na-
2 tional domestic market.

3 “(vi) REDUCTION IN PRICE RE-
4 CEIVED.—

5 “(I) IN GENERAL.—Subject to
6 subclauses (II), (IV), and (V), if the
7 Secretary determines under clause (v)
8 that there is excess production, the
9 Secretary shall provide for a reduction
10 in the price received by all dairy pro-
11 ducers for not more than 5 percent of
12 all milk produced in the 48 contiguous
13 States and marketed by dairy pro-
14 ducers for commercial use.

15 “(II) NOTIFICATION.—Not later
16 than 15 days prior to the implementa-
17 tion of a reduction in price in accord-
18 ance with subclause (I), the Secretary
19 shall submit notification of, and jus-
20 tification for, the reduction in price
21 to—

22 “(aa) the Committee on Ag-
23 riculture of the House of Rep-
24 resentatives;

1 “(bb) the Committee on Ag-
2 riculture, Nutrition, and Forestry
3 of the Senate;

4 “(cc) each administrator of
5 a Federal milk marketing order;

6 “(dd) each State agency
7 that oversees the pricing of milk
8 paid to dairy producers; and

9 “(ee) other applicable Fed-
10 eral and State agencies.

11 “(III) PUBLICATION.—After re-
12 ceiving notification under subclause
13 (II)(cc), each administrator of a Fed-
14 eral milk marketing order shall pub-
15 lish the decision of the Secretary in all
16 bulletins and publications of the Fed-
17 eral milk marketing order.

18 “(IV) LIMITATION.—The Sec-
19 retary shall not provide for a reduc-
20 tion in the price received by a dairy
21 producer under subclause (I) unless
22 the Secretary determines under this
23 subparagraph that there exists a posi-
24 tive trade balance in dairy products

1 that are imported into, or exported
2 from, the United States, based on—

3 “(aa) dollar value; and

4 “(bb) the quantity of milk
5 represented by imports and ex-
6 ports, as determined under this
7 subparagraph.

8 “(V) AMOUNT.—The amount of
9 the reduction under subclause (I) in
10 the price received by dairy producers
11 shall not exceed $\frac{1}{2}$ the minimum price
12 of Class II milk.

13 “(vii) ADDITIONAL REDUCTION.—

14 “(I) IN GENERAL.—If the Sec-
15 retary determines that the reduction
16 described in clause (vi) is insufficient
17 to reduce excess production, subject to
18 subclauses (II) and (III) and clause
19 (ii)(IV), the Secretary shall reduce the
20 price received by any dairy producer
21 or farming operation that has in-
22 creased the production of all milk in a
23 calendar quarter, as compared to the
24 average quantity of milk produced in

1 the corresponding calendar quarter in
2 the previous 3 years.

3 “(II) APPLICATION.—A reduction
4 in price under subclause (I) shall
5 apply only to the quantity of milk pro-
6 duced in excess of the average quan-
7 tity of milk produced in the cor-
8 responding calendar quarters in the
9 previous 3 years.

10 “(III) NOTIFICATION.—Not later
11 than 15 days prior to the implementa-
12 tion of a reduction in price in accord-
13 ance with subclause (I), the Secretary
14 shall submit notification of, and jus-
15 tification for, the reduction in price
16 to—

17 “(aa) the Committee on Ag-
18 riculture of the House of Rep-
19 resentatives;

20 “(bb) the Committee on Ag-
21 riculture, Nutrition, and Forestry
22 of the Senate;

23 “(cc) each administrator of
24 a Federal milk marketing order;

1 “(dd) each State agency
2 that oversees the pricing of milk
3 paid to dairy producers; and

4 “(ee) other applicable Fed-
5 eral and State agencies.

6 “(IV) PUBLICATION.—After re-
7 ceiving notification under subclause
8 (III)(cc), each administrator of a Fed-
9 eral milk marketing order shall pub-
10 lish the decision of the Secretary in all
11 bulletins and publications of the Fed-
12 eral milk marketing order.

13 “(viii) AMOUNTS DERIVED FROM RE-
14 DUCTION IN PRICES PAID TO DAIRY PRO-
15 DUCERS.—

16 “(I) IN GENERAL.—Not later
17 than 30 days after the end of each
18 quarter, the Secretary shall pay to the
19 special dairy producer account estab-
20 lished under subclause (II) any
21 amounts derived from a reduction in
22 milk prices paid to dairy producers
23 under clauses (vi) and (vii).

24 “(II) SPECIAL DAIRY PRODUCER
25 ACCOUNT.—The Commodity Credit

1 Corporation shall establish a special
2 dairy producer account in which
3 amounts described in subclause (I)
4 shall be credited.

5 “(ix) APPEALS.—

6 “(I) IN GENERAL.—A dairy pro-
7 ducer subject to an additional reduc-
8 tion under clause (vii) may appeal to
9 the Federal or State milk marketing
10 administrator to provide evidence that
11 the dairy producer did not increase
12 production in the calendar year that
13 the reduction was in effect when com-
14 pared to the average quantity of milk
15 produced during the 3 previous years.

16 “(II) RETURN OF AMOUNTS.—If
17 a dairy producer proves that the dairy
18 producer did not increase total pro-
19 duction for the effective calendar year,
20 the Secretary shall return to the dairy
21 producer any amounts collected for
22 any overproduction of any quarter of
23 the affected year.

24 “(III) SUBMISSION OF APPEAL.—
25 A dairy producer that ships to an un-

1 regulated milk handler may submit
2 any appeal of the dairy producer to
3 the Secretary or to the designated
4 representative of the Secretary.

5 “(x) EXTRAORDINARY CIR-
6 CUMSTANCES.—In deciding an appeal sub-
7 mitted by a dairy producer under clause
8 (ix), a Federal or State milk marketing ad-
9 ministrator (or, in the case of an appeal
10 under clause (ix)(III), the Secretary or the
11 designated representative of the Secretary)
12 shall take into consideration production
13 losses due to, at a minimum, fire, severe
14 weather conditions, or severe disease out-
15 breaks.

16 “(xi) COLLECTION.—Except as pro-
17 vided in clause (xii), reductions in price re-
18 quired under clause (vi) or (vii) shall be
19 collected by Federal and State milk mar-
20 keting administrators and timely remitted
21 to the Commodity Credit Corporation to
22 offset the cost of purchasing excess milk
23 products.

24 “(xii) COLLECTION IN UNREGULATED
25 AREAS.—Reductions in price required for

1 unregulated areas under subclause (IV) or
 2 (VI) shall be collected by the Secretary and
 3 timely remitted to the Commodity Credit
 4 Corporation to offset the cost of pur-
 5 chasing excess milk products.

6 “(R) PROHIBITION ON CERTAIN
 7 CHARGES.—In carrying out this Act, the Sec-
 8 retary shall not impose charges on dairy pro-
 9 ducers for the cost of the conversion of raw
 10 milk to manufactured products.

11 “(S) RESPONSIBILITIES OF MILK PUR-
 12 CHASING HANDLERS.—A milk handler that pur-
 13 chases milk from a dairy producer shall assume
 14 title for the milk at the time at which the milk
 15 is pumped into a milk truck provided by or oth-
 16 erwise delivered to the milk handler.

17 “(T) APPLICABILITY.—Subparagraphs (P)
 18 through (S) apply to all dairy producers and
 19 handlers of milk in the 48 contiguous States.”.

20 **SEC. 5. AMENDMENTS TO FEDERAL MILK MARKETING OR-**
 21 **DERS.**

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

1 “(H) ORDERS COVERING MILK AND MILK
2 PRODUCTS.—In the case of an order covering
3 milk or milk products, disapproval of an amend-
4 ment to the order shall not be considered to be
5 disapproval of—

6 “(i) the order; or

7 “(ii) other terms of the order.”.

○