

WESTERN UNITED DAIRYMEN

SPECIAL UPDATE

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USDA Moves to Assure Producers Can Vote on FMMO This Year

By Annie AcMoody, director of economic analysis

Unlike milk production, excitement surrounding the California dairy industry's efforts towards better producer prices is not in decline. Indeed, just a week ago, USDA announced an unexpected delay in the FMMO process that left producer groups very disappointed. The agency stated it would be delaying the final decision for a California FMMO until after the U.S. Supreme Court rules on the challenge to the use of Administrative Law Judges (ALJs) throughout the federal government agencies. In an effort to accelerate the process, WUD, along with MPC and CDC, submitted a letter to Secretary Perdue urging him to release the decision. The three California coops (CDI, DFA and LOL) who originally petitioned USDA also submitted a letter. At the Farm Show this morning, when questioned on the process, Secretary Perdue responded he could not provide additional information because of ex-parte rules. He however encouraged stakeholders to listen to a USDA call scheduled a few hours later, providing additional explanation on the delay of the California FMMO and which we should "be pleased with". Rumors started flying through the Farm Show faster than Olympians on a luge.

The conference call organized by USDA was hosted by Stephen Vaden from the Office of General Counsel at USDA. Citing many legal cases and opinions, he described USDA's options in the process. The main risk and concern to USDA is that if the Supreme Court's ruling made ALJ appointments unconstitutional, the California FMMO would likely be voided (or vacated in legal speak). With such an outcome, we would be looking at starting the process over and likely not seeing a final decision for another three years. Since USDA is not a fan of Russian roulette, they would rather take the safest route where all the work has no chance of reverting to square one. To ensure this, USDA will hire a judicial officer to review the whole record, all 40 days of it. And by reviewing the record, he will need to look at the whole thing word by word: the transcripts and the exhibits. If he so determines the record complete he will ratify it. If he does not, he would seek additional feedback.

Removing the potential of having to start from scratch certainly took away the biggest risk to the process, but the delay remains and the uncertainty of not seeing a final decision continues to hang over producers head. Despite the documentation-heavy record, USDA thinks this new road will delay the process by one month at best, or four at the most. Basically, if the new officer reaches an agreement with the decision as is, we could see implementation, pending the outcome of the producer referendum, by November 2018. If he does not, there must be a comment period for stakeholders and USDA anticipates this would push the implementation to February 2019. Yes, a year from now. We appreciate the secretary's effort towards improving a tough situation but we are still disappointed in the delay this is causing.

WUD's president Frank Mendonsa is extremely disappointed in the delay of the final decision. Recalling the numerous heartfelt testimonies from producers at the 2015 hearing he added "milk prices in California are still as depressed today as they were over two years ago. While some tweaks have been made to the California formulas since then, there is hope in the producer community this could yield higher prices for California producers".

Stay tuned: we should see a decision or a period for comments in the next month or so!

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