

CONSOLIDATION OF MILK MARKETING ORDERS

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JULY 19, 1999.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed  
\_\_\_\_\_

Mr. COMBEST, from the Committee on Agriculture,  
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1402]

[Including cost estimate of the Congressional Budget Office]

The Committee on Agriculture, to whom was referred the bill (H.R. 1402) to require the Secretary of Agriculture to implement the Class I milk price structure known as Option 1–A as part of the implementation of the final rule to consolidate Federal milk marketing orders, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

**SECTION 1. REQUIRED USE OF OPTION 1A AS PRICE STRUCTURE FOR CLASS I MILK UNDER CONSOLIDATED FEDERAL MILK MARKETING ORDERS.**

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

(b) **EFFECT ON IMPLEMENTATION SCHEDULE.**—The requirement to use Option 1A in subsection (a) does not modify or delay the time period for actual implementation of the final decision as part of Federal milk marketing orders specified in section 738 of the Agriculture, Rural Development, Food and Drug Administration, and Re-

lated Agencies Appropriations Act, 1999 (as contained in section 101(a) of division A of Public Law 105-277; 112 Stat. 2681-30).

**SEC. 2. NECESSITY OF USING FORMAL RULEMAKING TO DEVELOP PRICING METHODS FOR CLASS III AND CLASS IV MILK; MODIFIED MANUFACTURING ALLOWANCE FOR CHEESE.**

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

(b) FORMAL RULEMAKING.—

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

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

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

(c) FAILURE TO TIMELY COMPLETE RULEMAKING.—If the Secretary of Agriculture fails to implement new Class III and Class IV pricing formulas within the time period required under subsection (b)(2) (plus any additional period provided under subsection (b)(3)), the Secretary may not assess or collect assessments from milk producers or handlers under section 8c of the Agricultural Adjustment Act (7 U.S.C. 608c), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, for marketing order administration and services provided under such section after the end of that period until the pricing formulas are implemented. The Secretary may not reduce the level of services provided under that section on account of the prohibition against assessments, but shall rather cover the cost of marketing order administration and services through funds available for the Agricultural Marketing Service of the Department.

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

(e) MODIFIED MANUFACTURING ALLOWANCE FOR CHEESE.—Pending the implementation of new pricing formulas for Class III and Class IV milk as required by subsection (b), the Secretary of Agriculture shall modify the formula used for determining Class III prices, as contained in the final decision referred to in subsection (a), to replace the manufacturing allowance of 17.02 cents per pound of cheese each place it appears in that formula with an amount equal to 14.7 cents per pound of cheese.

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

(a) EXTENSION OF PROGRAM.—Subsection (h) of section 141 of the Agricultural Market Transition Act (7 U.S.C. 7251) is amended by striking “1999” both places it appears and inserting “2000”.

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

(c) DELAY IN RECOURSE LOAN PROGRAM FOR PROCESSORS.—Section 142(e) of the Agricultural Market Transition Act (7 U.S.C. 7252(e)) is amended by striking “2000” and inserting “2001”.

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

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

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

“(a) **IN GENERAL.**—Not later than 90 days after the date of enactment of this section, the Secretary of Agriculture shall establish a program under which milk producers and cooperatives are authorized to voluntarily enter into forward price contracts with milk handlers.

“(b) **MINIMUM MILK PRICE REQUIREMENTS.**—Payments made by milk handlers to milk producers and cooperatives, and prices received by milk producers and cooperatives, under the forward contracts shall be deemed to satisfy all regulated minimum milk price requirements of paragraphs (A), (B), (C), (D), (F), and (J) of subsection (5), and subsections (7)(B) and (18), of section 8c.

“(c) **APPLICATION.**—This section shall apply only with respect to the marketing of federally regulated milk (regardless of its use) that is in the current of interstate or foreign commerce or that directly burdens, obstructs, or affects interstate or foreign commerce in federally regulated milk.”

**BRIEF EXPLANATION**

H.R. 1402, as amended, modifies the final decision of the Secretary of Agriculture announced in the Federal Register on April 2, 1999 (64 Fed. Reg. 16025) with regard to the differential pricing method for Class I or fluid milk within Federal Milk Marketing Orders. Under the Act, the Class I price structure identified as Option 1A ‘Location-Specific Differentials Analysis’ in the proposed rule published in the Federal Register on January 30, 1998 (63 Fed. Reg. 4802, 4809) as modified or corrected by the Secretary of Agriculture through April 2, 1999, and published on July 14, 1999 (64 Fed. Reg. 37894, 37895) would be adopted in place of the modified Option 1–B included as part of the final decision.

The requirement to use the modified Option 1–A does not modify or delay any previously legislated time periods for actual implementation of the final decision.

The Act, as amended, reduces the processor cheese make allowance in the final decision from \$0.1702/cwt. to \$0.147/cwt. for a period of 10 months during which time the Secretary is required to engage in emergency rulemaking to develop the Class III and IV price structure.

The Act, as amended, extends the dairy price support program for 1 year at its current level while delaying implementation of the Recourse Loan Program for the same period of time.

Finally, the Act, as amended, requires the Secretary to establish forward pricing program so that producers and cooperatives may enter into contracts with handlers on a voluntary basis in order to manage risk and reduce the negative impacts of price volatility.

**PURPOSE AND NEED**

The Agricultural Marketing Agreement Act of 1937 authorizes the Federal Milk Market Order program which is currently undergoing a reform process in accordance with Congressional mandates enacted in the Federal Agriculture Improvement and Reform Act of 1996 (P.L. 104–127).

Milk marketing orders are legal instruments, voluntarily initiated and approved by two-thirds of the producers affected by the

order. Handlers or first buyers—not producers—are regulated under an order.

Milk marketing orders address situations that would cause disorderly marketing, unfair trade and inequitable market conditions in their absence. Milk orders prevent handlers from playing producers against each other in an attempt to drive down the prices that handlers have to pay for milk. Milk orders also establish a system of prices that reflect the incentives to draw milk from surplus regions to deficit regions when local supplies are not adequate to satisfy fluid demands.

In each milk marketing order area, the Class I price is the minimum price that regulated handlers must pay for milk used in fluid products—called Class I milk. Like Class II and Class III prices, producers do not receive the Class I price directly; rather, they receive a weighted average, called the blend price, which represents the volume and price of all milk in the marketing order area used in Class I, II, III, and III–A (re-designated Class IV under the final Decision announced by the Secretary on April 2, 1999). Under the current program, the Class I price is announced each month for the following month, as the sum of the Basic Formula Price (BFP) for the previous month plus a stated Class I price differential. Since the BFP is the same for every milk order, most discussions of Class I prices focus on the Class I differential, which varies across milk marketing orders.

Class I differentials vary across Federal milk order areas for two reasons. First, there needs to be a price incentive (called the Class I differential) to move Grade A milk from points of production to fluid milk processing plants, which are typically located closer to population centers than to production areas. However, Federal orders also recognize that local milk prices should not exceed the cost of available “distant” milk plus transportation costs to the “local” market. The price incentive also persuades manufacturing plants to “give up” milk and make it available for the fluid market.

The two Class I pricing options that the earlier proposed ruled advanced for final consideration were reviewed in the final decision. The final decision published by the Secretary of Agriculture in the Federal Register on April 2, 1999 (64 Fed. Reg. 16025) adopted a modified differential pricing system that, according to an independent analysis conducted at the request of the Committee by the Food and Agricultural Policy Research Institute and including input from experts in dairy economics from industry, academia, and the U.S. Department of Agriculture, would result in a nationwide net decrease in all-milk prices by as much as \$0.01 to \$0.02/cwt compared with the option adopted in this Act.

The Committee concluded that while the national impact was small, the option preferred by the USDA would have a significant impact on producer revenue when evaluated on a regional basis. In reaching the conclusion that individual regions would benefit from the higher Class I differentials contained in the modified option 1A, the Committee also considered the impact the current system has had on price volatility. This concern was addressed through the inclusion of an authorization for producers and cooperatives who sell to private handlers to engage in forward price contracting, a risk management tool that has historically been available in any Fed-

eral Milk Marketing Order to producers who sell milk to cooperatives only. Under this provision, producers may, on a voluntary basis, enter into a contract with a private handler to supply milk at a set price, thereby reducing the risk of price volatility that has historically impacted dairy markets.

The need for the Committee substitute's provision requiring that USDA reconsider formulas for pricing Class III and Class IV was made clear both by the Department's justifications contained in the Final Decision and by the testimony of numerous witnesses at two hearings held by the Subcommittee on Livestock and Horticulture since the Decision was released. While the Committee provision specifically requires a change in the cheese "manufacturing allowance"—a price adjustment meant to account for the cost of converting raw milk into cheese—other provisions of the Class III and Class IV formulas recommended by the Department were called into question. The cheese manufacturing allowance, however, presents a clear example of why the Committee substitute contains its finding that the Final Decision is not well-founded on the public evidence submitted to the Department in the course of its rule-making process.

When the Proposed Rule was first issued in January of 1998, the Class III pricing formula was to be based on the NASS survey of prices for cheese. To account for the value added by manufacturing, a "make allowance" was deducted from that price prior to the calculation of the producer's price. A one cent change in the make allowance for cheese results in a 10.14 cent change in the producer price in the opposite direction. The 1998 Proposed Rule included a make allowance of 12.7 cents per pound of cheese. This level invited scrutiny from the outset since the BFP Replacement Committee—established by the Department to provide it with expert analysis in this area—used a standard make allowance of 13.7 cents per pound.

Dairy industry organizations commented to USDA specifically on the make allowance included in the 1998 Proposed Rule. Among those who felt it was too low were:

The National Milk Producers Federation—which represents producer-owned cooperatives. NMPF suggested a level of 14.21 cents, an amount based on a survey of cheese plants conducted by USDA's own Rural Cooperative Business Service.

The International Dairy Foods Association—which represents processors including cheese manufacturers. IDFA suggested a level of 15.2 cents, based on a weighted average of California's audited survey and the RCBS survey.

The Dairy Institute of California, which suggested a level of 17 cents for block cheese and 14 cents for barrels.

In requiring an interim adjustment of the make allowance to 14.7 cents during the required emergency rulemaking, the Committee has chosen an average of the levels proposed by the National Milk Producers Federation and the International Dairy Foods Association—organizations which represent much of the nation's cooperative and proprietary cheese-making capacity. By including this level, the Committee is not suggesting that 14.7 cents is the correct level for the Department to propose at the conclusion of the rule-making required by the Committee substitute. The Com-

mittee expects the rulemaking to be an opportunity for the Department to obtain further views from the industry as a whole, and to adopt a formula that is clearly justified based on the evidence submitted.

The approach adopted by the Committee in this regard allows implementation of order reform to proceed on schedule while Class III and Class IV formulas are reconsidered. In a letter to the Committee dated June 29, 1999, the Secretary of Agriculture volunteered the Department's willingness "to reassess the manufacturing milk pricing question, providing that the process comports with and does not interfere with USDA's implementation of its reforms of the milk marketing order system." The Committee provision meets the Secretary's conditions.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Required use of option 1-A*

Subsection (a) modifies the final decision of the Secretary of Agriculture announced in the Federal Register on April 2, 1999 (64 Fed. Reg. 16025) with regard to the differential pricing method for Class I or fluid milk within Federal Milk Marketing Orders by replacing the differentials in the decision with those identified as Option 1A 'Location-Specific Differentials Analysis' in the proposed rule published in the Federal Register on January 30, 1998 (63 Fed. Reg. 4802, 4809) as modified or corrected by the Secretary of Agriculture through April 2, 1999, and published on July 14, 1999 (64 Fed. Reg. 37894, 37895).

Subsection (b) clarifies that the requirement to use the modified Option 1-A does not modify or delay any previously legislated time periods for actual implementation of the final decision.

##### *Section 2. Necessity of using formal rulemaking to develop pricing methods for Class III and Class IV milk; modified manufacturing allowance for cheese*

Subsection (a) expresses Congressional findings.

Subsection (b) requires the Secretary to enter into formal rulemaking, on an emergency basis, to develop Class III and Class IV pricing formulas within 10 months of enactment. The subsection provides that the time limitation for rulemaking can be extended only upon an order of the court.

Subsection (c) would prohibit the Secretary from assessing or collecting assessments from milk producers or handlers to administer the federal milk market order program if the final rule required under the previous subsection is delayed. The subsection stipulates that in the event that assessments are prohibited, no reduction in services currently available in administering the market order program can occur.

Subsection (d) clarifies that nothing in the section may delay implementation of the final rule for consolidating federal milk market orders.

Subsection (e) reduces the processors manufacturing allowance from \$0.1702/cwt to \$0.147/cwt during the period of time necessary for rulemaking required under subsection (b).

*Section 3. One year extension of the current milk price support program*

This section extends the price support program, as well as the cheese price support rate for 1 year at their current levels. The section also delays implementation of the processor recourse loan program authorized in section 142(e) of 1996 farm bill.

*Section 4. Dairy forward pricing program*

The section requires the Secretary of Agriculture, within 90 days of enactment, to implement a program of price forward contracting, in federally regulated milk market orders, so that producers and cooperatives can voluntarily contract with handlers. The section clarifies that payment of the contract price shall be deemed to have met the minimum price requirements of the Agricultural Adjustment Act of 1937.

COMMITTEE CONSIDERATION

I—SUBCOMMITTEE

On June 24, 1999, the Subcommittee on Livestock and Horticulture held a hearing regarding H.R. 1402. Testimony was taken from Members of Congress, the Governor of the State of Minnesota, Economists with the Food and Agriculture Policy Research Institute located at the University of Missouri, and milk producers and processors testifying both for and against the bill.

II—FULL COMMITTEE

The Committee on Agriculture met, pursuant to notice and with a quorum present, on June 30, 1999 to consider H.R. 1402 and other pending business. Mr. Pombo, Chairman of the Subcommittee on Livestock and Horticulture sought, and was granted consent to discharge the Subcommittee on Livestock and Horticulture from further consideration of the bill. Chairman Combest recognized Committee Counsel to provide a brief explanation of the bill.

The Chairman opened the consideration of the bill for discussion and amendments.

The first amendment, offered by Mr. Pombo addressed an issue raised by Mr. Pombo during the Subcommittee hearing regarding some minor changes that were made to the Option 1A differential levels presented in the Proposed Rule. The changes only involved adjusting certain county specific differentials to provide for more appropriate price alignment in several counties in the northeast, seven counties in Florida, and one county in North Carolina. These changes, while included in the Regulatory Impact Analysis prepared by the Secretary of Agriculture and made available at the time of publication of the final decision, were not, in and of themselves, published in the Federal Register. The amendment clarifies that the changes that were referred to in the Federal Register on April 2, 1999 (64 Fed. Reg., p.16110) will be implemented in the final rule. Without objection, the amendment was adopted. The Committee is aware that following the markup of H.R. 1402, the corrections referred to in 64 Fed. Reg. p.16110 were published on July 14, 1999 (64 Fed. Reg. 37894, 37895). It is the Committee's

intent that enacting this legislation, the Secretary implement the corrections published in the Federal Register on July 14, 1999.

Mr. Peterson was then recognized to offer and explain an amendment that extends the current milk price support program for one year. Discussion occurred and the amendment was adopted by a voice vote.

Mr. Gutknecht offered and explained an amendment concerning control of excess milk production in marketing order areas where Class I differential exceeds the national average Class I differential. Discussion occurred, and without objection, Mr. Gutknecht withdrew the amendment.

Mr. Stenholm was then recognized to offer and explain an amendment to mandate formal rulemaking to develop pricing methods for Class III and Class IV milk and to modify manufacturing allowance for cheese. Discussion occurred, and by a division vote of 29 yeas to 15 nays, the amendment was adopted.

Mr. Gutknecht was recognized to offer and explain an amendment to mandate a limitation on a corporate marketing association on blending of proceeds from the collective sales or marketing of milk and milk products. Discussion occurred, and by a recorded vote of 12 yeas to 37 nays, the amendment was not adopted. See Rollcall Vote No. 1.

Mr. Dooley was then recognized to offer and explain an amendment to mandate a dairy forward pricing program.

Following discussion, Mr. Stenholm offered and explained a second degree amendment that would allow for the establishment of forward contract programs within Federal milk marketing orders subject to normal rulemaking process and approval by producers in affected orders to the Dooley amendment to mandate a dairy forward pricing program. Discussion occurred, and by a division vote of 21 yeas to 21 nays, the Stenholm amendment was not adopted. The vote then occurred on the underlying Dooley amendment, and by a division vote of 23 yeas to 20 nays, the amendment was adopted.

Mr. Minge was then recognized to offer and explain an amendment to require sharing of additional receipts among all producers. Discussion occurred, and by a voice vote the amendment was not adopted.

Mr. Boehner was then recognized to offer and explain an amendment in the nature of a substitute to provide for the eventual termination of milk orders. Discussion occurred, and by a roll call vote of 11 yeas to 35 nays, the amendment was not adopted. See Rollcall Vote No. 2.

The Chairman recognized Mr. Stenholm, who made a motion that the bill be favorably reported to the House, as amended. The motion was carried by a roll call vote of 32 yeas to 15 nays. See Rollcall Vote No. 3.

Mr. Stenholm then made a motion to authorize the Chairman to offer such motions as may be necessary in the House to go to conference with the Senate on H.R. 1402 or a similar Senate bill. Without objection, the motion was agreed to.

The Chairman then thanked the Members and adjourned the meeting.



## REPORTING THE BILL—ROLLCALL VOTES

In compliance with clause 3(b) of rule XIII of the House of Representatives, the Committee sets forth the record of the following roll call votes taken with respect to H.R. 1402:

## ROLLCALL NO. 1

Summary: Amendment to mandate a limitation on a corporate marketing association on blending of proceeds from the collective sales or marketing of milk and milk products.

Offered by: Mr. Gutknecht.

Results: Failed by a roll call vote: 12 yeas to 37 nays.

YEAS	NAYS
1. Mr. Ewing	1. Mr. Combest
2. Mr. Smith	2. Mr. Barrett
3. Mrs. Chenoweth	3. Mr. Boehner
4. Mr. LaHood	4. Mr. Goodlatte
5. Mr. Thune	5. Mr. Pombo
6. Mr. Gutknecht	6. Mr. Everett
7. Mr. Simpson	7. Mr. Lucas, OK
8. Mr. Peterson	8. Mr. Hostettler
9. Mr. Dooley	9. Mr. Chambliss
10. Mr. Minge	10. Mr. Moran
11. Mr. Pomeroy	11. Mr. Schaffer
12. Mr. Hill	12. Mr. Jenkins
	13. Mr. Cooksey
	14. Mr. Calvert
	15. Mr. Riley
	16. Mr. Walden
	17. Mr. Ose
	18. Mr. Hayes
	19. Mr. Fletcher
	20. Mr. Stenholm
	21. Mr. Condit
	22. Mrs. Clayton
	23. Mr. Hilliard
	24. Mr. Holden
	25. Mr. Bishop
	26. Mr. Thompson, MS
	27. Mr. Baldacci
	28. Mr. Berry
	29. Mr. Goode
	30. Mr. McIntyre
	31. Ms. Stabenow
	32. Mr. Etheridge
	33. Mr. John
	34. Mr. Boswell
	35. Mr. Phelps
	36. Mr. Lucas, KY
	37. Mr. Thompson, CA
NOT VOTING	
1. Mr. Canady	
2. Mr. Brown	

ROLLCALL NO. 2

Summary: Amendment in the Nature of a Substitute to provide for the eventual termination of milk orders.

Offered by: Mr. Boehner.

Results: Failed by a roll call vote: 11 yeas to 35 nays.

YEAS

1. Mr. Barrett
2. Mr. Boehner
3. Mr. Hostettler
4. Mr. LaHood
5. Mr. Calvert
6. Mr. Gutknecht
7. Mr. Ose
8. Mr. Peterson
9. Mr. Minge
10. Mr. Pomeroy
11. Mr. Boswell

NAYS

1. Mr. Combest
2. Mr. Ewing
3. Mr. Pombo
4. Mr. Smith
5. Mr. Everett
6. Mr. Lucas, OK
7. Mrs. Chenoweth
8. Mr. Chambliss
9. Mr. Moran
10. Mr. Schaffer
11. Mr. Thune
12. Mr. Jenkins
13. Mr. Riley
14. Mr. Walden
15. Mr. Simpson
16. Mr. Hayes
17. Mr. Fletcher
18. Mr. Stenholm
19. Mr. Dooley
20. Mrs. Clayton
21. Mr. Hilliard
22. Mr. Holden
23. Mr. Bishop
24. Mr. Thompson, MS
25. Mr. Baldacci
26. Mr. Berry
27. Mr. Goode
28. Mr. McIntyre
29. Ms. Stabenow
30. Mr. Etheridge
31. Mr. John
32. Mr. Phelps
33. Mr. Lucas, KY
34. Mr. Thompson, CA
35. Mr. Hill

NOT VOTING

1. Mr. Goodlatte
2. Mr. Canady
3. Mr. Cooksey
4. Mr. Brown
5. Mr. Condit

ROLLCALL NO. 3

Summary: Final Passage on H.R. 1402, as amended.

Offered by: Mr. Stenholm.

Results: Adopted by a rollcall vote: 32 yeas to 15 nays.

## YEAS

1. Mr. Combest
2. Mr. Smith
3. Mr. Everett
4. Mr. Lucas, OK
5. Mr. Chambliss
6. Mr. LaHood
7. Mr. Moran
8. Mr. Schaffer
9. Mr. Jenkins
10. Mr. Riley
11. Mr. Walden
12. Mr. Simpson
13. Mr. Hayes
14. Mr. Fletcher
15. Mr. Stenholm
16. Mr. Condit
17. Mrs. Clayton
18. Mr. Hilliard
19. Mr. Holden
20. Mr. Bishop
21. Mr. Thompson, MS
22. Mr. Baldacci
23. Mr. Berry
24. Mr. Goode
25. Mr. McIntyre
26. Ms. Stabenow
27. Mr. Etheridge
28. Mr. John
29. Mr. Phelps
30. Mr. Lucas, KY
31. Mr. Thompson, CA
32. Mr. Hill

## NOT VOTING

1. Mr. Goodlatte
2. Mr. Canady
3. Mr. Cooksey
4. Mr. Brown

## NAYS

1. Mr. Barrett
2. Mr. Boehner
3. Mr. Ewing
4. Mr. Pombo
5. Mrs. Chenoweth
6. Mr. Hostettler
7. Mr. Thune
8. Mr. Calvert
9. Mr. Gutknecht
10. Mr. Ose
11. Mr. Peterson
12. Mr. Dooley
13. Mr. Minge
14. Mr. Pomeroy
15. Mr. Boswell

## BUDGET ACT COMPLIANCE (SECTIONS 308, 402, AND 423)

The provisions of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a)(1) of the Congressional Budget Act of 1974 (relating to estimates of new budget authority, new spending authority, new credit authority, or increased or decreased revenues or tax expenditures) are not considered applicable. The estimate and comparison required to be prepared by the Director of the Congressional Budget Office under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and sections 402 and 423 of the Congressional Budget Act of 1974 submitted to the Committee prior to the filing of this report are as follows:

U.S. CONGRESS,  
 CONGRESSIONAL BUDGET OFFICE,  
 Washington, DC, July 13, 1999.

Hon. LARRY COMBEST,  
 Chairman, Committee on Agriculture,  
 House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1402, a bill to require the Secretary of Agriculture to implement the Class I milk price structure known as Option 1-A as part of the implementation of the final rule to consolidate federal milk marketing orders.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Jim Langley (for federal costs) and Roger Hitchner (for the private-sector impact).

Sincerely,

BARRY B. ANDERSON  
 (for Dan L. Crippen, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

*H.R. 1402—A bill to require the Secretary of Agriculture to implement the Class I milk price structure known as Option 1-A as part of the implementation of the final rule to consolidate federal milk marketing orders*

Summary: H.R. 1402 would require the Secretary of Agriculture to modify final rulemaking procedures to change the method by which minimum prices are established for fluid milk in different regions of the country. The bill would require formal rulemaking procedures to develop pricing methods—known as marketing orders—for milk used in manufactured dairy products (cheese, butter, and nonfat dry milk) and would, pending a final rule, modify the formula for minimum cheese prices. H.R. 1402 also would extend for one year the current milk price support program (scheduled to expire December 31, 1999), delay starting the recourse loan program for commercial processors of dairy products, and require the Secretary to establish a new dairy program that would allow milk producers and cooperatives to enter into forward price contracts with milk handlers.

CBO estimates that implementing the provisions related to federal marketing orders for milk prices would not require any additional discretionary outlays over the 2000–2004 period. Enacting the bill would affect direct spending—primarily as a result of the extending current price-support programs for one year. Thus, pay-as-you-go procedures would apply. CBO estimates that enacting H.R. 1402 would reduce direct spending by \$102 million in 2000 but would result in a net increase in direct spending of \$149 million over the 2000–2004 period.

H.R. 1402 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments. The bill would impose a private-sector mandate, as defined by UMRA, by requiring handlers of milk regulated by federal milk marketing orders to pay a higher price for milk than they would otherwise be required to pay.

The estimated cost to the private sector of the mandate contained in this bill would exceed the threshold for private-sector mandates (\$100 million in 1996, adjusted annually for inflation) established in UMRA.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 1402 is shown in the following table. The cost of this legislation fall primarily within budget function 350 (agriculture).

	By fiscal year, in millions of dollars—				
	2000	2001	2002	2003	2004
CHANGES IN DIRECT SPENDING					
Estimated Budget Authority .....	-102	241	-4	7	7
Estimated Outlays .....	-102	241	-4	7	7

Basis of Estimate: For the purpose of this estimate, CBO assumes that H.R. 1402 will be enacted before October 1, 1999. The bill would require the Secretary of Agriculture to choose an alternative marketing order by that date.

*One-year extension of current milk price support program*

H.R. 1402 would extend the milk price support program for one year and delay implementing a loan program for commercial processors of dairy products. CBO estimates that these two provisions would reduce federal outlays by \$102 million in 2000 and increase federal outlays by \$149 million over the 2000–2004 period.

The Federal Agriculture Improvement and Reform Act of 1996 (Public Law 104–127) terminates the milk price support program on December 31, 1999, replacing it with recourse loans available to commercial processors beginning January 1, 2000. These recourse loans would help dairy processors manage inventories of dairy products and assure a greater degree of price stability for the dairy industry during the year. The loan period extend through the end of the fiscal year in which they are made, but the Secretary of Agriculture may extend these loans for up to one additional year. (CBO assumes that the Secretary will extend recourse loans.) The Credit Reform Act of 1990 exempted all credit programs of the Commodity Credit Corporation from its provisions, and the budget therefore would record these loans on a cash basis.

Under current law, CBO estimates that the net outlays for recourse loans (loans made minus loans repaid during the same fiscal year) would be \$280 million in 2000 (the first year of the program) and would be in the range of –\$12 million to \$7 million in subsequent years as outlays for new loans would be offset by repayments of previous loans. By delaying implementation of the recourse loan program one year (until January 1, 2001), the relatively large start-up cost for the program would be shifted from 2000 to 2001.

CBO estimates that continuing the milk price support program for one year would increase federal outlays (by increasing net purchases of dairy products and related expenses) by \$178 million in 2000. Hence, the net effect of extending milk price supports and delaying recourse loans would be to reduce outlays \$102 million in 2000 (\$178 million in net price support cost minus \$280 million in forgone recourse loan start-up costs). Outlays would increase by

\$241 million in 2001, as \$251 million in net recourse loans would be partially offset by a reduction of \$9 million in net purchases. Relatively small changes occur in subsequent fiscal years. The difference between net recourse loans forgone in 2000 (\$280 million) and made in 2001 (\$251 million) arises because loan activity depends on commercial stocks, for which CBO estimates different levels in 2000 and 2001.

*Consolidated Federal milk marketing order provisions*

As required by Public Law 104–127, the Secretary of Agriculture announced on March 31, 1999, a final decision to overhaul the federal milk marketing order program. Milk marketing orders classify milk by use, set minimum prices that handlers must pay for each class of milk, and provide for paying average prices to all dairy farmers who supply a particular region. The decision to adopt a new marketing order must be approved by producer referendums, which USDA will conduct later this year. If approved by referendum, the changes will take effect on October 1, 1999.

The most controversial aspect of milk marketing reform is the method of setting minimum prices for fluid milk. The Secretary's decision—known as Option 1–B—would probably increase fluid milk prices in the Upper Midwest and Florida and reduce prices elsewhere. Despite these regional differences, the national average price of milk is not expected to change significantly.

If enacted, H.R. 1402 would require the Secretary of Agriculture to implement an alternative method of calculating minimum fluid milk prices known as Option 1–A. This alternative method would more closely reflect the current regional distribution of fluid milk prices. The bill would not alter the requirement of Public Law 104–127 that reform of milk marketing orders be implemented by October 1, 1999.

The bill would require the Secretary to use rulemaking to develop pricing methods for milk used for cheese, butter, and nonfat dry milk and would modify the formula for setting minimum cheese prices until a final decision was approved by rulemaking (required to be completed within 10 months of enactment).

H.R. 1402 also would require the Secretary to establish a program under which milk producers and cooperatives would be authorized to enter into forward price contracts with milk handlers of federally regulated milk. CBO estimates that implementing this program would not have any significant impact on administrative costs of the Department of Agriculture.

By affecting the price of milk, changes in milk marketing orders could affect federal nutrition programs, particularly the Special Milk Program. However, CBO expects that H.R. 1402 would have a negligible impact on the Special Milk Program because the impact on retail milk prices is likely to be small.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

	By fiscal year, in millions of dollars—										
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Changes in outlays .....	0	-102	241	-4	7	7	4	3	-1	1	1
Changes in receipts .....	Not applicable										

Estimated impact on state, local, and tribal governments: H.R. 1402 contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimated impact on the private sector: H.R. 1402 would impose a private-sector mandate, as defined by UMRA, by requiring handlers of milk regulated by federal milk marketing orders to pay a higher price for milk than they would otherwise be required to pay. The Secretary of Agriculture issued on March 31, 1999, final rules for the consolidation and reform of federal milk marketing orders. Such consolidation and reform was required by the Federal Agricultural Improvement and Reform Act of 1996 and will take effect October 1, 1999, if approved by producer referendum. Such approval is expected. As a part of those final rules, the Secretary established new Class I price differentials that set premiums that handlers in the various federal orders must pay for milk used for fluid purposes, such as bottled milk. H.R. 1402 would require the Secretary to use a different set of Class I differentials than announced as part of the final rule. In nine of the eleven new federal order areas, the differential required by H.R. 1402 would be higher than that announced by the Secretary. Milk handlers in those areas would be required to pay producers more for milk used for fluid purposes. Based on projections of milk marketings and use, CBO estimates that handlers would be required to pay milk producers annually about \$140 million more than they would without this change in the law.

Section 2 of H.R. 1402 would require the Secretary of Agriculture to use a formal rulemaking process to reconsider the Class III and Class IV minimum pricing formulas announced in the final rules issued March 31, 1999. Class III milk is that used to produce cheese; Class IV milk is that used to produce butter and milk powder. The bill would require that a new decision on those formulas be implemented within 10 months after enactment. In the interim, H.R. 1402 would require the Secretary to replace the manufacturing allowance for cheese that was announced in the March 31, 1999, rules with a lower value. Substituting the lower value in the formula has the effect of raising the price that milk handlers must pay producers for fluid milk and raising the minimum price that must be paid for milk used to produce cheese, in both cases by nearly \$0.24 per hundredweight. On an annualized basis the cost to milk handlers of this provision would exceed \$100 million. CBO can not provide a more precise estimate because of the uncertainty of how long this provision would be in effect and how the increase in the minimum Class III price would affect prices paid to producers.

Milk producers' gross receipts would be higher by an amount corresponding to the higher costs to milk handlers that would result from enactment of H.R. 1402. The higher costs faced by handlers would be mostly passed on to consumers as higher prices for milk and milk products.

All changes cited above are estimated relative to what is expected to happen without enactment of H.R. 1402. The final rules issued in March 1999, which are expected to become effective in October 1999, would probably reduce farm and consumer-level milk prices. The new rules, as amended by the provisions of H.R. 1402, would cause such decreases in milk prices to be smaller.

Estimate prepared by: Federal costs: Jim Langley; impact on the private sector: Roger Hitchner.

Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

#### COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(2) of Rule XIII of the Rules of the House of Representatives, the Committee report incorporates the cost estimate prepared by the Director of the Congressional Budget Office pursuant to sections 402 and 423 of the Congressional Budget Act of 1974.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of Rule XIII of the Rules of the House of Representatives, the Committee finds the Constitutional authority for this legislation in Article I, clause 8, section 18, that grants Congress the power to make all laws necessary and proper for carrying out the powers vested by Congress in the Government of the United States or in any department or officer thereof.

#### OVERSIGHT STATEMENT

No summary of oversight findings and recommendations made by the Committee on Government Reform, as provided for in clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives, was available to the Committee with reference to the subject matter specifically addressed by H.R. 1402.

#### COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of Rule XIII of the Rules of the House of Representatives, the Committee on Agriculture's oversight findings and recommendations are reflected in the body of this report.

#### ADVISORY COMMITTEE STATEMENT

No advisory committee within the meaning of section 5(b) of the Federal Advisory Committee Act was created by this legislation.

#### APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (Public Law 104-1).

#### FEDERAL MANDATES STATEMENT

The Committee adopted as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office



pursuant to section 423 of the Unfunded Mandates Reform Act (Public Law 104-4).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**AGRICULTURAL MARKET TRANSITION ACT**

\* \* \* \* \*

**Subtitle D—Other Commodities**

**CHAPTER 1—DAIRY**

**SEC. 141. MILK PRICE SUPPORT PROGRAM.**

(a) \* \* \*

(b) **RATE.**—The price of milk shall be supported at the following rates per hundredweight for milk containing 3.67 percent butterfat:

(1) \* \* \*

\* \* \* \* \*

(4) During calendar **[year 1999]** *years 1999 and 2000*, \$9.90.

\* \* \* \* \*

(h) **PERIOD OF EFFECTIVENESS.**—This section (other than subsection (g)) shall be effective only during the period beginning on the first day of the first month beginning after the date of enactment of this title and ending on December 31, **[1999]** *2000*. The program authorized by this section shall terminate on December 31, **[1999]** *2000*, and shall be considered to have expired notwithstanding section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 907).

**SEC. 142. RECOURSE LOAN PROGRAM FOR COMMERCIAL PROCESSORS OF DAIRY PRODUCTS.**

(a) \* \* \*

\* \* \* \* \*

(e) **EFFECTIVE DATE.**—This section shall be effective beginning January 1, **[2000]** *2001*.

\* \* \* \* \*

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**SECTION 23 OF THE AGRICULTURAL ADJUSTMENT ACT**

**SEC. 23. DAIRY FORWARD PRICING PROGRAM.**

(a) **IN GENERAL.**—*Not later than 90 days after the date of enactment of this section, the Secretary of Agriculture shall establish a program under which milk producers and cooperatives are authorized to voluntarily enter into forward price contracts with milk handlers.*

(b) *MINIMUM MILK PRICE REQUIREMENTS.*—Payments made by milk handlers to milk producers and cooperatives, and prices received by milk producers and cooperatives, under the forward contracts shall be deemed to satisfy all regulated minimum milk price requirements of paragraphs (A), (B), (C), (D), (F), and (J) of subsection (5), and subsections (7)(B) and (18), of section 8c.

(c) *APPLICATION.*—This section shall apply only with respect to the marketing of federally regulated milk (regardless of its use) that is in the current of interstate or foreign commerce or that directly burdens, obstructs, or affects interstate or foreign commerce in federally regulated milk.

## DISSENTING VIEWS

I strenuously disagree with the Committee's action to reverse the very modest reforms contained within the final rule developed by the U.S. Department of Agriculture. Despite three years of rule making and an exhaustive public comment period, H.R. 1402 breaks a commitment by the Congress in the 1996 Farm Bill to adopt a more market-oriented policy for our nation's dairy industry. Instead, this legislation leaves in place a blatantly unfair Depression-era pricing structure that penalizes dairy producers based on how close they are to Eau Claire, Wisconsin.

At a time when the United States is working to negotiate the liberalization of trade barriers throughout the world, the Option 1A legislation will perpetuate the regionalist and protectionist thinking which ultimately undermines the modernization of our dairy industry. A decision to prolong the worse features of our current policy is a contradiction of the worst kind. Moreover, the Committee is supporting changes to the final rule despite analysis by the USDA and independent economists that the reforms will result in a minimal impact on dairy farmer revenues. Rather than encouraging greater efficiencies in milk distribution, greater equity for all producers, and a more consumer friendly pricing system, the Committee's approval of H.R. 1402 is an endorsement of the status quo.

GIL GUTKNECHT.

