

111TH CONGRESS
2D SESSION

H. R. 5288

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

IN THE HOUSE OF REPRESENTATIVES

MAY 12, 2010

Mr. COSTA (for himself, Mr. WELCH, Mr. COURTNEY, Mr. LARSEN of Washington, and Mr. LARSON of Connecticut) introduced the following bill; which was referred to the Committee on Agriculture

A BILL

To amend the Dairy Production Stabilization Act of 1983 to establish a dairy price 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 Price Stabiliza-
5 tion Program Act of 2010”.

6 **SEC. 2. DAIRY PRICE 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 new subtitle:

1 **“Subtitle D—Dairy Price**
2 **Stabilization Program**

3 **“SEC. 141. DEFINITIONS.**

4 “In this subtitle:

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

10 “(2) ALLOWABLE MILK MARKETING GROWTH
11 RATE.—The term ‘allowable milk marketing growth
12 rate’ means the allowable milk marketing growth
13 rate established by the Secretary for the applicable
14 quarter under section 143(b)(1).

15 “(3) ALTERNATIVE MARKET ACCESS FEE.—The
16 term ‘alternative market access fee’ means a fee de-
17 scribed in section 143(b)(2) that is assessed on all
18 milk produced in excess of the allowable milk mar-
19 ketings of a dairy facility.

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

23 “(5) DAIRY FACILITY.—The term ‘dairy facil-
24 ity’ means an operation on a property, or set of
25 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(e).

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.—The term ‘producer’ means
16 all persons engaged in the production of bovine milk
17 for commercial use. All producers holding a milk li-
18 cense shall be included.

19 “(10) PRODUCER BOARD.—The term ‘Producer
20 Board’ means the Producer Board established under
21 section 142(b).

22 “(11) PROGRAM.—The term ‘Program’ means
23 the Dairy Price Stabilization Program established
24 under section 142(a).

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

3 “(A) January 1 through March 31.

4 “(B) April 1 through June 30.

5 “(C) July 1 through September 30.

6 “(D) October 1 through December 31.

7 “(13) REGION.—The term ‘region’ means each
8 of the following

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

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

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

23 “(D) Region 4, South, consisting of the
24 States of Kansas, New Mexico, Oklahoma, and
25 Texas.

1 “(E) Region 5, Northwest, consisting of
2 the States of Colorado, Idaho, Montana, Or-
3 regon, Utah, Washington, and Wyoming.

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

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

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

14 **“SEC. 142. ESTABLISHMENT.**

15 “(a) ISSUANCE OF ORDERS.—

16 “(1) PROPOSED ORDER.—Not later than 60
17 days after the date of the enactment of this subtitle,
18 the Secretary shall publish in the Federal Register
19 a proposed order to establish a program to be known
20 as the ‘Dairy Price Stabilization Program’ that shall
21 apply to all dairy facilities within the contiguous
22 United States that produce milk for sale commer-
23 cially.

24 “(2) REFERENDUM ON PROPOSED ORDER.—
25 Not later than 90 days after the date of the enact-

1 ment of this subtitle, the Secretary shall conduct a
2 referendum among producers who, during a rep-
3 resentative period (as determined by the Secretary),
4 have been engaged in the production of milk for
5 commercial use for the purpose of ascertaining
6 whether the proposed order shall take effect. The
7 Program shall be implemented only if the Secretary
8 determines that it has been approved by not less
9 than a majority of the eligible producers voting in
10 the referendum. If implementation of the Program is
11 not approved by a majority of the eligible producers
12 voting in the referendum, the Secretary may not
13 issue a final order to establish the Program. To de-
14 termine the approval or disapproval of producers,
15 the Secretary shall consider the approval or dis-
16 approval by any cooperative association of producers,
17 engaged in a bona fide manner in marketing milk or
18 the products thereof, as the approval or disapproval
19 of the producers who are members of or under con-
20 tract with such cooperative association of producers.
21 If a cooperative association of producers elects to
22 vote on behalf of its members, such cooperative asso-
23 ciation shall provide each producer, on whose behalf
24 the cooperative association is expressing approval or
25 disapproval, a description of the question presented

1 in the referendum together with a statement of the
2 manner in which the cooperative association intends
3 to cast its vote on behalf of the membership. Such
4 information shall inform the producer of procedures
5 to follow to cast an individual ballot should the pro-
6 ducer so choose within the period of time established
7 by the Secretary for casting ballots. Such notifica-
8 tion shall be made at least 30 days before the ref-
9 erendum and shall include an official ballot. The bal-
10 lots shall be tabulated by the Secretary and the vote
11 of the cooperative association shall be adjusted to re-
12 flect the individual votes.

13 “(3) FINAL ORDER.—If the Secretary deter-
14 mines that the proposed order has been approved by
15 not less than a majority of the eligible producers
16 voting in the referendum required by paragraph (2),
17 the Secretary shall issue, not later than 30 days
18 after such determination, a final order to establish
19 the Program.

20 “(4) REFERENDUM ON CONTINUATION OF PRO-
21 GRAM.—Not later than 3 years after the date of the
22 enactment of this subtitle, the Secretary shall con-
23 duct a referendum among producers who, during a
24 representative period (as determined by the Sec-
25 retary), have been engaged in the production of milk

1 for commercial use, for the purpose of ascertaining
2 whether the Program then in effect shall be contin-
3 ued. The program shall be continued only if the Sec-
4 retary determines that it has been approved by not
5 less than a majority of the eligible producers voting
6 in the referendum. If continuation of the Program is
7 not approved by a majority of the eligible producers
8 voting in the referendum, the Secretary shall termi-
9 nate collection of fees under the Program within six
10 months after the Secretary determines that such ac-
11 tion is favored by a majority of the eligible pro-
12 ducers voting in the referendum and shall terminate
13 the program in an orderly manner as soon as prac-
14 ticable after such determination.

15 “(b) PRODUCER BOARD.—

16 “(1) IN GENERAL.—The order shall provide for
17 the establishment of a board of directors to be
18 known as the ‘Producer Board’ to advise the Sec-
19 retary on administration of the Program.

20 “(2) COMPOSITION.—The Producer Board shall
21 be composed of 30 members, of whom—

22 “(A) 24 shall be producers, of whom—

23 “(i) 12 producers shall be appointed
24 based upon region, with 2 members from

1 each of the 6 dairy producing regions in
2 the United States; and

3 “(ii) 12 producers shall be appointed
4 based upon the geographical distribution of
5 milk production volume throughout the
6 United States;

7 “(B) 2 shall represent dairy consumers;

8 “(C) 2 shall represent fluid milk bottlers;

9 and

10 “(D) 2 shall represent dairy product proc-
11 essors.

12 “(3) APPOINTMENT.—The Secretary shall ap-
13 point the members of the Producer Board after con-
14 sidering any nominations submitted by interested
15 parties.

16 “(4) ADVISOR.—

17 “(A) IN GENERAL.—The Secretary shall
18 appoint a dairy economist to advise the Pro-
19 ducer Board.

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

23 “(c) PRODUCER APPEALS COMMITTEE.—The order
24 shall require the Producer Board to establish a committee
25 to be known as the ‘Producer Appeals Committee’ to ad-

1 vise the Secretary on appeals of decisions made during the
2 first year of operation of the Program.

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

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

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

9 “(2) INITIAL ESTABLISHMENT OF ALLOWABLE
10 MILK MARKETINGS.—The initial establishment of al-
11 lowable milk marketings for a dairy facility under
12 this subtitle shall be based on the highest of the annual
13 milk marketings of the dairy facility from the cal-
14 endar year ending—

15 “(A) December 31, 2007;

16 “(B) December 31, 2008; or

17 “(C) December 31, 2009.

18 “(b) ESTABLISHMENT OF RATES AND FEES.—

19 “(1) ALLOWABLE MILK MARKETING GROWTH
20 RATE.—

21 “(A) CALCULATION OF ALLOWABLE MILK
22 MARKETING.—The allowable milk marketings of
23 a dairy facility for a quarter shall be equal to
24 the quantity of milk commercially produced by
25 the dairy facility during the corresponding

1 quarter during the previous calendar year, as
 2 adjusted to reflect the allowable milk marketing
 3 growth rate for the quarter.

4 “(B) CALCULATION OF ALLOWABLE MILK
 5 MARKETING GROWTH RATE.—At least 30 days
 6 before the first day of each quarter, the Sec-
 7 retary, after considering any recommendations
 8 made by the Producer Board, shall establish the
 9 allowable milk marketing growth rate for the
 10 upcoming quarter based on the following 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

11 “(C) MILK FEED RATION.—For purposes
 12 of this paragraph and paragraph (2)(A), the
 13 Secretary shall calculate a milk feed ratio for a
 14 month using the same procedures used to cal-
 15 culate the milk feed ratio on page 64 of the
 16 USDA January 2010 Agricultural Prices publi-
 17 cation (including the data and factors noted in
 18 footnote 4).

19 “(D) QUARTERLY ANNOUNCEMENT OF
 20 THE ALLOWABLE MILK MARKETING GROWTH
 21 RATE.—For the purpose of announcing the
 22 quarterly allowable milk marketing growth rate,

1 the Secretary shall use the simple average of
 2 the three most recently available monthly fig-
 3 ures for the milk feed ratio.

4 “(2) STANDARD AND ALTERNATIVE MARKET
 5 ACCESS FEES.—

6 “(A) STANDARD MARKET ACCESS FEE.—

7 “(i) IN GENERAL.—At least 30 days
 8 before the first day of each quarter, the
 9 Secretary shall establish the standard mar-
 10 ket access fee to be assessed on all com-
 11 mercial milk production of a dairy facility
 12 for that quarter.

13 “(ii) REQUIREMENT.—The standard
 14 market access fee shall be based on the
 15 number of hundredweights of raw milk
 16 produced for commercial use, as deter-
 17 mined by the Secretary.

18 “(iii) CALCULATION OF STANDARD
 19 MARKET ACCESS FEE.—The standard mar-
 20 ket access fee shall be determined using
 21 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

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

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

15 “(i) 5; by

16 “(ii) the standard market access fee
17 amount per hundredweight of milk.

18 “(3) REVISIONS.—The Secretary may make re-
19 visions to the calculations of the market access fee
20 and allowable milk marketing growth rate, but only
21 if at least two-thirds of the members of the Producer
22 Board support the revisions. For any revisions, the
23 Secretary shall consider—

24 “(A) the economic conditions of the dairy
25 industry in the United States;

1 “(B) the economic conditions of the world
2 dairy market;

3 “(C) the commercial disappearance of fluid
4 and manufactured milk products;

5 “(D) the domestic on-farm cost of pro-
6 ducing raw milk;

7 “(E) the domestic farm-gate milk price
8 paid to dairy farmers in the United States;

9 “(F) the international value of manufac-
10 tured dairy products;

11 “(G) the current United States import/ex-
12 port balance in dairy products;

13 “(H) any foreseen purchases by the Fed-
14 eral Government for nutrition programs; and

15 “(I) any other economic indicator that the
16 Secretary determines to be appropriate.

17 “(c) ALLOWABLE MILK MARKETINGS.—

18 “(1) IN GENERAL.—At least 30 days before the
19 first day of each quarter, the Secretary shall—

20 “(A) establish the quantity of allowable
21 milk marketings for each dairy facility; and

22 “(B) notify each dairy facility of the quan-
23 tity.

24 “(2) APPEAL.—A dairy facility may appeal to
25 the Secretary any discrepancy in the quantity of al-

1 allowable milk marketings established for the dairy fa-
2 cility.

3 “(3) TRANSFERS OF ALLOWABLE MILK MAR-
4 KETINGS.—The 1 or more owners of the milk-pro-
5 ducing cows at a dairy facility may transfer, in full,
6 the allowable milk marketings associated with the
7 dairy facility to—

8 “(A) an individual or entity that purchases
9 the dairy facility; or

10 “(B) another dairy facility under the same
11 ownership.

12 “(4) LEAP-YEAR ADJUSTMENT.—

13 “(A) EFFECT OF LEAP YEAR.—During a
14 calendar year that consists of 366 days, $\frac{1}{90}$ th
15 of the allowable milk marketings for the first
16 quarter shall be added to the allowable milk
17 marketings of each dairy producer.

18 “(B) SUBSEQUENT YEAR.—Following a
19 year described in subparagraph (A), $\frac{1}{91}$ st of
20 the allowable milk marketings shall be sub-
21 tracted from the allowable milk marketings of
22 each dairy producer during the preceding year.

23 “(d) COLLECTION OF MARKET ACCESS FEES.—

24 “(1) IN GENERAL.—During any quarter, a
25 dairy facility that produces and markets milk in a

1 quantity that is greater than the allowable milk mar-
2 ketings of the dairy facility for that quarter shall be
3 assessed the standard market access fee in the fol-
4 lowing quarter unless, not later than 7 days after
5 the end of the quarter, the dairy facility notifies in
6 writing the appropriate local office of the Farm
7 Services Agency of the intent of the dairy facility to
8 pay the alternative market access fee in lieu of the
9 standard market access fee.

10 “(2) NOTICE.—Not later than 25 days after the
11 end of a quarter during which a dairy facility ex-
12 ceeded the allowable milk marketings of the dairy fa-
13 cility, the Secretary shall send to the dairy facility
14 and to each of the milk handlers of the dairy facility
15 a notice that describes the market access fee to be
16 assessed against the dairy facility during the fol-
17 lowing quarter.

18 “(3) MILK HANDLERS.—

19 “(A) IN GENERAL.—Each milk handler of
20 a dairy facility notified under paragraph (2)
21 shall—

22 “(i) during the quarter in which the
23 milk handler receives the notice, collect an
24 assessment per hundredweight of milk
25 from the dairy facility in the amount of the

1 market access fee described in the notice;
2 and

3 “(ii) deposit the assessment amounts
4 into the protected account described in
5 subsection (f).

6 “(B) ALTERNATIVE MARKET ACCESS
7 FEE.—If a dairy facility notifies the appropriate
8 local office of the Farm Services Agency under
9 paragraph (1) of an intent to pay the alter-
10 native market access fee, the amount of the as-
11 sessment described in the notice under para-
12 graph (2) shall be—

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

16 “(ii) deposited into the protected ac-
17 count described in subsection (f).

18 “(4) SUBSEQUENT OVERAGES.—If a dairy facil-
19 ity exceeds the allowable milk marketings of the
20 dairy facility in a quarter and any of the 4 subse-
21 quent quarters, the dairy facility shall be assessed a
22 market access fee in an amount that is equal to the
23 lesser of—

1 “(A) the market access fee announced
2 after the first quarter in which the dairy facility
3 exceeded the allowable milk marketings; or

4 “(B) the market access fee announced for
5 the 4 quarters in which the dairy facility subse-
6 quently exceeds the allowable milk marketings
7 of the dairy facility.

8 “(5) RESPONSIBILITY.—The milk handler for
9 the 1 or more owners of the milk-producing cows at
10 a dairy facility that receives a notice under para-
11 graph (2) shall give notice to the owners that the
12 market access fees shall be—

13 “(A) deducted from the proceeds of the
14 dairy facility; and

15 “(B) submitted to the local office of the
16 Farm Services Agency with which the owners
17 have registered.

18 “(e) PAYMENT OF MARKET ACCESS FEE DIVI-
19 DENDS.—

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

1 “(A) each hundredweight of allowable milk
2 marketings produced during that quarter at the
3 dairy facility; bears to

4 “(B) total hundredweights produced by all
5 facilities that did not exceed their allowable
6 milk marketings during that quarter.

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

11 “(3) DISTRIBUTION.—

12 “(A) IN GENERAL.—The market access fee
13 dividends for a quarter shall be distributed to
14 each qualifying dairy facility not later than 30
15 days after the last day of the following quarter.

16 “(B) ELIGIBILITY.—The 1 or more owners
17 of the milk-producing cows at a dairy facility
18 described in paragraph (1) shall be eligible to
19 receive any market access fee dividends paid to
20 the dairy facility under this subsection.

21 “(C) PAYMENT.—Payment of market ac-
22 cess fee dividends shall be by check or direct
23 deposit.

24 “(f) ADMINISTRATION.—Amounts collected by milk
25 handlers under subsection (d) shall be deposited into a

1 protected account established by the Secretary from which
2 amounts may not be withdrawn other than for distribution
3 as market access fee dividends.”.

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