H. R. 3428

To provide for the modification and implementation of the final rule for the consolidation and reform of Federal milk marketing orders, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 17, 1999

Mr. BLUNT introduced the following bill; which was referred to the Committee on Agriculture

A BILL

To provide for the modification and implementation of the final rule for the consolidation and reform of Federal milk marketing orders, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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

(a) Final Rule Defined.—In this section, the term “final rule” means the final rule for the consolidation and reform of Federal milk marketing orders that was published in the Federal Register on September 1, 1999 (64

(b) Implementation of Final Rule for Milk Order Reform.—Subject to subsection (c), the final rule shall take effect, and be implemented by the Secretary of Agriculture, on the first day of the first month beginning at least 30 days after the date of the enactment of this Act.

(c) Use of Option 1A for Pricing Class I Milk.—In lieu of the Class I price differentials specified in the final rule, the Secretary of Agriculture shall price fluid or Class I milk under the Federal milk marketing 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.

(d) Effect of Prior Announcement of Minimum Prices.—If the Secretary of Agriculture announces minimum prices for milk under Federal milk marketing orders pursuant to section 1000.50 of title 7, Code of Federal Regulations, before the effective date specified in sub-
section (b), the minimum prices so announced before that date shall be the only applicable minimum prices under Federal milk marketing orders for the month or months for which the prices have been announced.

(e) IMPLEMENTATION OF REQUIREMENT.—The implementation of the final rule, as modified by subsection (c), shall not be subject to any of the following:

(1) The notice and hearing requirements of section 8c(3) of the Agricultural Adjustment Act (7 U.S.C. 608c(3)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, or the notice and comment provisions of section 553 of title 5, United States Code.

(2) A referendum conducted by the Secretary of Agriculture pursuant to subsections (17) or (19) of section 8c of the Agricultural Adjustment Act (7 U.S.C. 608c), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937.


(4) Chapter 35 of title 44, United States Code (commonly known as the Paperwork Reduction Act).
(5) Any decision, restraining order, or injunction issued by a United States court before the date of the enactment of this Act.

SEC. 2. FURTHER RULEMAKING TO DEVELOP PRICING METHODS FOR CLASS III AND CLASS IV MILK UNDER MARKETING ORDERS.

(a) CONGRESSIONAL FINDING.—The Class III and Class IV milk 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) RULEMAKING 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 milk pricing formulas included in the final rule for the consolidation and reform of Federal milk marketing orders that was published in the Federal Register on September 1, 1999 (64 Fed. Reg. 47897–48021).
(c) **TIME PERIOD FOR RULEMAKING.**—On December 1, 2000, the Secretary of Agriculture shall publish in the Federal Register a final decision on the Class III and Class IV milk pricing formulas. The resulting formulas shall take effect, and be implemented by the Secretary, on January 1, 2001.

(d) **EFFECT OF COURT ORDER.**—The actions authorized by subsections (b) and (c) 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 of Agriculture is enjoined or otherwise restrained by a court order from implementing a final decision within the time period specified in subsection (e), the length of time for which that injunction or other restraining order is effective shall be added to the time limitations specified in subsection (e) 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.

(e) **FAILURE TO TIMELY COMPLETE RULEMAKING.**—If the Secretary of Agriculture fails to implement new Class III and Class IV milk pricing formulas within the time period required under subsection (e) (plus any additional period provided under subsection (d)), 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.

(f) Implementation of Requirement.—The implementation of the final decision on new Class III and Class IV milk pricing formulas shall not be subject to congressional review under chapter 8 of title 5, United States Code.

SEC. 3. 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 PILOT PROGRAM."

"(a) Pilot Program Required.—Not later than 90 days after the date of the enactment of this section, the Secretary of Agriculture shall establish a temporary pilot
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—

“(1) all regulated minimum milk price requirements of paragraphs (B) and (F) of subsection (5) of section 8c; and

“(2) the requirement of paragraph (C) of such subsection regarding total payments by each handler.

“(c) MILK COVERED BY PILOT PROGRAM.—

“(1) COVERED MILK.—The pilot program shall apply only with respect to the marketing of federally regulated milk that—

“(A) is not classified as Class I milk or otherwise intended for fluid use; and

“(B) is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects interstate or foreign commerce in federally regulated milk.
“(2) Relation to Class I milk.—To assist
milk handlers in complying with the limitation in
paragraph (1)(A) without having to segregate or
otherwise individually track the source and disposi-
tion of milk, a milk handler may allocate milk re-
cipts from producers, cooperatives, and other
sources that are not subject to a forward contract to
satisfy the handler’s obligations with regard to Class
I milk usage.

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

“(e) Study and Report on Effect of Pilot
Program.—

“(1) Study.—The Secretary of Agriculture
shall conduct a study on forward contracting be-
tween milk producers and cooperatives and milk
handlers to determine the impact on milk prices paid
to producers in the United States. To obtain infor-
mation for the study, the Secretary may use the au-
thorities available to the Secretary under section 8d,
subject to the confidentiality requirements of sub-
section (2) of such section.
“(2) REPORT.—Not later than April 30, 2002, the Secretary shall submit to the Committee on Agriculture, Nutrition and Forestry of the Senate and the Committee on Agriculture of the House of Representatives a report containing the results of the study.”.

SEC. 4. CONTINUATION OF CONGRESSIONAL CONSENT FOR NORtheast INTERSTATE DAIRY COMPACT.

Section 147(3) of the Agricultural Market Transition Act (7 U.S.C. 7256(3)) is amended by striking “concurrent with” and all that follows through the period at the end and inserting “on September 30, 2001.”. 