

111TH CONGRESS
1ST SESSION

S. 889

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

APRIL 23, 2009

Mr. SPECTER (for himself and 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 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 for all milk prod-
 12 ucts, the Secretary shall estimate the
 13 quantity of all milk to be produced in the
 14 48 contiguous States and marketed by pro-
 15 ducers for commercial use during the next
 16 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 each
 25 dairy product (including

1 cheeses, curds, butter, but-
 2 terfat, butter oil, buttermilk,
 3 anhydrous milk fat, dairy
 4 spreads, milk, cream, con-
 5 centrated milk, condensed
 6 milk, milk powder, yogurt,
 7 ice cream, whey, whey pro-
 8 tein concentrate, milk pro-
 9 tein concentrate, milk pro-
 10 tein isolate, casein,
 11 caseinates, lactose, food
 12 preps containing milk, and
 13 milk chocolate) imported
 14 into, or exported from, the
 15 United States; and

16 “(BB) determine the
 17 quantity of raw milk con-
 18 tained in each such product.

19 “(bb) INCLUSIONS.—In
 20 identifying dairy products under
 21 item (aa)(AA), the Secretary
 22 shall include any current or pro-
 23 jected future import of a product
 24 used for dairy, a dairy substitute,
 25 or ingredient, including any prod-

1 uct that does not have the status
2 of ‘generally recognized as safe’,
3 as determined by the Commis-
4 sioner of Food and Drugs.

5 “(II) MILK PRODUCTION TO-
6 TALS.—Not later than February 1 of
7 each calendar year, the Secretary
8 shall determine the total quantity of
9 all milk produced by each producer or
10 farming operation during the pre-
11 ceding calendar year.

12 “(III) EXCESS PRODUCTION DE-
13 TERMINATION.—Not more than once
14 every 2 months, if the Secretary, act-
15 ing through the Commodity Credit
16 Corporation, has purchased the max-
17 imum quantity practicable of excess
18 milk and milk products, the Secretary
19 may determine whether an excess
20 quantity of milk and milk products is
21 being produced for the national do-
22 mestic market.

23 “(IV) REDUCTION IN PRICE RE-
24 CEIVED.—

1 “(aa) IN GENERAL.—Sub-
 2 ject to item (bb), if the Secretary
 3 determines under subclause (III)
 4 that there is excess production,
 5 the Secretary may provide for a
 6 reduction in the price received by
 7 producers for not more than 5
 8 percent of all milk produced in
 9 the 48 contiguous States and
 10 marketed by producers for com-
 11 mercial use.

12 “(bb) LIMITATION.—The
 13 Secretary shall not provide for a
 14 reduction in the price received by
 15 a producer under item (aa) un-
 16 less the Secretary determines
 17 that there exists a positive trade
 18 balance in dairy products de-
 19 scribed in subclause (I)(aa)(AA)
 20 that are imported into, or ex-
 21 ported from, the United States,
 22 based on—

23 “(AA) dollar value; and
 24 “(BB) the quantity of
 25 milk represented by exports,

1 as determined under sub-
 2 clause (I)(aa)(AA).

3 “(V) AMOUNT.—The amount of
 4 the reduction under subclause (IV) in
 5 the price received by producers shall
 6 not exceed half the minimum price of
 7 Class II milk.

8 “(VI) ADDITIONAL REDUC-
 9 TION.—If the Secretary determines
 10 that the reduction described in sub-
 11 clause (IV) is insufficient to reduce
 12 excess production, subject to sub-
 13 clauses (VII) and (VIII), the Sec-
 14 retary may reduce the price received
 15 by any producer or farming operation
 16 that—

17 “(aa) produces more than
 18 3,000,000 pounds of milk in a
 19 calendar year; and

20 “(bb) has increased the pro-
 21 duction of all milk in a calendar
 22 year, as compared to the imme-
 23 diately preceding calendar year.

24 “(VII) APPLICATION.—A reduc-
 25 tion in price under subclause (VI)

1 shall apply only to the quantity of
 2 milk produced in excess of the quan-
 3 tity of milk produced during the pre-
 4 vious calendar year.

5 “(VIII) NEW PRODUCER EXCEP-
 6 TION.—A new producer, as defined by
 7 the Secretary, shall—

8 “(aa) during the 1-year pe-
 9 riod beginning on the date on
 10 which the new producer com-
 11 mences operation, be exempt
 12 from any applicable price reduc-
 13 tion relating to the first
 14 3,000,000 pounds of milk pro-
 15 duced by the new producer; and

16 “(bb) after that 1-year pe-
 17 riod, be subject to each price re-
 18 duction that applies to existing
 19 producers.

20 “(IX) APPEALS.—A producer
 21 subject to an additional reduction
 22 under subclause (VI) may appeal to
 23 the Federal or State milk marketing
 24 administrator to provide evidence that
 25 the producer did not increase produc-

1 tion in the calendar year that the re-
2 duction was in effect when compared
3 to the immediately preceding calendar
4 year.

5 “(X) EXTRAORDINARY CIR-
6 CUMSTANCES.—In deciding an appeal
7 under subclause (IX), a Federal or
8 State milk marketing administrator
9 may take into consideration produc-
10 tion losses due to severe weather con-
11 ditions or severe disease outbreaks.

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

21 “(XII) COLLECTION IN UNREGU-
22 LATED AREAS.—Reductions in price
23 required for unregulated areas under
24 subclause (IV) or (VI) shall be col-
25 lected by the Secretary and timely re-

1 mitted to the Commodity Credit Cor-
 2 poration to offset the cost of pur-
 3 chasing excess milk products.

4 “(viii) PROHIBITION ON CERTAIN
 5 CHARGES.—In carrying out this Act, the
 6 Secretary shall not impose charges on pro-
 7 ducers for the cost of the conversion of raw
 8 milk to manufactured products.

9 “(ix) RESPONSIBILITIES OF MILK
 10 PURCHASING HANDLERS.—A milk handler
 11 that purchases milk from a producer shall
 12 assume title for the milk at the time at
 13 which the milk is pumped into a milk truck
 14 provided by or otherwise delivered to the
 15 milk handler.

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

19 **SEC. 4. AMENDMENTS TO FEDERAL MILK MARKETING OR-**
 20 **DERS.**

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

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