

111TH CONGRESS
2D SESSION

S. 3531

To amend the Dairy Production Stabilization Act of 1983 to establish a dairy market stabilization program.

IN THE SENATE OF THE UNITED STATES

JUNE 24, 2010

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

A BILL

To amend the Dairy Production Stabilization Act of 1983
to establish a dairy market stabilization program.

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 “Dairy Market Sta-
5 bilization Act of 2010”.

6 **SEC. 2. DAIRY MARKET STABILIZATION PROGRAM.**

7 The Dairy Production Stabilization Act of 1983 (7
8 U.S.C. 1421 note; title I of Public Law 98–189) is amend-
9 ed by adding at the end the following:

**“Subtitle D—Dairy Market
Stabilization Program**

“SEC. 141. DEFINITIONS.

“In this subtitle:

“(1) ALLOWABLE MILK MARKETING.—The term ‘allowable milk marketing’ means the quantity of milk production that a dairy facility may produce during a quarter without incurring a market access fee, as determined under section 143(a)(2).

“(2) ALLOWABLE MILK MARKETING GROWTH RATE.—The term ‘allowable milk marketing growth rate’ means the allowable milk marketing growth rate established by the Secretary for the applicable quarter under section 143(a)(3).

“(3) ALTERNATIVE MARKET ACCESS FEE.—The term ‘alternative market access fee’ means a fee described in section 143(a)(4) that is assessed on all milk produced in excess of the allowable milk marketings of a dairy facility.

“(4) APPEALS COMMITTEE.—The term ‘Appeals Committee’ means the producer appeals committee established under section 142(c).

“(5) DAIRY FACILITY.—The term ‘dairy facility’ means an operation on a property, or set of properties that are contiguous or separated only by

1 a public right-of-way, that is directly related to rais-
2 ing cows or producing milk from cows for the pur-
3 pose of making a profit or for a livelihood.

4 “(6) MARKET ACCESS FEE DIVIDEND.—The
5 term ‘market access fee dividend’ means the market
6 access fees collected during an applicable quarter
7 that are redistributed to dairy facilities with allow-
8 able milk marketings under section 143(c).

9 “(7) MILK HANDLER.—The term ‘milk handler’
10 means a person that makes payments to a dairy fa-
11 cility for milk produced in the United States and
12 purchased from the dairy facility for commercial use.

13 “(8) ORDER.—The term ‘order’ means an order
14 issued by the Secretary under section 142(a).

15 “(9) PRODUCER.—

16 “(A) IN GENERAL.—The term ‘producer’
17 means any person engaged in the production of
18 bovine milk for commercial use.

19 “(B) INCLUSIONS.—The term ‘producer’
20 includes any producer holding a license to
21 produce milk.

22 “(10) PRODUCER BOARD.—The term ‘Producer
23 Board’ means the Producer Board established under
24 section 142(b).

1 “(11) PROGRAM.—The term ‘Program’ means
2 the Dairy Market Stabilization Program established
3 under section 142(a).

4 “(12) QUARTER.—The term ‘quarter’ means
5 each of the following 4 quarters of a calendar year:

6 “(A) January 1 through March 31.

7 “(B) April 1 through June 30.

8 “(C) July 1 through September 30.

9 “(D) October 1 through December 31.

10 “(13) REGION.—The term ‘region’ means each
11 of the following:

12 “(A) Region 1, Northeast, consisting of the
13 States of Connecticut, Delaware, Maine, Mary-
14 land, Massachusetts, New Hampshire, New Jer-
15 sey, New York, Pennsylvania, Rhode Island,
16 Vermont, and West Virginia.

17 “(B) Region 2, Southeast, consisting of the
18 States of Alabama, Arkansas, Florida, Georgia,
19 Kentucky, Louisiana, Mississippi, Missouri,
20 North Carolina, South Carolina, Tennessee, and
21 Virginia.

22 “(C) Region 3, Midwest, consisting of the
23 States of Illinois, Indiana, Iowa, Michigan, Min-
24 nesota, Nebraska, North Dakota, Ohio, South
25 Dakota, and Wisconsin.

1 “(D) Region 4, South, consisting of the
2 States of Kansas, New Mexico, Oklahoma, and
3 Texas.

4 “(E) Region 5, Northwest, consisting of
5 the States of Colorado, Idaho, Montana, Or-
6 egon, Utah, Washington, and Wyoming.

7 “(F) Region 6, West, consisting of the
8 States of Arizona, California, and Nevada.

9 “(14) SECRETARY.—The term ‘Secretary’
10 means the Secretary of Agriculture, acting in con-
11 sultation with the Appeals Committee or Producer
12 Board (as appropriate).

13 “(15) STANDARD MARKET ACCESS FEE.—The
14 term ‘standard market access fee’ means a fee as-
15 sessed under section 143(b) on all milk produced by
16 a dairy facility.

17 **“SEC. 142. ESTABLISHMENT.**

18 “(a) ISSUANCE OF ORDERS.—

19 “(1) PROPOSED ORDER.—Not later than 60
20 days after the date of enactment of this subtitle, the
21 Secretary shall publish in the Federal Register a
22 proposed order to establish a program to be known
23 as the ‘Dairy Market Stabilization Program’ that
24 shall apply to all dairy facilities within the contig-

1 uous United States that produce milk for sale com-
 2 mercially.

3 “(2) FINAL ORDER.—After providing notice
 4 and opportunity for public comment on the proposed
 5 order under paragraph (1), but not later than 90
 6 days after publication of the proposed order, the
 7 Secretary shall issue an order to establish the Pro-
 8 gram.

9 “(3) REFERENDUM ON CONTINUATION OF PRO-
 10 GRAM.—

11 “(A) IN GENERAL.—Not later than 3 years
 12 after the date of enactment of this subtitle, the
 13 Secretary shall conduct a referendum among
 14 dairy producers who, during a representative
 15 period (as determined by the Secretary), have
 16 been engaged in the production of milk for com-
 17 mercial use, for the purpose of ascertaining
 18 whether the Program then in effect shall be
 19 continued.

20 “(B) VOTING PROCEDURE.—The Secretary
 21 shall conduct the following 2 rounds of voting
 22 in the referendum:

23 “(i) FIRST ROUND.—

24 “(I) IN GENERAL.—In the first
 25 round of voting, each dairy producer

1 shall be entitled to cast the vote of the
2 dairy producer.

3 “(II) PROHIBITION.—A coopera-
4 tive association of dairy producers
5 may not vote on behalf of the mem-
6 bers of the association.

7 “(ii) SECOND ROUND.—

8 “(I) IN GENERAL.—In the second
9 round of voting, a cooperative associa-
10 tion of dairy producers may vote on
11 behalf of those of the members of the
12 association who did not vote in the
13 first round.

14 “(II) PROHIBITION.—A coopera-
15 tive association of dairy producers
16 may not vote on behalf of the mem-
17 bers of the association who voted in
18 the first round.

19 “(C) DETERMINATION.—The Program
20 shall be continued after the date of the ref-
21 erendum only if the Secretary determines that
22 the Program has been approved by not less
23 than a majority of the eligible dairy producers
24 voting in the referendum.

“(D) TERMINATION.—If continuation of the Program is not approved by a majority of the eligible dairy producers voting in the referendum, the Secretary shall—

“(i) terminate the collection of fees under the Program not later than 180 days after the Secretary determines that termination is favored by a majority of the eligible producers voting in the referendum; and

“(ii) terminate the Program in an orderly manner as soon as practicable after that determination.

“(b) PRODUCER BOARD.—

“(1) IN GENERAL.—The order shall provide for the establishment of a board of directors to be known as the ‘Producer Board’ to advise the Secretary on administration of the Program.

“(2) COMPOSITION.—The Producer Board shall be composed of 15 members, of whom—

“(A) 12 shall be producers, of whom—

“(i) 6 producers shall be elected under paragraph (3)(A) based on region, with 1 member from each of the 6 dairy-producing regions in the United States; and

1 “(ii) 6 producers shall be elected
 2 under paragraph (3)(B) based on the geo-
 3 graphical distribution of milk production
 4 volume throughout the United States;

5 “(B) 1 shall represent dairy consumers;

6 “(C) 1 shall represent fluid milk bottlers;

7 and

8 “(D) 1 shall represent dairy product proc-
 9 essors.

10 “(3) ELECTION.—

11 “(A) REGIONAL REPRESENTATION.—

12 “(i) IN GENERAL.—The Secretary
 13 shall hold an election of dairy producers in
 14 each region to select the members of the
 15 Producer Board described in paragraph
 16 (2)(A)(i).

17 “(ii) VOTING.—Each dairy producer
 18 shall have 1 vote per region in which the
 19 dairy producer has a dairy.

20 “(iii) FIRST ROUND.—

21 “(I) IN GENERAL.—In the first
 22 round of voting, each dairy producer
 23 shall be entitled to cast the vote of the
 24 dairy producer.

1 “(II) PROHIBITION.—A coopera-
 2 tive association of dairy producers
 3 may not vote on behalf of the mem-
 4 bers of the association.

5 “(iv) SECOND ROUND.—

6 “(I) IN GENERAL.—In the second
 7 round of voting, a cooperative associa-
 8 tion of dairy producers may vote on
 9 behalf of those of the members of the
 10 association who did not vote in the
 11 first round.

12 “(II) PROHIBITION.—A coopera-
 13 tive association of dairy producers
 14 may not vote on behalf of the mem-
 15 bers of the association who voted in
 16 the first round.

17 “(B) GEOGRAPHICAL DISTRIBUTION OF
 18 MILK PRODUCTION VOLUME.—

19 “(i) IN GENERAL.—The Secretary
 20 shall determine which of the 6 dairy-pro-
 21 ducing regions in the United States shall
 22 hold an election of dairy producers to se-
 23 lect the members of the Producer Board
 24 described in paragraph (2)(A)(ii), based on
 25 the milk production volume of each region.

1 “(ii) VOTING.—Each dairy producer
 2 in a region selected under clause (i) shall
 3 have 1 vote per selected region in which
 4 the dairy producer has a dairy.

5 “(iii) VOTING PROCEDURE.—Each re-
 6 gion selected under clause (i) shall conduct
 7 2 rounds of voting under similar proce-
 8 dures to the procedures described in sub-
 9 paragraph (A)(iii).

10 “(4) ADVISOR.—

11 “(A) IN GENERAL.—The Secretary shall
 12 appoint a dairy economist to advise the Pro-
 13 ducer Board.

14 “(B) NONVOTING MEMBER.—The indi-
 15 vidual appointed under subparagraph (A) shall
 16 be a nonvoting member of the Producer Board.

17 “(c) PRODUCER APPEALS COMMITTEE.—The order
 18 shall require the Producer Board to establish a committee
 19 to be known as the ‘Producer Appeals Committee’ to ad-
 20 vise the Secretary on appeals of decisions made during the
 21 first year of operation of the Program.

22 **“SEC. 143. OPERATION OF THE PROGRAM.**

23 “(a) ESTABLISHMENT OF RATES, FEES, DIVIDENDS,
 24 AND INITIAL ALLOWABLE MILK MARKETINGS.—

1 “(1) IN GENERAL.—The order shall provide for
2 the establishment of rates and fees and the payment
3 of dividends in accordance with this section.

4 “(2) ALLOWABLE MILK MARKETINGS.—

5 “(A) IN GENERAL.—At least 30 days be-
6 fore the first day of each quarter, the Secretary
7 shall—

8 “(i) establish the quantity of allowable
9 milk marketings for each dairy facility;
10 and

11 “(ii) notify each dairy facility of the
12 quantity.

13 “(B) ESTABLISHMENT OF ALLOWABLE
14 MILK MARKETINGS DURING THE FIRST YEAR OF
15 THE PROGRAM.—

16 “(i) DAIRY FACILITIES THAT BEGAN
17 MARKETING MILK PRIOR TO 2007.—In the
18 case of a dairy facility that marketed milk
19 during the period beginning on January 1,
20 2007, and ending on the date of enactment
21 of this subtitle, the allowable milk mar-
22 ketings for the dairy facility during the
23 first year of operation of the Program shall
24 be, at the option of the dairy facility—

1 “(I) the average of the milk mar-
2 ketings for the corresponding quarters
3 of 2007, 2008, and 2009, as adjusted
4 to reflect the allowable milk marketing
5 growth rate; or

6 “(II) the milk marketings for the
7 corresponding quarter of 2009.

8 “(ii) OTHER DAIRY PRODUCERS.—In
9 the case of a dairy facility that did not
10 market milk during each of the calendar
11 years 2007, 2008, and 2009, but that is
12 marketing milk as of the date of enactment
13 of this Act, the initial establishment of al-
14 lowable milk marketings shall be—

15 “(I) established by the Secretary
16 in an amount determined by the Sec-
17 retary to be appropriate; and

18 “(II) subject to review by the Ap-
19 peals Committee.

20 “(C) ESTABLISHMENT OF ALLOWABLE
21 MILK MARKETINGS IN SUBSEQUENT YEARS.—
22 Except as otherwise provided in this subsection,
23 the quantity of allowable milk marketings for a
24 dairy facility under this subtitle shall be equal
25 to the quantity of milk commercially produced

by the dairy facility during the corresponding quarter during the previous calendar year, as adjusted to reflect the allowable milk marketing growth rate.

“(D) APPEAL.—A dairy producer may appeal to the Secretary the quantity of allowable milk marketings established for the dairy producer.

“(E) TRANSFERS OF ALLOWABLE MILK MARKETINGS.—The 1 or more owners of the milk-producing cows at a dairy facility may transfer, in full, the allowable milk marketings associated with the dairy facility to—

“(i) an individual or entity that purchases the dairy facility; or

“(ii) another dairy facility under the same ownership.

“(F) LEAP-YEAR ADJUSTMENT.—

“(i) IN GENERAL.—During a calendar year that consists of 366 days, $\frac{1}{90}$ th of the allowable milk marketings for the first quarter shall be added to the allowable milk marketings of each dairy facility.

“(ii) SUBSEQUENT YEAR.—Following a year described in subparagraph (A),

1 1/91st of the allowable milk marketings
 2 shall be subtracted from the allowable milk
 3 marketings of each dairy facility during
 4 the preceding year.

5 “(3) ALLOWABLE MILK MARKETING GROWTH
 6 RATE.—

7 “(A) ESTABLISHMENT OF ALLOWABLE
 8 MILK MARKETING GROWTH RATE.—At least 30
 9 days before the first day of each quarter, the
 10 Secretary, after considering any recommenda-
 11 tions made by the Producer Board, shall estab-
 12 lish the allowable milk marketing growth rate
 13 for the upcoming quarter based on the following
 14 table:

“Milk-Feed Ratio	Allowable milk marketing growth rate (in percent)
Milk-Feed Ratio greater than/equal to 2.00	3.00
Milk-Feed Ratio 1.75–1.99	0.00
Milk-Feed Ratio less than/equal to 1.74	–3.00.

15 “(B) MILK FEED RATIO.—For purposes of
 16 this paragraph and paragraph (4), the Sec-
 17 retary shall calculate a milk-feed ratio for a
 18 month using the same procedures used to cal-
 19 culate the milk-feed ratio on page 64 of the Ag-
 20 ricultural Prices report dated January 29,
 21 2010, of the National Agricultural Statistics
 22 Service of the Department of Agriculture (in-

1 cluding the data and factors noted in footnote
2 4).

3 “(C) QUARTERLY ANNOUNCEMENT OF THE
4 ALLOWABLE MILK MARKETING GROWTH
5 RATE.—For the purpose of announcing the
6 quarterly allowable milk marketing growth rate,
7 the Secretary shall use the simple average of
8 the 3 most recently available monthly figures
9 for the milk-feed ratio.

10 “(4) STANDARD AND ALTERNATIVE MARKET
11 ACCESS FEES.—

12 “(A) STANDARD MARKET ACCESS FEE.—

13 “(i) IN GENERAL.—At least 30 days
14 before the first day of each quarter, the
15 Secretary shall establish the standard mar-
16 ket access fee to be assessed on all com-
17 mercial milk production of a dairy facility
18 for that quarter.

19 “(ii) REQUIREMENT.—The standard
20 market access fee shall be based on the
21 number of hundredweights of raw milk
22 produced for commercial use, as deter-
23 mined by the Secretary.

24 “(iii) CALCULATION OF STANDARD
25 MARKET ACCESS FEE.—The standard mar-

1 ket access fee shall be determined using
 2 the following table:

“Milk-Feed Ratio	Market Access Fee
Milk-Feed Ratio greater than/equal to 3.00	\$0.03
Milk-Feed Ratio 2.50–2.99	\$0.13
Milk-Feed Ratio 2.00–2.49	\$0.25
Milk-Feed Ratio less than/equal to 1.99	\$0.50.

3 “(iv) QUARTERLY ANNOUNCEMENT OF
 4 THE MARKET ACCESS FEE.—For the pur-
 5 pose of announcing the quarterly standard
 6 market access fee, the Secretary shall use
 7 the simple average of the 3 most recently
 8 available monthly figures for the milk-feed
 9 ratio.

10 “(B) ALTERNATIVE ACCESS FEE.—The
 11 amount of the alternative market access fee to
 12 be assessed on all commercial milk production
 13 of a dairy facility that exceeds the allowable
 14 milk marketings of the dairy facility for a quar-
 15 ter shall be equal to the product obtained by
 16 multiplying—

17 “(i) 5; by

18 “(ii) the standard market access fee
 19 amount per hundredweight of milk.

20 “(5) REVISIONS.—

21 “(A) IN GENERAL.—The Secretary may
 22 make revisions to the calculations of the market

1 access fee and allowable milk marketing growth
 2 rate, but only if at least $\frac{2}{3}$ of the members of
 3 the Producer Board support the revisions.

4 “(B) CONSIDERATIONS.—For any revi-
 5 sions, the Secretary shall consider—

6 “(i) the economic conditions of the
 7 dairy industry in the United States;

8 “(ii) the economic conditions of the
 9 world dairy market;

10 “(iii) the commercial disappearance of
 11 fluid and manufactured milk products;

12 “(iv) the domestic on-farm cost of
 13 producing raw milk, including—

14 “(I) the cost of feed;

15 “(II) the cost of labor, including
 16 the reasonable value of the labor and
 17 management of the dairy producer;

18 “(III) machinery expenses;

19 “(IV) interest expenses; and

20 “(V) other cash expenses, includ-
 21 ing the cost of hauling, veterinary
 22 services and medicine, bedding and
 23 litter, marketing, custom services and
 24 supplies, fuel, lubrication, electricity,

1 machinery and building repairs, labor,
2 association fees, and assessments;

3 “(v)(I) the domestic mailbox milk
4 price paid to dairy farmers in the United
5 States; and

6 “(II) the margin between that milk
7 price and the domestic on-farm cost of pro-
8 ducing milk referred to in subsection (iv);

9 “(vi) other economic forces affecting
10 dairy producers;

11 “(vii) probable trends in production
12 and consumption of milk and milk prod-
13 ucts;

14 “(viii) the level of dairy farm prices in
15 relation to production costs;

16 “(ix) the financial condition of dairy
17 producers;

18 “(x) the costs and charges for pro-
19 ducing, hauling, handling, processing, dis-
20 tributing, selling, and conducting all other
21 services performed with respect to milk
22 and milk products;

23 “(xi) the international value of manu-
24 factured dairy products;

1 “(xii) the current United States im-
 2 port/export balance in dairy products;

3 “(xiii) any foreseen purchases by the
 4 Federal Government for nutrition pro-
 5 grams; and

6 “(xiv) any other economic indicator
 7 that the Secretary determines to be appro-
 8 priate.

9 “(b) COLLECTION OF MARKET ACCESS FEES.—

10 “(1) IN GENERAL.—During any quarter, a
 11 dairy facility that produces and markets milk in a
 12 quantity that is greater than the allowable milk mar-
 13 ketings of the dairy facility for that quarter shall be
 14 assessed the standard market access fee in the fol-
 15 lowing quarter unless, not later than 7 days after
 16 the end of the quarter, the dairy facility notifies in
 17 writing the appropriate local office of the Farm
 18 Services Agency of the intent of the dairy facility to
 19 pay the alternative market access fee in lieu of the
 20 standard market access fee.

21 “(2) NOTICE.—Not later than 25 days after the
 22 end of a quarter during which a dairy facility ex-
 23 ceeded the allowable milk marketings of the dairy fa-
 24 cility, the Secretary shall send to the dairy facility
 25 and to each of the milk handlers of the dairy facility

1 a notice that describes the market access fee to be
2 assessed against the dairy facility during the fol-
3 lowing quarter.

4 “(3) MILK HANDLERS.—

5 “(A) IN GENERAL.—Each milk handler of
6 a dairy facility notified under paragraph (2)
7 shall—

8 “(i) during the quarter for which the
9 milk handler receives the notice, collect an
10 assessment per hundredweight of milk
11 from the dairy facility in the amount of the
12 market access fee described in the notice;
13 and

14 “(ii) deposit the assessment amounts
15 into the protected account described in
16 subsection (d).

17 “(B) ALTERNATIVE MARKET ACCESS
18 FEE.—If a dairy facility notifies the appropriate
19 local office of the Farm Services Agency under
20 paragraph (1) of an intent to pay the alter-
21 native market access fee, the amount of the as-
22 sessment described in the notice under para-
23 graph (2) shall be—

1 “(i) deducted from the revenues of the
2 dairy facility in 3 equal monthly install-
3 ments; and

4 “(ii) deposited into the protected ac-
5 count described in subsection (d).

6 “(4) SUBSEQUENT OVERAGES.—If a dairy facil-
7 ity exceeds the allowable milk marketings of the
8 dairy facility in a quarter and any of the 4 subse-
9 quent quarters, the dairy facility shall be assessed a
10 market access fee in an amount that is equal to the
11 lesser of—

12 “(A) the market access fee announced
13 after the first quarter in which the dairy facility
14 exceeded the allowable milk marketings; or

15 “(B) the market access fee announced for
16 the 4 quarters in which the dairy facility subse-
17 quently exceeds the allowable milk marketings
18 of the dairy facility.

19 “(5) RESPONSIBILITY.—The milk handler for
20 the 1 or more owners of the milk-producing cows at
21 a dairy facility that receives a notice under para-
22 graph (2) shall give notice to the owners that the
23 market access fees shall be—

24 “(A) deducted from the proceeds of the
25 dairy facility; and

1 “(B) submitted to the local office of the
2 Farm Services Agency with which the owners
3 have registered.

4 “(c) PAYMENT OF MARKET ACCESS FEE DIVI-
5 DENDS.—

6 “(1) IN GENERAL.—During any quarter, a
7 dairy facility that produces and markets a quantity
8 of milk that is less than or equal to the allowable
9 milk marketings of the dairy facility for that quarter
10 shall be entitled to receive a market access fee divi-
11 dend in an amount based on the ratio that—

12 “(A) each hundredweight of allowable milk
13 marketings produced during that quarter at the
14 dairy facility; bears to

15 “(B) total hundredweights produced by all
16 facilities that did not exceed the applicable al-
17 lowable milk marketings during that quarter.

18 “(2) TOTAL AMOUNT.—The total amount of
19 market access fee dividends available during a quar-
20 ter shall be equal to the cumulative market access
21 fees collected under this subtitle for a quarter.

22 “(3) DISTRIBUTION.—

23 “(A) IN GENERAL.—The market access fee
24 dividends for a quarter shall be distributed to

1 each qualifying dairy facility not later than 30
2 days after the last day of the following quarter.

3 “(B) ELIGIBILITY.—The 1 or more owners
4 of the milk-producing cows at a dairy facility
5 described in paragraph (1) shall be eligible to
6 receive any market access fee dividends paid to
7 the dairy facility under this subsection.

8 “(C) PAYMENT.—Payment of market ac-
9 cess fee dividends shall be by check or direct
10 deposit.

11 “(d) ADMINISTRATION.—Amounts collected by milk
12 handlers under subsection (b) shall be deposited into a
13 protected account established by the Secretary from which
14 amounts may not be withdrawn other than for distribution
15 as market access fee dividends.”.

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