

H.R. 5288, the “Dairy Price Stabilization Act of 2010”

Addressing Concerns Laid Out By Western United Dairymen

BACKGROUND INFORMATION

In a recent article in the *Hanford Sentinel*, a statement was made that Western United Dairymen had “submitted several concerns to [Rep. Jim] Costa last year that have gone unanswered.”

In fact, a letter was sent by Western United Dairymen to Rep. Costa, dated October 19, 2009, with a list of eleven concerns about the preliminary drafts of what would eventually become H.R. 5288, the “Dairy Price Stabilization Act of 2010.” According to the October 19th letter, the “*suggestions and comments were developed by a WUD sub-committee of producer members who met on October 5, 2009. The board of directors reviewed and approved the comments on October 16, 2009.*”

On January 8, 2010, representatives from Western United Dairymen, California Dairies Inc., Holstein Association USA, Land O’Lakes, and Milk Producers Council met with Rep. Jim Costa and his staff in Fresno, CA. During that meeting, all eleven of Western United Dairymen’s concerns were discussed, as well as several issues and concerns raised by California Dairies Inc. The representatives from Western United Dairymen were Tiffany LaMendola, Dominic Carinalli, Joe Airoso, Simon Vander Woude and Larry Pietrowski.

Below is a summary of the discussion during that meeting of Western United Dairymen’s eleven concerns.

All Milk Participates

Concern expressed by WUD: it is absolutely vital that all producers and all milk participate equally in the program. That is, no exemptions should be issued under any circumstances. Language should be added to highlight the intent for all to be included. Perhaps the definition of producer in Sec. 141 (9) could read – “*The term ‘producer’ means any and all persons engaged in the production of bovine milk for commercial use. All producers holding a milk license shall be included.*” The intent is to include all producers whether they are Grade A, Grade B, conventional, organic, regulated, unregulated, producer-distributor, etc.

Discussion at January 8th meeting: All organizations represented at the meeting were in agreement that the program needs to apply to all milk that is produced in the U.S.

Resolution at January 8th meeting: The definition of a “producer” in the draft legislation was replaced by the language recommended by Western United Dairymen.

Components

Concern expressed by WUD: Allowable milk marketings (AMM) should be defined more clearly (i.e. is it based on raw milk production in total pounds or based on components of fat and solids-not-fat?). Components from a Jersey herd are likely to be significantly different than that of a Holstein herd, given the same amount of milk.

Discussion at January 8th meeting: The discussion of this concern centered around the practicality of trying to manage the program using components instead of raw milk production. While all the organizations recognized the equity of a program based on components, they also recognized that a program designed like that would be exponentially more difficult to manage, and that producers trying to manage their production to stay under their allowable milk marketings would have a much harder time in their planning if they had to factor in components.

Resolution at January 8th meeting: The consensus amongst the organizations was to leave the current language in the bill, which utilizes raw milk production in calculating both the allowable milk marketings and the market access fees paid by dairies that expand their production.

Producer Board Composition

Concern expressed by WUD: Sec. 142 (b)(2) – representation from each identified region (West, Midwest, South, Central, Northeast) should be weighted by milk marketings per region. For example, the Western region produces approximately 39% of the U.S. annual milk supply and should therefore be issued 39% of the producer seats on the producer review board, or 4 to 5 seats of the 12 producer seats available.

Discussion at January 8th meeting: This item was discussed at length during the January 8, 2010 meeting. There were two main areas of focus during this discussion: (1) How much authority would the board have to make changes to the program; and (2) How can the board be set up to reflect proper representation of milk volume, while still being politically acceptable to all milk-producing regions of the country.

During the meeting, there was broad support for exploring the development of a set of “triggers” within the bill that would set the parameters of the program (i.e., set the “market access fees” and “allowable growth”). By setting those parameters in the bill, and only allowing an oversight board to make adjustments if there is broad consensus, the possible “politicization” of the Producer Board is severely limited.

As for the composition of the Producer Board, there was broad support for looking at the National Dairy Board’s composition, and seeing if this program could follow that model.

Resolution at January 8th meeting: A subcommittee was set up to look at the specific issues of: (1) How the Producer Board should be set up; and (2) Establishing a set of triggers in the legislation. The members of that subcommittee were Eric Erba (CDI), Ray Souza (WUD), Steve Maddox (Holstein Association), Cornell Kasbergen (LOL) and Geoffrey Vanden Heuvel (MPC).

Several conference calls were held to resolve these issues. In addition to subcommittee members, Rep. Costa’s staff also participated in the calls. The subcommittee also solicited the assistance of Dr. Mark Stephenson (Cornell University) and Dr. Chuck Nicholson (Cal Poly, San Luis Obispo) in establishing the triggers in the bill that would set the market access fees and allowable growth rates that are announced each quarter under the program. After multiple conference calls and a report from Drs. Stephenson and Nicholson on possible triggers that could be used, the subcommittee felt comfortable moving forward with the set of triggers that is

currently in H.R. 5288. In addition, subcommittee members noted that if additional analysis showed that a better set of triggers could be developed, that the legislation should be adjusted to reflect those improvements. On the call, then-Chairman of Western United Dairymen, Ray Souza, stated that he felt it was time to move forward with this bill, and he was comfortable with the triggers that were outlined, as long as there was a recognition that changes could be made down the road if better information became available.

On the specific issue of Producer Board representation, the organizations represented on the conference calls had no objections to utilizing the model of the National Dairy Board, which would give every region a base level of representation, with additional members appointed based on regional milk volume.

Producer Review of Program

Concern expressed by WUD: Provisions should be added to establish this as a five-year program with a three-year review for continuation and or modification of the program based on past performance. The three-year review coincides with the end of the current farm bill program. Re-authorization of the DPSP should be through producer referendum. Producer referendum should include no bloc voting and be carried out as one vote per milk license.

Discussion at January 8th meeting: This item was discussed at length during the January 8, 2010 meeting. There was significant support amongst the organizations for a producer referendum to be held three years after implementing the Dairy Price Stabilization Program.

As for the voting structure of the producer referendum, there were two positions expressed in the meeting. Representatives from Western United Dairymen wanted no bloc voting, while representatives from California Dairies Inc. wanted bloc voting. The main argument by CDI was that without bloc voting, the referendum would likely fail to get enough votes to constitute a majority representation of producers. Therefore, the group discussed a solution that would allow each producer to vote individually however they like, with the cooperatives only able to vote on behalf of their members that declined to vote individually.

Resolution at January 8th meeting:

- Two producer referendum's will be required in the bill. The first producer referendum will be required to initially implement the DPSP. The second producer referendum will be required to continue the program after three years of operation.
- Every producer will have the ability to vote individually in each referendum, with cooperatives only able to vote on behalf of their members that decline to vote.

Collection of Alternative Market Access Fee

Concern expressed by WUD: Sec. 142(d)(3)(B)(i) – the committee identified concerns with the possible scenario in which a dairy may go out of business before the full alternative market access fee is collected in 3 equal monthly installments, as outlined. Provisions dealing with failure to pay should possibly be added.

Discussion at January 8th meeting: This concern was discussed, with the recognition that this scenario would likely be very rare and would not have a significant impact on the amount of fees collected and distributed.

Resolution at January 8th meeting: The consensus amongst the group was to leave the provision in the bill unchanged.

Transfers of Allowable Milk Marketings

Concern expressed by WUD: Sec. 143(c)(3): provisions should be added so that one or more owners of the milk-producing cows at a dairy facility may transfer or sell, in full or in part, the allowable milk marketings associated with the dairy facility to another party. That is, base should be fully transferable to any milk producer (not just to an individual who purchases the dairy facility or another facility under the same ownership, as currently established).

Discussion at January 8th meeting: This issue was discussed during the meeting, with broad support by the organizations in attendance that dairymen should have the ability to transfer their allowable milk marketings.

Resolution at January 8th meeting: Based on the group's discussion, the language of H.R. 5288, as introduced, reflects the ability of individual producers to transfer their allowable milk marketings to another producer.

Establishment of Allowable Milk Marketing Growth Rate

Concern expressed by WUD: Sec. 143(b)(1)(A) – language should be added to establish that the allowable growth rate could be a negative figure, if market conditions warrant. Under certain conditions, the Producer Board and Secretary may deem it necessary for producers to produce at levels below their established allowable milk marketings.

Discussion at January 8th meeting: This was a brief discussion, as there was agreement amongst all organizations that the intent of the legislation was to give the flexibility in the program to set a negative “allowable growth rate” during times of extreme oversupply and negative dairy farmer margins.

Resolution at January 8th meeting: All organizations agreed that language would be added to the legislation that would clarify that the allowable growth rate could be adjusted to a negative figure. This was achieved by establishing the set of triggers, which sets the allowable growth rate to negative-three percent when the milk/feed ratio is below 2.00.

Cheating

Concern expressed by WUD: Provisions to address cheating and establish severe penalties for doing so should be added. A possible forfeiture of base should be considered for a penalty.

Discussion at January 8th meeting: The focus of this discussion amongst the organizations was, “What is defined as ‘cheating?’” After some discussion, it didn't appear that anyone could clearly define what would constitute “cheating,” other than a situation where false information is provided to the Farm Services Agency about the volume of milk sold to a

processing facility, which is already illegal. Therefore, the group felt that until specific actions were defined as “cheating,” it would be unwise to try and develop language for the bill at this juncture.

Resolution at January 8th meeting: No specific adjustment was made to the legislation, but if further information becomes available that would clarify what constitutes “cheating,” Rep. Costa’s staff is open to working on appropriate language.

Milk Deficit Regions or Markets

Concern expressed by WUD: How would this program address regional supply imbalances? For instance, California is currently short of milk for processing today. Could California’s supply be adjusted differently than other regions? Or, at times certain niche markets (such as organic) may be short on milk supply needs for processing. Provisions should be added to address the potential need for additional milk in milk deficit regions or niche markets.

Discussion at January 8th meeting: There was much discussion about this program’s role in addressing specific regional issues, such as deficit or surplus regions. In the end, several factors brought up during the meeting led to the group’s decision to maintain the program’s treatment of all dairy regions the same.

First, it was noted that the Dairy Price Stabilization Program does not change the dynamics between the various dairy regions. The proposal was designed to address the milk price volatility that affects all producers in the U.S., regardless of local milk supply issues. Areas of the country that are either deficit or surplus areas now will have the same local issues to address if this program were put in place. The example was given by one participant of the group that under the status quo, if a certain area of the country has a need for additional milk, the processors seeking the milk can address that by paying premiums to attract that additional milk. Nothing about that scenario changes under this program. In fact, it was pointed out that the draft legislation would provide a processor that needs additional milk with a tangible premium to attract a local milk supply: the processor could pay the market access fee on behalf of a dairy wishing to supply them with additional milk.

The issue of politics was also discussed. Someone mentioned that a program designed with different market access fees and allowable growth rates would generate regional friction in promoting the legislation, and would likely result in an inability to develop a national coalition supporting the proposal.

Resolution at January 8th meeting: After extensive discussion, the consensus amongst the group was to maintain the legislation as a national program, with uniform parameters (i.e., market access fees and allowable growth rates) applied to all regions of the country.

Agricultural Marketing Service (AMS) rather than Farm Service Agency (FSA)

Concern expressed by WUD: The AMS may be better suited to handle the acts of administration of the program, collection of market access fees, and payments, rather than local FSA offices as currently identified. AMS currently oversees industry marketing and promotion programs, including dairy.

Discussion at January 8th meeting: There was minimal discussion on this issue. There were no strong opinions on whether FSA or AMS would be better equipped to manage the funds collected and distributed under this program. Given the fact that FSA already has the structure in place to collect production data and distribute to individual dairies, it was believed that FSA may be the best government structure to utilize in implementing this program.

Resolution at January 8th meeting: The decision amongst the group was to leave the current language alone (which utilizes the FSA), but to further explore the feasibility of having AMS run the program instead.

Broader Implications of Program

Concern expressed by WUD: The committee recognized this bill does not address the potential impact on dairy imports and exports. Additionally, WTO implications should be considered.

Discussion at January 8th meeting: There was discussion during the meeting about the possible impact this program could have on the U.S. dairy industry's ability to export dairy products competitively, as well as preventing a dramatic increase in the importation of foreign dairy products. One individual commented that the key to success for this proposal was maintaining as low a market access fee as possible, so that the industry continues to produce an adequate supply of milk to meet our demands. It was pointed out that the program is designed to take the peaks and valleys out of the milk price, while maintaining an average long-term price of milk in line with the long-term average price the industry has now, which would hopefully prevent additional imports over the long-term.

However, after discussing the issue at length, the group expressed that there was no way to ensure with absolute certainty the end results of the program. It was recognized that beyond the domestic price of milk, there are many factors go into the import/export balance in dairy products (i.e., value of the U.S. dollar, weather in Oceania, etc.). Therefore, the group saw the three-year referendum built into the legislation as an adequate stop-gap measure where producers would be able to examine the effectiveness of the DPSP and hold a referendum vote before extending it beyond the initial three year period.

Resolution at January 8th meeting: As noted, the group supported a producer referendum to be held three years after implementing the legislation. It was agreed that after three years, the industry would have a better idea about the impact the program has on our import/export balance in dairy products.