

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.

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## 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

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## 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.”.

○