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4 MARKUP OF H.R. 1947, THE FEDERAL AGRICULTURE REFORM AND RISK

5 MANAGEMENT ACT OF 2013

6 Wednesday, June 5, 2013

7 House of Representatives

8 Committee on the Judiciary

9 Washington, D.C.

10 The committee met, pursuant to call, at 2:11 p.m., in  
11 Room 2141, Rayburn House Office Building, Hon. Bob Goodlatte  
12 [chairman of the committee] presiding.

13 Present: Representatives Goodlatte, Sensenbrenner,  
14 Coble, Smith, Bachus, Issa, King, Jordan, Poe, Marino,  
15 Gowdy, Amodei, Labrador, Farenthold, Holding, Collins,  
16 DeSantis, Conyers, Scott, Watt, Lofgren, Richmond, and

17 DelBene.

18       Staff Present: Shelley Husband, Majority Staff  
19 Director; Branden Ritchie, Majority Deputy Staff  
20 Director/Chief Counsel; Allison Halataei, Majority  
21 Parliamentarian, Kelsey Deterding, Clerk; Daniel Flores,  
22 Majority Counsel; Perry Apelbaum, Minority Staff Director;  
23 Danielle Brown, Minority Parliamentarian; James Park,  
24 Minority Counsel; and Susan Jensen, Minority Counsel.

25

26 Chairman Goodlatte. Good afternoon. The Judiciary  
27 Committee will come to order.

28 Without objection, the chair is authorized to declare a  
29 recess at any time.

30 Pursuant to notice, I now call up H.R. 1947, as  
31 introduced for purposes of markup, and move that the  
32 committee report the bill without recommendation to the  
33 House. And the clerk will report the bill.

34 Ms. Deterding. H.R. 1947, to provide for the reform and  
35 continuation --

36 Chairman Goodlatte. Without objection, the bill is  
37 considered as read and open for amendment at any point.

38 [The information follows:]

39

40 Chairman Goodlatte. And I will begin by recognizing  
41 myself and the ranking member for opening statements.

42 I would like to note for Members at the outset of this  
43 markup that I am making a motion to report this bill without  
44 recommendation to the House. It is important for the  
45 committee to preserve its jurisdictional prerogatives and  
46 make appropriate changes to the provisions within our  
47 jurisdiction.

48 However, I realize that the views of the Members of this  
49 committee on the 500 or so pages of the bill that are not in  
50 our jurisdiction may vary, and in that regard, we are not  
51 asking you today to make a judgment on the merits of this  
52 lengthy bill.

53 The Federal Agriculture Reform and Risk Management Act  
54 of 2013, known as the farm bill, is major legislation to  
55 repeal, reform, streamline, or consolidate a host of Federal  
56 agricultural programs and policies. It is legislation of  
57 substantial interest to the public, and a number of its  
58 programs are controversial.

59 To initiate and administer the farm bill's programs, the  
60 legislation provides the Department of Agriculture with

61 multiple authorities to promulgate new regulations.  
62 Ordinarily, when Congress grants rulemaking authority, new  
63 regulations are promulgated under the notice and comment  
64 procedures of the Administrative Procedure Act and the  
65 provisions of other statutes that prescribe agency  
66 procedure. In addition, new regulations typically are  
67 submitted to Congress for review under the Congressional  
68 Review Act.

69 The Administrative Procedure Act has for decades been  
70 considered the constitution of agency rulemaking. The  
71 Congressional Review Act, meanwhile, stands as an additional  
72 means to check and balance agency rulemaking that may be  
73 inconsistent with congressional intent, excessively costly,  
74 or unsound for other reasons.

75 These laws to govern rulemaking are some of the most  
76 important in the Judiciary Committee's jurisdiction. It is  
77 imperative that this committee keep a vigilant watch over  
78 legislation that undermines their applicability in any way.

79 I am concerned that the farm bill does precisely that.  
80 Specifically, it exempts from the Administrative Procedure  
81 Act and the Congressional Review Act its highly

82 controversial dairy supply stabilization program, its  
83 related dairy margin protection program, its conservation  
84 programs, and its authorization of the use of the Commodity  
85 Credit Corporation's funds, facilities, and authorities to  
86 implement the bill's commodities provisions.

87       Some Members support these programs. Others do not.  
88 But these are major programs that will have immense impact  
89 on the public, involve substantial deployments of public  
90 funds, and impose numerous costs on the private sector. I  
91 trust that others share my concern that the farm bill seeks  
92 to remove rulemaking under these programs from the critical  
93 protections that the APA and the Congressional Review Act  
94 provide against errors and excesses in agency rulemakings.

95       For this reason, I called for this markup to be held,  
96 and I intend to offer an amendment to restore the  
97 protections of the Administrative Procedure Act and the  
98 Congressional Review Act to this important legislation.

99       And it is now my pleasure to recognize the ranking  
100 member of the committee, the gentleman from Michigan, Mr.  
101 Conyers, for his opening statement.

102       Mr. Conyers. Thank you, Chairman Goodlatte.

103 Members of the committee, I wanted everyone to know that  
104 I applaud the chairman's assertion of jurisdiction over the  
105 Administrative Procedures Act, the Congressional Review Act,  
106 and competition policy and how it impacts consumers. These  
107 are items that I believe are within our jurisdiction and  
108 should not be cavalierly overlooked. And so, I support the  
109 purpose of this meeting. I join with those of us who are  
110 concerned about it.

111 And I will not mention the fact that this is an  
112 important bill and that there are 50 million hungry  
113 Americans and that the SNAP program is in jeopardy, all  
114 items that are not in our jurisdiction. And so, with that,  
115 I look forward to working with the members of the committee  
116 to move this legislation and the amendment forward as  
117 expeditiously as possible in addressing these concerns.

118 And I ask unanimous consent to put the rest of my  
119 statement in the record.

120 Chairman Goodlatte. Without objection, the gentleman's  
121 statement will be made a part of the record, as will the  
122 opening statements of all other Members.

123 [The information follows:]

124

125 Chairman Goodlatte. And I thank Chairman Conyers for  
126 his comments.

127 Mr. Conyers. Thank you.

128 Chairman Goodlatte. I have an amendment at the desk,  
129 and the clerk will report the amendment.

130 Ms. Deterding. Amendment to H.R. 1947, offered by Mr.  
131 Goodlatte. In Section 146 --

132 Chairman Goodlatte. Without objection, the amendment is  
133 considered as read.

134 [The amendment of Chairman Goodlatte follows:]

135



136 Chairman Goodlatte. And I will recognize myself to  
137 explain the amendment.

138 Our colleagues on the Committee on Agriculture have  
139 written the farm bill to provide dramatic reforms and  
140 changes to our Nation's agricultural programs. I agree that  
141 many of these programs need reform, not the least of which  
142 include our commodity programs.

143 Given the broad changes and impacts that these programs  
144 will bring to America's farmers and ranchers and other  
145 affected entities, I believe that the public deserves a full  
146 and fair opportunity to comment on the regulations that will  
147 determine how these programs will be run. I also believe  
148 that the Department of Agriculture should take these  
149 comments into mind when they author their final regulations.

150 That is why I believe it is necessary for this committee  
151 to take action today to ensure that these agencies  
152 promulgate these regulations under, not exempt from, the  
153 Administrative Procedure Act and the Congressional Review  
154 Act.

155 The APA is widely regarded as the constitution of  
156 Federal rulemaking. Its requirements are critical, but they

157 are not heavy handed. They most notably include provisions  
158 that require agencies to provide public notice and seek  
159 public comment before they promulgate new regulations, as  
160 well as provisions that enable the courts to review  
161 agencies' final decisions.

162 The APA's requirements provide the most significant  
163 legal protections we have to date to assure that Federal  
164 rulemaking is informed by public views and the relevant  
165 facts, rests faithfully on the enabling statutes that  
166 authorize rulemaking, and is not arbitrary or capricious.  
167 The Congressional Review Act likewise imposes few, but  
168 important restraints on Federal rulemaking. It requires new  
169 regulations to be submitted to Congress for review and  
170 potential approval and requires important information about  
171 the details of new major regulations when those regulations  
172 are submitted to Congress.

173 Congress, however, is provided only a short period of  
174 time in which to review new regulations. If that time  
175 elapses without a disapproval resolution having been passed,  
176 regulations become effective and enter into law.

177 The APA and the CRA represent Congress' considered

178 judgment that when new regulations are promulgated, these  
179 statutes should constrain agency decision-making to assure  
180 consideration of the public's views, the just rule of law,  
181 and fidelity to congressional intent. When significant  
182 regulations are created, such as those that involve new  
183 Government programs or major economic burdens, it is  
184 particularly important that APA and CRA procedures be  
185 applied.

186       This is surely the case when longstanding major Federal  
187 agricultural programs are reformed or substantial new  
188 programs are created, such as in the farm bill. It is  
189 similar to the case when regulations would implement a  
190 program as in the case of the dairy supply stabilization  
191 program that is highly controversial, will have broad  
192 economic impacts, imposes private sector mandates, threatens  
193 civil penalties, and has triggered widespread opposition  
194 from consumers, producers, retailers, and exporters based on  
195 the program's expected adverse economic impacts.

196       The Agriculture Committee's report on H.R. 1947 lacks  
197 any compelling justification to exempt any of its dairy or  
198 conservation programs from the Administrative Procedure Act

199 or the Congressional Review Act. Accordingly, I believe  
200 that this committee should act to restore the protections of  
201 those statutes to these important areas of the farm bill  
202 rulemaking.

203 My amendment accomplishes that. Because of the economic  
204 concerns that have been expressed by consumers, producers,  
205 and others across a broad spectrum of interest, my amendment  
206 also assures that the Department of Agriculture in its Dairy  
207 Market Stabilization Program rulemakings will examine and  
208 render determinations on key potential economic impacts of  
209 the stabilization program.

210 Major concerns have been raised that the stabilization  
211 program will raise consumer prices, hurt milk exports,  
212 encourage milk imports, increase the cost and strain the  
213 resources of Government-funded nutrition programs, and limit  
214 the growth of the domestic dairy industry by discouraging  
215 new investments for processing capacity. It is imperative  
216 that these issues be accounted for in the course of  
217 rulemaking to implement the stabilization program.

218 Accordingly, the amendment requires the Department of  
219 Agriculture to render determinations in the rulemakings of

220 the impacts of the stabilization program on the dairy value  
221 chain, the U.S. dairy industry's international  
222 competitiveness, and Government-funded domestic and  
223 international nutrition programs. Significantly, the farm  
224 bill under consideration in the Senate asks the department  
225 to study nearly identical criteria.

226 My amendment does not make the department's rulemaking  
227 contingent upon the results of these determinations. It  
228 does, however, assure that the department will take these  
229 issues seriously into consideration, informed by public  
230 comment, as it establishes the stabilization regulations.

231 Lastly, representing a large agricultural area, I also  
232 recognize that many in rural America have been frustrated by  
233 the length of time it took the Department of Agriculture to  
234 get programs from the 2008 farm bill off the ground.

235 My amendment accounts for those concerns as well by  
236 setting a deadline of 9 months after enactment for interim  
237 rules on stabilization to be put in place, allowing interim  
238 rules for the other affected programs, and requiring final  
239 rules with full notice and comment no later than 1 year  
240 later.

241 While this amendment makes important changes to preserve  
242 the APA rulemaking requirements and the Congressional Review  
243 Act, it does not solve what many believe are the fundamental  
244 problems with the Dairy Market Stabilization Program. I do  
245 not believe that the dairy market stabilization and supply  
246 control program for dairy should be a part of this farm  
247 bill. Others may disagree.

248 However, at minimum, this Congress should ensure that  
249 those affected by this intrusive program have the right to  
250 comment on the regulations governing this program and that  
251 Congress reserves the right to review the program under the  
252 Congressional Review Act.

253 My amendment represents a measured and balanced response  
254 to the important procedural defects in the farm bill that  
255 are within the Judiciary Committee's jurisdiction, and I  
256 urge my colleagues to support the amendment and recognize  
257 the gentleman from Michigan, the ranking member, for his  
258 comments.

259 Mr. Conyers. Thank you, Chairman Goodlatte.

260 I think that everyone that I have discussed this with on  
261 our side accept the amendment and appreciate your efforts to

262 accommodate some of our concerns.

263       The amendment restores the protections of both the  
264 Administrative Procedure Act and the Congressional Review  
265 Act and, in addition, requires the Secretary of Agriculture  
266 to include a determination regarding the impact of the Dairy  
267 Market Stabilization Program on various matters, including  
268 consumers in competition in domestic dairy markets. It is  
269 my understanding that this requirement is not intended to  
270 delay or hinder the Secretary's rulemaking authority under  
271 the bill, nor is it intended to be used as a legal challenge  
272 to the rules required to be promulgated under H.R. 1947.

273       And as one who has very little farm area in his  
274 congressional district, I have not carefully gone through  
275 the 575 pages that constitute H.R. 1947, but nevertheless  
276 urge the support of this amendment.

277       And I yield back.

278       Chairman Goodlatte. Would the gentleman yield?

279       Mr. Conyers. Of course.

280       Chairman Goodlatte. I thank the gentleman for yielding.

281       I just want to make a point that I neglected. I have  
282 been informed that the American Farm Bureau Federation

283 advises that it supports this amendment, and I think that  
284 will be helpful for those concerned about what impact it may  
285 have on the implementation of regulations after the farm  
286 bill is adopted and becomes law.

287 Mr. Conyers. Thank you.

288 Chairman Goodlatte. Are there additional Members who  
289 seek recognition?

290 The gentlewoman from Washington is recognized for 5  
291 minutes.

292 Ms. DelBene. Thank you, Mr. Chair.

293 Mr. Chair, I oppose this amendment because of the impact  
294 on the Dairy Security Act.

295 In addition to serving on this committee, I am honored  
296 to serve on the Agriculture Committee, and first, I have a  
297 report by a respected voice in agriculture from the  
298 University of Missouri. I would like to ask for unanimous  
299 consent to have this included in the record.

300 Chairman Goodlatte. Without objection, it will be made  
301 a part of the record.

302 [The information follows:]

303



304 Ms. DelBene. Thank you.

305 This report talks about the impact of the Dairy Security  
306 Act on farm-level milk prices and says they may rise only  
307 one half of one cent per gallon because of the Dairy  
308 Security Act. In addition, the current volatility in the  
309 market is far more harmful to consumers than that change.

310 Recently, the Agriculture Committee held an all-day  
311 markup of the farm bill where there were extensive policy  
312 discussions on a number of issues, including the Dairy  
313 Security Act. And while the overall bill is certainly not a  
314 perfect bill, the Dairy Security Act is one of the most  
315 crucial elements.

316 There has already been a lengthy debate about the need  
317 for new dairy policy, and that took place in the Agriculture  
318 Committee, where efforts to remove the stabilization program  
319 failed, an amendment that failed. If this committee is  
320 going to debate policies in the farm bill, especially things  
321 like the dairy market, then let us talk about having  
322 hearings where folks can be educated on these issues.

323 Let us also talk about other issues, like cuts to  
324 nutrition programs like SNAP. Why are we implementing

325 studies to determine the impact on a necessary stabilization  
326 program for dairy that is good for farmers and consumers,  
327 but not studying the impact that indiscriminate cuts to SNAP  
328 will have on children, working families, and our seniors?

329 Mr. Chairman, if we are going to have a debate on the  
330 farm bill today, let us have a debate on the impact of  
331 cutting free school lunches for 210,000 children. Let us  
332 have a debate on the impact that these cuts will have on  
333 over 50 million hungry people living in our country.

334 This is not the time or the place for this debate. We  
335 should be working on issues relevant to the Judiciary  
336 Committee, like comprehensive immigration reform, updating  
337 the Electronic Communications Privacy Act, talking about the  
338 Marketplace Fairness Act. Our time would be better spent on  
339 these pressing issues rather than rehashing arguments from  
340 other committees.

341 I urge my colleagues to vote no on this amendment.

342 Mr. Conyers. Would the gentlelady yield?

343 Ms. DelBene. I yield.

344 Mr. Conyers. Thank you very much.

345 And we appreciate and understand your concerns that you

346 have articulated. And your mention about some very  
347 important parts of the agriculture bill, certainly I would  
348 like to talk about, too, especially SNAP, the food stamp  
349 bill.

350 The only problem is that it is not in our jurisdiction.  
351 And so, we would be far afield in trying to assert our  
352 jurisdiction under the rulemaking authority and then go and  
353 violate our jurisdiction to talk about important -- I agree  
354 with you -- important agricultural issues that are not  
355 within the jurisdiction of the committee.

356 Ms. DelBene. One of the things in this amendment  
357 include studies on the impact of the dairy stabilization  
358 program. If we are going to do studies on things, then let  
359 us do studies also on food nutrition programs. There is  
360 nothing unique to dairy in this particular case, and that  
361 seems to be singled out in this amendment. And frankly,  
362 this isn't an appropriate use of this amendment.

363 Chairman Goodlatte. Would the gentlewoman yield?

364 Ms. DelBene. Yes.

365 Chairman Goodlatte. I thank the gentlewoman for  
366 yielding.

367 I just want to assure her that we do not take out the  
368 dairy stabilization program. In fact, we simply allow more  
369 public comment input by using the Administrative Procedures  
370 Act, which is the standard process for examining any new  
371 program, as well as the Congressional Review Act.

372 So all we are asking is that when this program, if it is  
373 still in the farm bill when the farm bill finally passes the  
374 House and the Senate. They work out their differences and  
375 pass a conference report and send it to the President.

376 That when the department gets the new programs -- and  
377 not just dairy. We haven't singled out dairy because new  
378 conservation programs in here and others are required to go  
379 through the Administrative Procedures Act.

380 Now a part of that process is to request that the agency  
381 do studies, but those studies do not dictate finding any  
382 outcome. The outcome might well be that this program will  
383 do great things, will reduce prices or will stabilize prices  
384 or do other things.

385 It simply says that they should be studied so that as  
386 the rulemaking process is done, it can be done in a fair way  
387 with consumers, consumer groups, agricultural groups, dairy

388 processors, and others have the opportunity to be heard on  
389 the issue. But it does not in any way impair what occurred  
390 in the Agriculture Committee in terms of having the dairy  
391 stabilization program in the farm bill.

392 We don't have jurisdiction over that, and we are not  
393 attempting to exercise jurisdiction beyond what this  
394 committee has jurisdiction for. And I want to assure the  
395 gentlewoman that I appreciate her concerns. We have a  
396 different point of view about the program, but that remains  
397 to be debated at a later time.

398 And we welcome her views being expressed here, like mine  
399 were expressed here. But we don't have the ability to  
400 change the program other than to say it has to go through  
401 the normal rulemaking process that any new regulation should  
402 go through to give the public and interested parties the  
403 opportunity to have input.

404 Mr. Sensenbrenner. Would the gentleman yield?

405 Chairman Goodlatte. I would be happy to yield to the  
406 gentleman from -- I don't have the time. The gentlewoman  
407 from Washington has the time.

408 Ms. DelBene. I will be happy to yield in a second.

409 Chairman Goodlatte. I will tell you what. The  
410 gentlewoman's time has expired.

411 Ms. DelBene. Okay.

412 Chairman Goodlatte. So maybe I should just recognize  
413 the gentleman from Wisconsin?

414 Ms. DelBene. Go ahead.

415 Mr. Sensenbrenner. I move to strike the last word.

416 Chairman Goodlatte. The gentleman is recognize for 5  
417 minutes.

418 Mr. Sensenbrenner. Let me commend the chairman of the  
419 committee for exerting jurisdiction on this, irrespective of  
420 what the merits are. Prior to my chairmanship, we had two  
421 or three chairs, both Democrats and Republicans, that  
422 basically let jurisdiction go, and we lost jurisdiction over  
423 a lot of important things to other committees because once  
424 we let jurisdiction go, it is really very, very hard to get  
425 it back.

426 So I remember the first fight that I picked during my  
427 chairmanship was to get antitrust jurisdiction over telecoms  
428 back in this committee because we have antitrust  
429 jurisdiction from top to bottom. Because Mr. Hyde and Mr.

430 Brooks chose not to exert that jurisdiction, we lost it to  
431 Energy and Commerce.

432 So what we are doing here today has something overriding  
433 into the power and influence of the Committee on the  
434 Judiciary that we had better protect because if we don't  
435 protect it, we are going to lose it. And that has happened  
436 in the past, and we don't want to have that happen again.

437 So having made that point, let me say good job, Mr.  
438 Chairman. Keep it up, even if we have to have more of these  
439 markups over just a short part of the bill. Because if we  
440 don't do that, then all of a sudden, we are going to find  
441 the Administrative Procedure Act and the public requirements  
442 of input go another committee that really has no expertise  
443 in it.

444 With that, I yield back.

445 Chairman Goodlatte. Would the gentleman yield?

446 Mr. Sensenbrenner. Reclaiming my time, I do yield to  
447 the chairman.

448 Chairman Goodlatte. I appreciate the gentleman's  
449 comments and yielding.

450 I just want to say to the gentlewoman, again to provide

451 her assurance, the studies that are called for include the  
452 domestic or international Government-funded nutrition  
453 programs, consumers, and competition in domestic dairy  
454 market. So it covers, I think, some of the concerns the  
455 gentlewoman raised about what the impact that this program  
456 would have on various interested groups including, most  
457 importantly, nutrition programs and consumers.

458 Mr. Conyers. Would the gentleman yield?

459 Mr. Sensenbrenner. I yield to the gentleman from  
460 Michigan.

461 Mr. Conyers. I would like to just compliment both the  
462 chairman and the former chairman, Mr. Sensenbrenner, because  
463 these additional protections, I call them, were added as a  
464 result of our negotiation here in the Judiciary. The  
465 nutrition programs, but we added consumers and competition  
466 in domestic dairy markets.

467 And I think that is very important, and I think it makes  
468 it a better bill, and I thank the gentleman for yielding.

469 Mr. Sensenbrenner. I now yield back the balance of my  
470 time.

471 Chairman Goodlatte. I thank the gentleman.



472           Are there further Members seeking recognition on the  
473 amendment?

474           If not, the question occurs on the amendment offered by  
475 the chairman.

476           Those in favor respond by saying aye.

477           Those opposed, no.

478           In the opinion of the chair, the ayes have it, and the  
479 amendment is agreed to.

480           Are there further amendments?

481           A reporting quorum being present, the question is on the  
482 motion to report the bill H.R. 1947, as amended, without  
483 recommendation to the House.

484           Those in favor respond by saying aye.

485           Those opposed, no.

486           In the opinion of the chair, the ayes have it, and the  
487 bill, as amended, is ordered reported without  
488 recommendation.

489           And that concludes our business today. I thank all of  
490 the Members for their participation, and the meeting is  
491 adjourned.

492           [Whereupon, at 2:37 p.m., the committee was adjourned.]