

Calendar No. 284

106TH CONGRESS  
1ST SESSION

**H. R. 1402**

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 24, 1999

Received; read twice and ordered placed on the calendar

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**AN ACT**

To require the Secretary of Agriculture to implement the Class I milk price structure known as Option 1A as part of the implementation of the final rule to consolidate Federal milk marketing orders.

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

1 **SECTION 1. REQUIRED USE OF OPTION 1A AS PRICE**  
2 **STRUCTURE FOR CLASS I MILK UNDER CON-**  
3 **SOLIDATED FEDERAL MILK MARKETING OR-**  
4 **DERS.**

5 (a) USE OF OPTION 1A.—In implementing the final  
6 decision for the consolidation and reform of Federal milk  
7 marketing orders, as required by section 143 of the Fed-  
8 eral Agriculture Improvement and Reform Act of 1996 (7  
9 U.S.C. 7253), the Secretary of Agriculture shall price  
10 fluid or Class I milk under the orders using the Class I  
11 price differentials identified as Option 1A “Location-Spe-  
12 cific Differentials Analysis” in the proposed rule published  
13 in the Federal Register on January 30, 1998 (63 Fed.  
14 Reg. 4802, 4809), except that the Secretary shall include  
15 the corrections and modifications to such Class I differen-  
16 tials made by the Secretary through April 2, 1999.

17 (b) EFFECT ON IMPLEMENTATION SCHEDULE.—The  
18 requirement to use Option 1A in subsection (a) does not  
19 modify or delay the time period for actual implementation  
20 of the final decision as part of Federal milk marketing  
21 orders specified in section 738 of the Agriculture, Rural  
22 Development, Food and Drug Administration, and Re-  
23 lated Agencies Appropriations Act, 1999 (as contained in  
24 section 101(a) of division A of Public Law 105–277; 112  
25 Stat. 2681–30).

26 (c) IMPLEMENTATION OF REQUIREMENT.—

1           (1) EXPEDITED IMPLEMENTATION.—The Sec-  
2           retary of Agriculture shall comply with subsection  
3           (a) as soon as practicable after the date of the en-  
4           actment of this Act. The requirement to use the Op-  
5           tion 1A described in such subsection shall not be  
6           subject to—

7                   (A) the notice and hearing requirements of  
8                   section 8c(3) of the Agricultural Adjustment  
9                   Act (7 U.S.C. 608c(3)), reenacted with amend-  
10                  ments by the Agricultural Marketing Agreement  
11                  Act of 1937, or the notice and comment provi-  
12                  sions of section 553 of title 5, United States  
13                  Code;

14                  (B) a referendum conducted by the Sec-  
15                  retary of Agriculture pursuant to subsections  
16                  (17) or (19) of such section 8c;

17                  (C) the Statement of Policy of the Sec-  
18                  retary of Agriculture effective July 24, 1971  
19                  (36 Fed. Reg. 13804), relating to notices of  
20                  proposed rulemaking and public participation in  
21                  rulemaking; and

22                  (D) chapter 35 of title 44, United States  
23                  Code (commonly known as the “Paperwork Re-  
24                  duction Act”).

1           (2) EFFECT ON MINIMUM MILK PRICES.—If the  
2           Secretary of Agriculture announces minimum prices  
3           for milk under Federal milk marketing orders pursu-  
4           ant to section 1000.50 of title 7, Code of Federal  
5           Regulations, before the date on which the Secretary  
6           first complies with subsection (a), the minimum  
7           prices so announced before that date shall be the  
8           only applicable minimum prices under Federal milk  
9           marketing orders for the months for which the  
10          prices have been announced.

11 **SEC. 2. NECESSITY OF USING FORMAL RULEMAKING TO DE-**  
12                           **VELOP PRICING METHODS FOR CLASS III**  
13                           **AND CLASS IV MILK; MODIFIED MANUFAC-**  
14                           **TURING ALLOWANCE FOR CHEESE.**

15          (a) CONGRESSIONAL FINDING.—The Class III and  
16          Class IV pricing formulas included in the final decision  
17          for the consolidation and reform of Federal milk mar-  
18          keting orders, as published in the Federal Register on  
19          April 2, 1999 (64 Fed. Reg. 16025), do not adequately  
20          reflect public comment on the original proposed rule pub-  
21          lished in the Federal Register on January 30, 1998 (63  
22          Fed. Reg. 4802), and are sufficiently different from the  
23          proposed rule and any comments submitted with regard  
24          to the proposed rule that further emergency rulemaking  
25          is merited.

1 (b) FORMAL RULEMAKING.—

2 (1) REQUIRED.—The Secretary of Agriculture  
3 shall conduct rulemaking, on the record after an op-  
4 portunity for an agency hearing, to reconsider the  
5 Class III and Class IV pricing formulas included in  
6 the final decision referred to in subsection (a).

7 (2) IMPLEMENTATION.—A final decision on the  
8 formula shall be implemented not later than 10  
9 months after the date of the enactment of this Act.

10 (3) EFFECT OF COURT ORDER.—The actions  
11 authorized by this subsection are intended to ensure  
12 the timely publication and implementation of new  
13 pricing formulas for Class III and Class IV milk. In  
14 the event that the Secretary is enjoined or otherwise  
15 restrained by a court order from implementing the  
16 final decision under paragraph (2), the length of  
17 time for which that injunction or other restraining  
18 order is effective shall be added to the time limita-  
19 tions specified in paragraph (2) thereby extending  
20 those time limitations by a period of time equal to  
21 the period of time for which the injunction or other  
22 restraining order is effective.

23 (c) FAILURE TO TIMELY COMPLETE RULE-  
24 MAKING.—If the Secretary of Agriculture fails to imple-  
25 ment new Class III and Class IV pricing formulas within

1 the time period required under subsection (b)(2) (plus any  
2 additional period provided under subsection (b)(3)), the  
3 Secretary may not assess or collect assessments from milk  
4 producers or handlers under section 8c of the Agricultural  
5 Adjustment Act (7 U.S.C. 608c), reenacted with amend-  
6 ments by the Agricultural Marketing Agreement Act of  
7 1937, for marketing order administration and services  
8 provided under such section after the end of that period  
9 until the pricing formulas are implemented. The Secretary  
10 may not reduce the level of services provided under that  
11 section on account of the prohibition against assessments,  
12 but shall rather cover the cost of marketing order adminis-  
13 tration and services through funds available for the Agri-  
14 cultural Marketing Service of the Department.

15 (d) EFFECT ON IMPLEMENTATION SCHEDULE.—  
16 Subject to subsection (e), the requirement for additional  
17 rulemaking in subsection (b) does not modify or delay the  
18 time period for actual implementation of the final decision  
19 referred to in subsection (a) as part of Federal milk mar-  
20 keting orders, as such time period is specified in section  
21 738 of the Agriculture, Rural Development, Food and  
22 Drug Administration, and Related Agencies Appropria-  
23 tions Act, 1999 (as contained in section 101(a) of division  
24 A of Public Law 105–277; 112 Stat. 2681–30).

1 (e) MODIFIED MANUFACTURING ALLOWANCE FOR  
2 CHEESE.—

3 (1) MODIFICATION OF ALLOWANCE.—Pending  
4 the implementation of new pricing formulas for  
5 Class III and Class IV milk as required by sub-  
6 section (b), the Secretary of Agriculture shall modify  
7 the formula used for determining Class III prices, as  
8 contained in the final decision referred to in sub-  
9 section (a), to replace the manufacturing allowance  
10 of 17.02 cents per pound of cheese each place it ap-  
11 pears in that formula with an amount equal to 14.7  
12 cents per pound of cheese.

13 (2) EXPEDITED IMPLEMENTATION.—The Sec-  
14 retary of Agriculture shall implement the modified  
15 formula as soon as practicable after the date of the  
16 enactment of this Act. Implementation and use of  
17 the modified formula shall not be subject to—

18 (A) the notice and hearing requirements of  
19 section 8c(3) of the Agricultural Adjustment  
20 Act (7 U.S.C. 608c(3)), reenacted with amend-  
21 ments by the Agricultural Marketing Agreement  
22 Act of 1937, or the notice and comment provi-  
23 sions of section 553 of title 5, United States  
24 Code;

1 (B) a referendum conducted by the Sec-  
2 retary of Agriculture pursuant to subsections  
3 (17) or (19) of such section 8c;

4 (C) the Statement of Policy of the Sec-  
5 retary of Agriculture effective July 24, 1971  
6 (36 Fed. Reg. 13804), relating to notices of  
7 proposed rulemaking and public participation in  
8 rulemaking; and

9 (D) chapter 35 of title 44, United States  
10 Code (commonly known as the “Paperwork Re-  
11 duction Act”).

12 (3) EFFECT ON MINIMUM MILK PRICES.—If the  
13 Secretary of Agriculture announces minimum prices  
14 for milk under Federal milk marketing orders pursu-  
15 ant to section 1000.50 of title 7, Code of Federal  
16 Regulations, before the date on which the Secretary  
17 first implements the modified formula, the minimum  
18 prices so announced before that date shall be the  
19 only applicable minimum prices under Federal milk  
20 marketing orders for the months for which the  
21 prices have been announced.

22 **SEC. 3. ONE-YEAR EXTENSION OF CURRENT MILK PRICE**  
23 **SUPPORT PROGRAM.**

24 (a) EXTENSION OF PROGRAM.—Subsection (h) of  
25 section 141 of the Agricultural Market Transition Act (7



1 U.S.C. 7251) is amended by striking “1999” both places  
2 it appears and inserting “2000”.

3 (b) CONTINUATION OF CURRENT PRICE SUPPORT  
4 RATE.—Subsection (b)(4) of such section is amended by  
5 striking “year 1999” and inserting “years 1999 and  
6 2000”.

7 (c) ELIMINATION OF RECOURSE LOAN PROGRAM FOR  
8 PROCESSORS.—Section 142 of the Agricultural Market  
9 Transition Act (7 U.S.C. 7252) is repealed.

10 **SEC. 4. DAIRY FORWARD PRICING PROGRAM.**

11 The Agricultural Adjustment Act (7 U.S.C. 601 et  
12 seq.), reenacted with amendments by the Agricultural  
13 Marketing Agreement Act of 1937, is amended by adding  
14 at the end the following new section:

15 **“SEC. 23. DAIRY FORWARD PRICING PILOT PROGRAM.**

16 “(a) PILOT PROGRAM REQUIRED.—Not later than 90  
17 days after the date of the enactment of this section, the  
18 Secretary of Agriculture shall establish a temporary pilot  
19 program under which milk producers and cooperatives are  
20 authorized to voluntarily enter into forward price con-  
21 tracts with milk handlers.

22 “(b) MINIMUM MILK PRICE REQUIREMENTS.—Pay-  
23 ments made by milk handlers to milk producers and co-  
24 operatives, and prices received by milk producers and co-

1 operatives, under the forward contracts shall be deemed  
2 to satisfy—

3 “(1) all regulated minimum milk price require-  
4 ments of paragraphs (B) and (F) of subsection (5)  
5 of section 8c; and

6 “(2) the requirement of paragraph (C) of such  
7 subsection regarding total payments by each han-  
8 dler.

9 “(c) MILK COVERED BY PILOT PROGRAM.—The pilot  
10 program shall apply only with respect to the marketing  
11 of federally regulated milk that—

12 “(1) is not classified as Class I milk or other-  
13 wise intended for fluid use; and

14 “(2) is in the current of interstate or foreign  
15 commerce or directly burdens, obstructs, or affects  
16 interstate or foreign commerce in federally regulated  
17 milk.

18 “(d) DURATION.—The authority of the Secretary of  
19 Agriculture to carry out the pilot program shall terminate  
20 on December 31, 2004. No forward price contract entered  
21 into under the program may extend beyond that date.

22 “(e) STUDY AND REPORT ON EFFECT OF PILOT  
23 PROGRAM.—

24 “(1) STUDY.—The Secretary of Agriculture  
25 shall conduct a study on forward contracting be-

1       tween milk producers and cooperatives and milk  
2       handlers to determine the impact on milk prices paid  
3       to producers in the United States. To obtain infor-  
4       mation for the study, the Secretary may use the au-  
5       thorities available to the Secretary under section 8d,  
6       subject to the confidentiality requirements of sub-  
7       section (2) of such section.

8               “(2) REPORT.—Not later than April 30, 2002,  
9       the Secretary shall submit to the Committee on Ag-  
10      riculture, Nutrition and Forestry of the Senate and  
11      the Committee on Agriculture of the House of Rep-  
12      resentatives a report containing the results of the  
13      study.”.

Passed the House of Representatives September 22,  
1999.

Attest:

JEFF TRANDAHL,

*Clerk.*

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**AN ACT**

To require the Secretary of Agriculture to implement the Class I milk price structure known as Option 1A as part of the implementation of the final rule to consolidate Federal milk marketing orders.

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