

106TH CONGRESS  
1ST SESSION

# 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.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 17, 1999

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

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## 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.

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. USE OF OPTION 1A AS PRICE STRUCTURE FOR**  
4 **CLASS I MILK UNDER CONSOLIDATED FED-**  
5 **ERAL MILK MARKETING ORDERS.**

6 (a) FINAL RULE DEFINED.—In this section, the term  
7 “final rule” means the final rule for the consolidation and  
8 reform of Federal milk marketing orders that was pub-  
9 lished in the Federal Register on September 1, 1999 (64

1 Fed. Reg. 47897–48021), to comply with section 143 of  
2 the Federal Agriculture Improvement and Reform Act of  
3 1996 (7 U.S.C. 7253).

4 (b) IMPLEMENTATION OF FINAL RULE FOR MILK  
5 ORDER REFORM.—Subject to subsection (c), the final rule  
6 shall take effect, and be implemented by the Secretary of  
7 Agriculture, on the first day of the first month beginning  
8 at least 30 days after the date of the enactment of this  
9 Act.

10 (c) USE OF OPTION 1A FOR PRICING CLASS I  
11 MILK.—In lieu of the Class I price differentials specified  
12 in the final rule, the Secretary of Agriculture shall price  
13 fluid or Class I milk under the Federal milk marketing  
14 orders using the Class I price differentials identified as  
15 Option 1A “Location-Specific Differentials Analysis” in  
16 the proposed rule published in the Federal Register on  
17 January 30, 1998 (63 Fed. Reg. 4802, 4809), except that  
18 the Secretary shall include the corrections and modifica-  
19 tions to such Class I differentials made by the Secretary  
20 through April 2, 1999.

21 (d) EFFECT OF PRIOR ANNOUNCEMENT OF MIN-  
22 IMUM PRICES.—If the Secretary of Agriculture announces  
23 minimum prices for milk under Federal milk marketing  
24 orders pursuant to section 1000.50 of title 7, Code of Fed-  
25 eral Regulations, before the effective date specified in sub-

1 section (b), the minimum prices so announced before that  
2 date shall be the only applicable minimum prices under  
3 Federal milk marketing orders for the month or months  
4 for which the prices have been announced.

5 (e) IMPLEMENTATION OF REQUIREMENT.—The im-  
6 plementation of the final rule, as modified by subsection  
7 (c), shall not be subject to any of the following:

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

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

19 (3) The Statement of Policy of the Secretary of  
20 Agriculture effective July 24, 1971 (36 Fed. Reg.  
21 13804), relating to notices of proposed rulemaking  
22 and public participation in rulemaking.

23 (4) Chapter 35 of title 44, United States Code  
24 (commonly known as the Paperwork Reduction Act).

1           (5) Any decision, restraining order, or injunc-  
2           tion issued by a United States court before the date  
3           of the enactment of this Act.

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

7           (a) CONGRESSIONAL FINDING.—The Class III and  
8           Class IV milk pricing formulas included in the final deci-  
9           sion for the consolidation and reform of Federal milk mar-  
10          keting orders, as published in the Federal Register on  
11          April 2, 1999 (64 Fed. Reg. 16025), do not adequately  
12          reflect public comment on the original proposed rule pub-  
13          lished in the Federal Register on January 30, 1998 (63  
14          Fed. Reg. 4802), and are sufficiently different from the  
15          proposed rule and any comments submitted with regard  
16          to the proposed rule that further emergency rulemaking  
17          is merited.

18          (b) RULEMAKING REQUIRED.—The Secretary of Ag-  
19          riculture shall conduct rulemaking, on the record after an  
20          opportunity for an agency hearing, to reconsider the Class  
21          III and Class IV milk pricing formulas included in the  
22          final rule for the consolidation and reform of Federal milk  
23          marketing orders that was published in the Federal Reg-  
24          ister on September 1, 1999 (64 Fed. Reg. 47897–48021).

1           (c) TIME PERIOD FOR RULEMAKING.—On December  
2 1, 2000, the Secretary of Agriculture shall publish in the  
3 Federal Register a final decision on the Class III and  
4 Class IV milk pricing formulas. The resulting formulas  
5 shall take effect, and be implemented by the Secretary,  
6 on January 1, 2001.

7           (d) EFFECT OF COURT ORDER.—The actions author-  
8 ized by subsections (b) and (c) are intended to ensure the  
9 timely publication and implementation of new pricing for-  
10 mulas for Class III and Class IV milk. In the event that  
11 the Secretary of Agriculture is enjoined or otherwise re-  
12 strained by a court order from implementing a final deci-  
13 sion within the time period specified in subsection (c), the  
14 length of time for which that injunction or other restrain-  
15 ing order is effective shall be added to the time limitations  
16 specified in subsection (c) thereby extending those time  
17 limitations by a period of time equal to the period of time  
18 for which the injunction or other restraining order is effec-  
19 tive.

20           (e) FAILURE TO TIMELY COMPLETE RULE-  
21 MAKING.—If the Secretary of Agriculture fails to imple-  
22 ment new Class III and Class IV milk pricing formulas  
23 within the time period required under subsection (c) (plus  
24 any additional period provided under subsection (d)), the  
25 Secretary may not assess or collect assessments from milk

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

12 (f) IMPLEMENTATION OF REQUIREMENT.—The im-  
13 plementation of the final decision on new Class III and  
14 Class IV milk pricing formulas shall not be subject to con-  
15 gressional review under chapter 8 of title 5, United States  
16 Code.

17 **SEC. 3. DAIRY FORWARD PRICING PROGRAM.**

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

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

23 “(a) PILOT PROGRAM REQUIRED.—Not later than 90  
24 days after the date of the enactment of this section, the  
25 Secretary of Agriculture shall establish a temporary pilot

1 program under which milk producers and cooperatives are  
2 authorized to voluntarily enter into forward price con-  
3 tracts with milk handlers.

4 “(b) MINIMUM MILK PRICE REQUIREMENTS.—Pay-  
5 ments made by milk handlers to milk producers and co-  
6 operatives, and prices received by milk producers and co-  
7 operatives, under the forward contracts shall be deemed  
8 to satisfy—

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

12 “(2) the requirement of paragraph (C) of such  
13 subsection regarding total payments by each han-  
14 dler.

15 “(c) MILK COVERED BY PILOT PROGRAM.—

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

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

21 “(B) is in the current of interstate or for-  
22 eign commerce or directly burdens, obstructs, or  
23 affects interstate or foreign commerce in feder-  
24 ally regulated milk.

1           “(2) RELATION TO CLASS I MILK.—To assist  
2           milk handlers in complying with the limitation in  
3           paragraph (1)(A) without having to segregate or  
4           otherwise individually track the source and dispo-  
5           sition of milk, a milk handler may allocate milk re-  
6           ceipts from producers, cooperatives, and other  
7           sources that are not subject to a forward contract to  
8           satisfy the handler’s obligations with regard to Class  
9           I milk usage.

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

14          “(e) STUDY AND REPORT ON EFFECT OF PILOT  
15          PROGRAM.—

16                 “(1) STUDY.—The Secretary of Agriculture  
17                 shall conduct a study on forward contracting be-  
18                 tween milk producers and cooperatives and milk  
19                 handlers to determine the impact on milk prices paid  
20                 to producers in the United States. To obtain infor-  
21                 mation for the study, the Secretary may use the au-  
22                 thorities available to the Secretary under section 8d,  
23                 subject to the confidentiality requirements of sub-  
24                 section (2) of such section.

1           “(2) REPORT.—Not later than April 30, 2002,  
2           the Secretary shall submit to the Committee on Ag-  
3           riculture, Nutrition and Forestry of the Senate and  
4           the Committee on Agriculture of the House of Rep-  
5           resentatives a report containing the results of the  
6           study.”.

7   **SEC. 4. CONTINUATION OF CONGRESSIONAL CONSENT FOR**  
8                           **NORTHEAST INTERSTATE DAIRY COMPACT.**

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

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