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

IN THE SENATE OF THE UNITED STATES

introduced the following bill; which was read twice and referred to the Committee on

A BILL

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

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Dairy Price Stabilization Program Act of 2010”.

SEC. 2. DAIRY PRICE STABILIZATION.

The Dairy Production Stabilization Act of 1983 (7 U.S.C. 1421 note; title I of Public Law 98-189) is amended by adding at the end the following:
Subtitle D—Dairy Price Stabilization

SEC. 141. DEFINITIONS.

“In this subtitle:

“(1) ALLOWABLE MILK MARKETING.—The term ‘allowable milk marketing’ means the quantity of milk production that dairy producers may produce during a quarter without incurring a price stabilization payment.

“(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(b)(1).

“(3) ALTERNATIVE PRICE STABILIZATION PAYMENT.—The term ‘alternative price stabilization payment’ means a fee described in section 143(d)(3) that is assessed on all milk produced by a dairy producer.

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

“(5) DAIRY PRODUCER.—The term ‘dairy producer’ means any person engaged in the production of milk for commercial use.
“(6) MILK HANDLER.—The term ‘milk handler’ means a person that makes payments to a dairy producer for milk produced in the United States and purchased from the dairy producer for commercial use.

“(7) NEW DAIRY PRODUCER.—The term ‘new dairy producer’ means any person that, as of the date of enactment of this subtitle, does not have an interest in ownership in milk-producing cows.

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

“(9) PRICE STABILIZATION DIVIDEND.—The term ‘price stabilization dividend’ means the price stabilization payments collected during an applicable quarter that are redistributed to dairy producers with allowable milk marketings under section 143(f).

“(10) PRICE STABILIZATION PAYMENT.—The term ‘price stabilization payment’ means a fee assessed under section 143(e) on all milk produced in excess of the allowable milk marketings of a dairy producer.

“(11) PRODUCER BOARD.—The term ‘Producer Board’ means the Producer Board established under section 142(b).
“(12) PROGRAM.—The term ‘Program’ means the Dairy Price Stabilization Program established under section 142(a).

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

“(A) January 1 through March 31.
“(B) April 1 through June 30.
“(C) July 1 through September 30.
“(D) October 1 through December 31.

“(14) REGION.—The term ‘region’ means each of—

“(A) the Western region, consisting of the States of Alaska, California, Hawaii, Oregon, and Washington;
“(B) the Intermountain region, consisting of the States of Arizona, Colorado, Idaho, Nevada, New Mexico, Montana, Utah, and Wyoming;
“(C) the Upper Midwest region, consisting of the States of Illinois, Indiana, Iowa, Michigan, Minnesota, North Dakota, South Dakota, and Wisconsin;
“(D) the Southern region, consisting of the States of Alabama, Arkansas, Florida, Georgia, Kansas, Kentucky, Louisiana, Mississippi, Mis-
souri, Nebraska, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia; and

“(E) the Northeastern region, consisting of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, and Vermont;

“(15) SECRETARY.—The term ‘Secretary’ means the Secretary of Agriculture, acting in consultation with the Appeals Committee or Producer Board (as appropriate).

“SEC. 142. ESTABLISHMENT.

“(a) ISSUANCE OF ORDERS.—

“(1) IN GENERAL.—Not later than days after the effective date of this subtitle, the Secretary shall publish in the Federal Register a proposed order to establish a program to be known as the ‘Dairy Price Stabilization Program’ that shall apply to all dairy producers within the United States that produce milk for sale commercially.

“(2) FINAL ORDER.—After providing notice and opportunity for public comment on the proposed order under paragraph (1), but not later than 90 days after publication of the proposed order, the
Secretary shall issue an order to establish the Program.

“(3) Referendum on continuation of Program.—

“(A) In general.—Not later than 3 years after the date of enactment of this subtitle, the Secretary shall conduct a referendum among dairy producers who, during a representative period (as determined by the Secretary), have been engaged in the production of milk for commercial use, for the purpose of ascertaining whether the Program then in effect shall be continued.

“(B) Individual voting required.—

“(i) In general.—Each dairy producer shall be required to cast the vote of the dairy producer in the referendum.

“(ii) Prohibition.—For purposes of the referendum, a cooperative association of dairy producers may not vote on behalf of the members of the association.

“(C) Determination.—The Program shall be continued after the date of the referendum only if the Secretary determines that the Program has been approved by not less
than a majority of the eligible dairy producers 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 13 members, of whom—

“(A) 10 shall be dairy producers, with 2 from each region;

“(B) 1 shall represent dairy consumers;
“(C) I shall represent fluid milk bottlers;

and

“(D) I shall represent dairy product processors.

“(3) ELECTION.—

“(A) In general.—The Secretary shall hold an election of dairy producers in each region to select the members of the Producer Board.

“(B) Voting.—Each dairy producer shall have 1 vote per region in which the dairy producer has a dairy.

“(C) Individual voting required.—

“(i) In general.—Each dairy producer shall be required to cast the vote of the dairy producer in the selecting members of the Producer Board.

“(ii) Prohibition.—For purposes of selecting members under subparagraph (A), a cooperative association of dairy producers may not vote on behalf of the members of the association.

“(4) Advisor.—
“(A) IN GENERAL.—The Secretary shall appoint a dairy economist to advise the Producer Board.

“(B) NONVOTING MEMBER.—The individual appointed under subparagraph (A) shall be a nonvoting member of the Producer Board.

“(5) EQUAL REPRESENTATION.—Dairy producer members of the Producer Board—

“(A) may collectively represent not more than 1 milk handler; and

“(B) shall be nominated representatives of 10 unique dairy organizations.

“(c) PRODUCER APPEALS COMMITTEE.—The order shall require the Producer Board to establish a committee to be known as the ‘Producer Appeals Committee’ to advise the Secretary on appeals of decisions made under the Program.

“SEC. 143. OPERATION OF THE PROGRAM.

“(a) Etablissement of Rates and Fees.—

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

“(2) CONSIDERATIONS.—In carrying out this section, the Secretary and the Producer Board shall consider—
“(A) the economic conditions of the dairy industry in the United States;

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

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

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

“(i) the cost of feed;

“(ii) the cost of hay, silage, pasture, and other forage;

“(iii) the cost of labor, including the reasonable value of the labor and management of the dairy producer;

“(iv) machinery expenses;

“(v) interest expenses; and

“(vi) other cash expenses, including the cost of hauling, veterinary services and medicine, bedding and litter, marketing, custom services and supplies, fuel, lubrication, electricity, machinery and building repairs, labor, association fees, and assessments;

“(E) the domestic mailbox milk price paid to dairy farmers in the United States;
“(F) other economic forces affecting dairy producers;
“(G) probable trends in production and consumption of milk and milk products;
“(H) the level of dairy farm prices in relation to production costs;
“(I) the financial condition of dairy producers;
“(J) the costs and charges for producing, hauling, handling, processing, distributing, selling, and conducting all other services performed with respect to milk and milk products;
“(K) the international value of manufactured dairy products;
“(L) the current United States import-export balance, in pounds, in dairy products;
“(M) any estimated purchases of dairy products by the Federal Government for nutrition programs; and
“(N) any other economic indicator that the Secretary or the Producer Board determines to be appropriate.

“(b) Establishment of Price Stabilization Payment and Allowable Milk Marketing Growth Rate.—
“(1) IN GENERAL.—Each quarter, the Secretary shall use the most accurate available economic modeling data to establish a price stabilization payment and allowable milk marketing growth rate that, to the maximum extent practicable—

“(A) reduces volatility in the all milk price; and

“(B) stabilizes the all milk price at or above the marginal cost of milk production.

“(2) ADJUSTMENTS.—Each quarter—

“(A) the Producer Board shall—

“(i) meet to review the appropriateness of the price stabilization payment and allowable milk marketing growth rate; and

“(ii) after consideration of data and analysis provided by the Secretary, make recommendations for any changes in the price stabilization payment and allowable milk marketing growth rate that at least 60 percent of the members of the Producer Board vote affirmatively to recommend; and

“(B) the Secretary shall implement the recommendations developed by the Producer Board under subparagraph (A)(ii).
“(c) ALLOWABLE MILK MARKETINGS.—

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

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

“(B) notify each dairy producer of the quantity.

“(2) ESTABLISHMENT OF ALLOWABLE MILK MARKETINGS DURING THE FIRST YEAR OF THE DAIRY PRICE STABILIZATION PROGRAM.—

“(A) DAIRY PRODUCERS WHO BEGAN MARKETING MILK PRIOR TO 2007.—In the case of a dairy producer that marketed milk during each of calendar years 2007, 2008, and 2009, the allowable milk marketings of the dairy producer for the initial calendar year shall be equal to the average quantity of milk marketings for each of calendar years 2007, 2008, and 2009, as adjusted to reflect the allowable milk marketing growth rate.

“(B) OTHER DAIRY PRODUCERS.—In the case of a dairy producer that has not marketed milk during each of the calendar years 2007, 2008, and 2009, but that is marketing milk as of the date of enactment of this Act, the initial
establishment of allowable milk marketings shall be—

“(i) established by the Secretary in an amount determined by the Secretary to be appropriate; and

“(ii) subject to review by the Appeals Committee.

“(3) Establishment of allowable milk marketings in subsequent years.—Except as otherwise provided in this subsection, the quantity of allowable milk marketings for a dairy producer under this subtitle shall be equal to the quantity of milk commercially produced by the dairy producer during the corresponding quarter during the previous calendar year, as adjusted to reflect the allowable milk marketing growth rate.

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

“(5) Transfers of allowable milk marketings.—Allowable milk marketings may be transferred from 1 dairy producer to another dairy producer if the 1 or more owners of the current and prospective dairy facilities agree and file the transfer of allowable milk marketings with the Secretary.
“(6) LEAP-YEAR ADJUSTMENT.—

“(A) 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 producer.

“(B) SUBSEQUENT YEAR.—Following a year described in subparagraph (A), \(\frac{1}{91}\)st of the allowable milk marketings shall be subtracted from the allowable milk marketings of each dairy producer during the preceding year.

“(7) ADMINISTRATIVE COSTS.—

“(A) IN GENERAL.—The Secretary may assess on all allowable milk marketings not more than 2 cents per hundredweight for the administrative costs of carrying out this subtitle.

“(B) NOTICE.—Not later than 15 days after the end of each quarter, the Secretary shall send to the dairy producer and to each of the milk handlers of the dairy producer a notice that describes the administrative costs to be assessed against the dairy producer during the following quarter.
“(C) MILK HANDLERS.—Each milk handler of a dairy producer notified under subparagraph (B) shall—

“(i) collect an assessment from the dairy producer during the quarter following the notice in the amount of the administrative costs described in the notice; and

“(ii) submit the assessment amounts to the Secretary for deposit into the protected account described in subsection (g).

“(d) PRICE STABILIZATION PAYMENT.—

“(1) IN GENERAL.—Each quarter, in accordance with subsection (b), the Secretary shall establish a price stabilization payment to be assessed on the commercial milk production of a dairy producer that exceeds the allowable milk marketings of the dairy producer for that quarter.

“(2) REQUIREMENT.—The price stabilization payment shall be assessed on the number of hundredweights of raw milk produced for commercial use that exceeds the allowable milk marketings of the dairy producer for the applicable quarter, as determined by the Secretary.
“(3) Alternative price stabilization payment.—The alternative price stabilization payment to be assessed for a dairy producer that makes an election under subsection (e)(1)(B) shall be—

“(A) at a rate of 1/2 of the standard price stabilization payment established under paragraph (1); and

“(B) assessed on all commercial milk production of the dairy producer for the quarter.

“(e) Collection of price stabilization payments.—

“(1) Assessment.—

“(A) In general.—Except as provided in subparagraph (B), during any quarter, a dairy producer that produces and markets milk in a quantity that is greater than the allowable milk marketings of the dairy producer for that quarter shall be assessed a price stabilization payment on the excess milk.

“(B) Alternative price stabilization payment.—Not later than 15 days after the end of any quarter described in subparagraph (A), a dairy producer may elect to notify in writing the appropriate local office of the Farm Services Agency of the intent of the dairy pro-
ducer to pay an alternative price stabilization payment in lieu of the standard price stabilization payment.

“(C) NEW DAIRY PRODUCERS.—A new dairy producer shall submit to the Secretary for the first year of milk marketings price stabilization payments in split payments, of which—

“(i) \( \frac{1}{2} \) shall be due during the first year of operation of the dairy producer; and

“(ii) \( \frac{1}{2} \) shall be due during the second year of operation of the dairy producer.

“(2) NOTICE.—Not later than 30 days after the end of a quarter during which the dairy producer exceeded the allowable milk marketings of the dairy producer, the Secretary shall send to the dairy producer and to each of the milk handlers of the dairy producer a notice that describes the price stabilization payment or, as appropriate, the alternative price stabilization payment, to be assessed against the dairy producer during the following quarter.

“(3) MILK HANDLERS.—Each milk handler of a dairy producer notified under paragraph (2) shall—

“(A) collect an assessment from the dairy producer during the quarter following the notice
in the amount of the price stabilization pay-
ment or, as appropriate, the alternative price sta-
bilization payment, described in the notice; and

“(B) submit the assessment amounts to
the Secretary for deposit into the protected ac-
count described in subsection (g).

“(4) RESPONSIBILITY.—The milk handler of a
dairy producer shall be responsible for providing no-
tice to the dairy producer that the price stabilization
payments will be—

“(A) deducted from the proceeds of the
producer; and

“(B) submitted to the Secretary.

“(5) INADVERTENT EXPANSION FORM.—

“(A) IN GENERAL.—If a dairy producer
exceeds the allowable milk marketings of the
dairy producer during a quarter, but does not
plan to exceed the cumulative annual allowable
milk marketings of the dairy producer, the
dairy producer shall file with the Secretary an
inadvertent expansion form.

“(B) REFUND.—At the end of the cal-
endar year, if the Secretary determines that the
actual milk marketings of the dairy producer
that submitted an inadvertent expansion form
under subparagraph (A) were equal to or less than the allowable milk marketings of the dairy producer for that calendar year, all surplus price stabilization payments collected during that calendar year shall be refunded to the dairy producer not later than 30 days after the date of the determination.

“(C) APPEAL.—A dairy producer may appeal to the Secretary the quantity of any price stabilization payments refunded to the dairy producer.

“(6) PREVENTION OF ABUSE.—

“(A) IN GENERAL.—The Secretary shall promulgate regulations to prevent abuse of this section and to ensure that dairy producers do not form other entities, including through spin-off or divestiture, in anticipation of electing alternative price stabilization payments under this subsection.

“(B) REMEDY.—In any case in which the Secretary determines that a dairy producer has formed another entity in anticipation of electing alternative price stabilization payments, the Secretary shall disregard the new entity in determining payments under this section.
“(f) Payment of Price Stabilization Dividends.—

“(1) In General.—During any quarter, a dairy producer that produces and markets a quantity of milk that is less than or equal to the allowable milk marketings of the dairy producer for that quarter shall be entitled to receive a price stabilization dividend in an amount based on the ratio that—

“(A) each hundredweight of allowable milk marketings produced during the quarter by the dairy producer; bears to

“(B) each hundredweight of milk produced commercially throughout the United States by dairy producers that stayed within the allowable milk marketings of the dairy producers during the quarter.

“(2) Total Amount.—The total amount of price stabilization dividends available during a quarter shall be equal to the difference between—

“(A) the cumulative price stabilization payments collected under this subtitle for a quarter; and
“(B) any price stabilization payments collected from dairy producers that filed an inadvertent expansion form under subsection (e)(6).

“(3) DISTRIBUTION.—

“(A) IN GENERAL.—The price stabilization dividends for a quarter shall be distributed to each qualifying dairy producer not later than 30 days after the last day of the following quarter.

“(B) ELIGIBILITY.—A dairy producer described in paragraph (1) shall be eligible to receive any price stabilization dividends paid to the dairy producer under this subsection.

“(C) PAYMENT.—Payment of price stabilization dividends shall be by check or direct deposit.

“(g) ADMINISTRATION.—Amounts collected by milk handlers under subsection (e) shall be deposited into a protected account established by the Secretary from which amounts may not be withdrawn other than for distribution as price stabilization dividends.

“SEC. 144. EFFECTIVE DATE.

“This subtitle shall be effective beginning on the first day of the first full quarter immediately following the date of enactment of this subtitle.”.