

106TH CONGRESS
2D SESSION

S. 3133

To provide compensation to producers for underestimation of wheat protein content.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 28 (legislative day, SEPTEMBER 22), 2000

Mr. BAUCUS (for himself and Mr. BURNS) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To provide compensation to producers for underestimation of wheat protein content.

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 “Wheat Protein
5 Mismeasurement Compensation Act.”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) it is the policy of Congress, as stated in the
9 United States Grain Standards Act (7 U.S.C. 71 et
10 seq.), to provide for an official inspection system for

1 grain and promote the uniform application of the
2 system, with the objectives that grain may be mar-
3 keted in an orderly and timely manner and that
4 trading in grain may be facilitated;

5 (2) in May 1993, the Secretary of Agriculture,
6 acting through the Federal Grain Inspection Service,
7 required the use of new technology for determining
8 the protein content of wheat;

9 (3) the calibrations provided by the Secretary
10 for the new protein measurement instruments—

11 (A) were erroneous; and

12 (B) resulted in protein determinations that
13 were lower than those produced by the tech-
14 nology in use before use of the new technology
15 was required;

16 (4) as a result of the miscalibration and the
17 failure to provide adequate notice and opportunity
18 for comment, wheat purchasers were forced to adjust
19 their protein measurement and pricing systems in
20 order to protect themselves on resale, resulting in
21 loss of revenue from the sale of high-protein wheat;
22 and

23 (5) it is necessary and appropriate for Congress
24 to enact a legislative remedy to provide compensa-
25 tion that is reasonable and necessary to redress the

1 losses caused by the actions of the Secretary and to
2 achieve the policies stated in the United States
3 Grain Standards Act (7 U.S.C. 71 et seq.).

4 **SEC. 3. DEFINITIONS.**

5 In this Act:

6 (1) CLAIM AMOUNT.—The term “claim
7 amount” means the gross amount of compensation
8 paid to a claimant under this Act.

9 (2) ELIGIBLE CLAIMANT.—The term “eligible
10 claimant” means—

11 (A) a wheat producer in the United States
12 that sold wheat between May 2, 1993, and Jan-
13 uary 24, 1994, inclusive, for a price determined
14 in whole or in part with reference to measured
15 or estimated protein content; or

16 (B) an independent country grain elevator
17 operator in the United States (or a person that
18 purchased wheat from such an operator) that
19 resold wheat at a loss resulting from erroneous
20 protein measurement standards based on
21 miscalibrated near infrared transmittance in-
22 struments.

23 (3) SECRETARY.—The term “Secretary” means
24 the Secretary of Agriculture.

1 (4) SETTLEMENT AGREEMENT.—The term
2 “settlement agreement” means the settlement agree-
3 ment negotiated under subsection (b)(1).

4 **SEC. 4. COMPENSATION FOR UNDERESTIMATION OF**
5 **WHEAT PROTEIN CONTENT.**

6 (a) COMPENSATION.—The Secretary shall pay such
7 amounts as are necessary, not exceeding \$465,000,000 in
8 the aggregate, to compensate eligible claimants for lost
9 revenue on the sale of wheat (including lost earnings, in-
10 terest, and reimbursement of attorneys’ fees and expenses)
11 resulting from the adoption by the Federal Grain Inspec-
12 tion Service, in May 1993, of erroneous protein measure-
13 ment standards based on miscalibrated near infrared
14 transmittance instruments.

15 (b) SETTLEMENT AGREEMENT.—

16 (1) IN GENERAL.—Not later than 90 days after
17 the date of enactment of this Act, the Secretary
18 shall negotiate a settlement agreement with the class
19 of plaintiffs in the case of *Gollehon Farming v.*
20 *United States*, 117 F. Supp. 2d 1145 (D. Mont.
21 1998), *affd*, 207 F. 3d 1373 (Fed. Cir. 2000), in ac-
22 cordance with this Act.

23 (2) AGGREGATE AMOUNT TO BE PAID.—The
24 settlement agreement—

1 (A) shall provide that the Secretary shall
2 deposit in a settlement trust, to be administered
3 in accordance with the settlement agreement
4 and any applicable judicial orders, the aggregate
5 amount that the Secretary reasonably estimates
6 will be necessary to fully compensate all
7 eligible claimants (including lost earnings, interest,
8 and reimbursement of attorneys' fees and
9 expenses); and

10 (B) may provide that the Secretary shall
11 pay into the settlement trust an additional
12 amount as a reserve.

13 (3) DISPOSITION PROVISION.—The settlement
14 agreement shall provide that any amounts that remain
15 in the trust on the termination of the trust,
16 after payment of all fees and expenses, shall be returned
17 to the general fund of the United States
18 Treasury.

19 (4) OTHER COMPONENTS OF SETTLEMENT
20 AGREEMENT.—

21 (A) PROCEDURES AND SCHEDULE.—The
22 settlement agreement shall specify procedures
23 and a schedule for identifying and paying the
24 claims of eligible claimants, including the use of
25 information available to the Secretary for iden-

1 tifying eligible claimants and quantifying indi-
2 vidual claims.

3 (B) INVESTMENT OF TRUST FUNDS.—The
4 settlement agreement shall provide for the in-
5 vestment of trust funds and the use of trust
6 earnings to pay all or part of the fees and ex-
7 penses associated with settlement implementa-
8 tion and trust administration.

9 (C) OTHER PROVISIONS.—The settlement
10 agreement shall contain any other provisions
11 that the Secretary and the class representatives
12 determine to be necessary to carry out this Act.

13 (5) JUDICIAL APPROVAL.—

14 (A) IN GENERAL.—As soon as practicable
15 after completing negotiation of the settlement
16 agreement, the Secretary shall—

17 (i) file the settlement agreement in
18 the judicial proceeding referred to in sub-
19 section (b)(1); and

20 (ii) seek a declaratory judgment that
21 the settlement agreement meets the re-
22 quirements of this Act.

23 (B) EFFECTIVENESS OF SETTLEMENT
24 AGREEMENT.—An order of the court declaring
25 that the settlement agreement meets the re-

1 requirements of this Act shall be considered to be
2 a compromise settlement for the purposes of
3 section 1304 of title 31, United States Code.

4 (c) REQUIRED SHOWING.—An eligible claimant shall
5 be entitled to compensation under subsection (a) on dem-
6 onstration by the claimant to the Secretary of—

7 (1) qualification as an eligible claimant;

8 (2) a reasonable estimate of the number of
9 bushels of wheat sold by the eligible claimant during
10 the period of May 2, 1993, through January 24,
11 1994, inclusive;

12 (3) evidence of loss;

13 (4) any other information required by the set-
14 tlement agreement.

15 (d) AMOUNT OF INDIVIDUAL COMPENSATION.—

16 (1) IN GENERAL.—

17 (A) DETERMINATION.—A claim amount
18 shall be determined in accordance with a for-
19 mula that may be—

20 (i) negotiated as part of the settle-
21 ment agreement; or

22 (ii) determined by the settlement
23 trustee in accordance with any applicable
24 judicial orders.

1 (B) FORMULA.—Subject to subparagraph
2 (C), the formula for determining the claim
3 amount of a claimant—

4 (i) shall be based primarily on the
5 number of bushels of wheat sold by the eli-
6 gible claimant during the period from May
7 2, 1993, through January 24, 1994; and

8 (ii) may take into account any other
9 relevant factors, including—

10 (I) the type and grade of wheat
11 sold;

12 (II) the location of crop land;

13 (III) the estimated protein con-
14 tent of the wheat sold;

15 (IV) the date of harvest of the
16 wheat; and

17 (V) the date of sale of the wheat.

18 (C) AVERAGE.—The average claim amount
19 for all claimants compensated under this Act
20 shall be equal to—

21 (i) \$0.30 per bushel; plus

22 (ii)(I) interest (as determined in ac-
23 cordance with this subsection); and

1 (II) reimbursement of costs and attor-
2 neys' fees as provided in subsection (e),
3 subject to subsection (e)(2).

4 (D) EXCESS OF SETTLEMENT AMOUNT
5 OVER DEPOSITED AMOUNT.—If the aggregate
6 claim amount of individual claims determined
7 under this subsection exceeds the amount de-
8 posited in the settlement trust under subsection
9 (b)(2), the amounts computed for individual
10 claimants shall be proportionally reduced so
11 that the aggregate amount of individual net
12 payments equals the amount deposited.

13 (2) INTEREST.—The interest component of the
14 claim amount of a claimant shall be—

15 (A) computed at the rate in effect on the
16 date of payment under section 6621(a)(1) of
17 the Internal Revenue Code of 1986; and

18 (B) limited to the amount of interest due
19 for the period from January 1, 1994, until the
20 date on which the lump-sum amount is paid
21 into the settlement trust.

22 (e) PROCEDURE.—

23 (1) IN GENERAL.—The settlement negotiated
24 by the Secretary under subsection (b)(1) shall be on
25 behalf of the entire class of eligible claimants.

1 (2) ATTORNEY'S FEES AND OTHER EX-
2 PENSES.—

3 (A) ATTORNEY'S FEE RATE.—Attorney's
4 fees payable from the trust in connection with
5 claims compensated under this Act shall be paid
6 at the maximum rate provided by section 2678
7 of title 28, United States Code, for judgments
8 rendered under section 1346(b) of that title.

9 (B) SOURCE OF PAYMENT.—To the extent
10 that they are not payable through deduction
11 from an individual claim, attorney's fees and all
12 other expenses of litigation and settlement shall
13 be payable from—

14 (i) settlement trust earnings;

15 (ii) settlement trust principal in ex-
16 cess of the aggregate amount of individual
17 claims; and

18 (iii) settlement trust principal held for
19 class members that cannot be located and
20 paid.

21 (f) WAIVER OF CONDITIONS AND LIMITATIONS.—

22 (1) IN GENERAL.—An eligible claimant shall be
23 entitled to receive compensation under this Act,
24 notwithstanding—

1 (A) any noncompliance of the eligible per-
2 son with section 2675 of title 28, United States
3 Code; or

4 (B) any previous administrative or judicial
5 denial of a claim of the eligible person.

6 (2) NO LIMITATION ON CLAIMS.—A claim by an
7 eligible person described in subsection (c) shall not
8 be subject to any limitation period for asserting the
9 claim, including the limitations under section 2401
10 of title 28, United States Code.

11 (g) SOURCE AND TIMING OF PAYMENT.—Notwith-
12 standing any other provision of law, the amount of the
13 lump-sum payment by the Secretary under subsection
14 (b)(1) shall be paid from the appropriation made by sec-
15 tion 1304 of title 31, United States Code, not later than
16 30 days after the date of entry of a declaratory judgment
17 under subsection (b)(5)(B).

18 (h) OTHER RIGHTS.—

19 (1) IN GENERAL.—The establishment of the
20 right to compensation under this Act shall not affect
21 any other right of recovery of a claimant.

22 (2) PROHIBITION OF DOUBLE RECOVERY.—

23 (A) IN GENERAL.—The amount of any
24 payment received by an eligible claimant under
25 this Act shall be applied toward satisfaction of

1 all claims in connection with lost revenue on the
2 sale of wheat, and lost earnings on those reve-
3 nues, resulting from the adoption by the Sec-
4 retary in May, 1993, of erroneous protein meas-
5 urement standards based on miscalibrated near
6 infrared transmittance instruments.

7 (B) NO EFFECT ON FEDERAL OR STATE
8 BENEFITS.—Any compensation received by a
9 claimant under this Act shall not reduce, affect,
10 or be considered in the determination of past or
11 future eligibility for, or the amount of, any ben-
12 efit to which the claimant may be entitled under
13 any Federal or State farm program.

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