

## **State Association Weekly Washington Report 3.22.18**

### **Congress Heads Out of Town**

Some call it the Easter recess, others call it spring break. In any event, Congress will be on recess March 26-April 6.

### **National Ag Day Celebrated in Nation's Capital**

National Agriculture Day was commemorated in Washington, DC, on March 20, officially the first day of spring, complete with presidential proclamations and vice presidential speeches. The second day of spring brought nearly half a foot of snow to the nation's capital, shutting down the federal government.

National Ag Day was the original 1970s brainchild of The Miller Publishing Co., then the Minneapolis-based publisher of *Feedstuffs Magazine*, and several monthly magazines devoted to animal agriculture and ag retailing. The purpose was simple: Celebrate the importance of agriculture to the quality of life of every U.S. citizen, give farmers and ranchers the credit they deserve for feeding America and big part of the world, and enhance consumer understanding of where their food comes from and how it gets from farm to table.

When Miller determined it wasn't the appropriate entity to coordinate a national campaign, it handed the idea to the National Agri-Marketing Assn. (NAMA), which ultimately ceded formal National Ag Day ownership/celebrations to the Agriculture Council of America (ACA). ACA has overseen commemoration for more than 45 years, giving this year's event the theme "Food for Life."

"Since day one of this administration, President Trump and our entire team have been working tirelessly to stand with our nation's farmers, producers, ranchers and foresters, and everyone involved in agriculture," said Vice President Mike Pence during a ceremony at USDA's Whitten Building patio. Pence, who was governor of Indiana and a former member of the House Agriculture Committee, delivered from the White House to Agriculture Secretary Sonny Perdue President Trump's official National Ag Day proclamation. "We're going to continue fighting every single day for the prosperity and opportunity and future of American agriculture."

"For the past 45 years, National Ag Day has played a key role in helping people understand where their food and fiber come from and how important agriculture is to our nation's economy," said Perdue in a statement. "Our farmers, ranchers, foresters and producers...are feeding and clothing the world, and it's important to never forget that."

Events held throughout the day included a breakfast reception hosted by the American Farm Bureau Federation (AFBF), where Ray Starling, White House special assistant to the president for agriculture, trade and food assistance delivered remarks; the radio show "This Week in AgriBusiness," hosted by Max Armstrong, featured a panel discussion on sustainability at the National Press Club. The event also honored the winners of the Agriculture Council's National Ag Day written and video essay contest, with sponsorship from CHS, Inc., Farm Progress, and the National Association of Farm Broadcasters, and an evening reception hosted by the National 4-H Council at Ritz Carlton Hotel where Perdue spoke and received the group's Abraham Lincoln Vision Award.

## **Trump Orders Tariffs on Chinese Imports; China Strikes Back at U.S. Ag Imports**

Within hours of President Trump making good on a promise to impose about \$50-60 billion in tariffs on an array of Chinese products flowing to the U.S., including agriculture, aerospace, steel and aluminum, the Chinese government slapped back with a prospective list of 128 U.S. products – \$3 billion worth and many of them agriculture imports – against which it may impose retaliatory duties.

Trump says he wants to level the trade playing field with China, but it's also clear he's looking to punish the world's second largest economy for appropriating U.S. intellectual property through mandates imposed on U.S. companies doing business there. He's also aiming to reduce the U.S. trade deficit with China, estimated by the U.S. at about \$375 billion a year, a record. China says the figure is closer to \$276 billion.

The Chinese action came despite warnings to Trump from Capitol Hill and the ag sector that targeting China, U.S. agriculture's second largest overseas market, would result in a trade war aimed at farmers, ranchers and agribusiness. Heading the list of ag products targeted by the Chinese through two separate tariff declarations as required by the World Trade Organization are soybeans, sorghum, pork, apples and other fresh and dried fruit, nuts and wine, along with "modified ethanol" and ginseng. Steel and aluminum products from the U.S. are also on the list. The tariffs are based on which list the products sit, and range from 15% on nuts to 25% on pork.

U.S. soybeans worth \$14 billion a year are sold to China, with another \$1.1 billion in pork exports. Special Assistant to the President for Agriculture, Trade & Food Assistance Ray Starling told an *Agri-Pulse* Ag & Food Summit audience in Washington, DC, this week that retaliation measures by China or other trading partners will be dealt with on a "case-by-case basis." "We will do everything within our power to protect our farmers from that sort of egregious behavior," Starling said.

U.S. Special Trade Representative (USTR) Robert Lighthizer appeared before the Senate Finance Committee and the House Ways & Means Committee this week. He got an earful relative to the pain that will be felt by agriculture in the wake of the Trump tariff orders, but he said it's the price to be paid to end Chinese actions on U.S. intellectual property. "It's something (ag retaliation) we're worried about. It is unfair...that farmers...would be singled out in this," he said. "Having said that, it's not possible to take the position that because of soybean farmers, we're not going to stick up for our rights in a whole variety of ways and have hundreds of billions of dollars' worth of other exports and domestic producers punished because of unfair trade."

Sen. Pat Roberts (R, KS), a member of the Finance Committee and chair of the Senate Agriculture Committee, said he and panel ranking member Sen. Debbie Stabenow (D, MI) agree Congress may have to come up with some kind of farmer assistance program – "some kind of payment on a case-by-case basis" – to help out when Chinese export business is lost. He called the payments "Trump Tariff Payments (TTP)."

For itself, China says it's "not afraid of and will not recoil from a trade war," asking the U.S. to "cease and desist" in pursuit of "a typical unilateral trade protectionist action" on steel, aluminum and other Chinese products. A statement released by the Chinese embassy in Washington, DC, said the tariff action is "self-defeating," and will "directly harm the interests of U.S. consumers, companies and

financial markets.” Trump is “ignoring rational voices” and “disregards the mutually beneficial nature of China-U.S. trade relations,” China said.

### **White House Expands Steel/Aluminum Tariff Exemptions**

In addition to exemptions from proposed steel and aluminum tariffs already announced for Canada, Mexico, the Trump administration this week announced its granted exemptions to the 28-member European Union (EU), Australia, Argentina, Brazil and South Korea.

The exemptions were announced by U.S. Special Trade Representative (USTR) Robert Lighthizer during testimony this week before the Senate Finance Committee. Lighthizer indicated more allies will likely be granted similar exemptions, but gave no details on the process for determining exemption status.

### **Trump Wants Three-year TPA Authority; Policy “Dangerous,” NAFTA 2.0 Not Trump’s Decision: Hatch**

President Trump this week sent to Capitol Hill his request for a three-year extension of trade promotion authority (TPA), but a senior GOP Senator greeted that request with an explanation to the White House that whether Trump wants to withdraw the U.S. from NAFTA or not, the ultimate arbiters of the tripartite trade treaty’s fate lies with Congress, not the White House.

At the same time, Sen. Orrin Hatch (R, UT), chair of the Finance Committee, the panel which oversees in the Senate all things related to trade, said he believes the administration’s trade policy overall is on a “dangerous course” that could hurt not only business, but consumers, and ultimately, leadership. “I know all of are doing what we can to move our country off this dangerous course,” Hatch said. “This is one of the most challenging environments for U.S. trade I’ve seen” in his 42 years in the Senate.

Hatch told a Business Roundtable meeting this week that “because the Constitution very clearly assigns to Congress the power to lay and collect tariffs and to regulate foreign commerce, Congress must have the final word on the fate of NAFTA.” Hatch said the same conditions apply to all other formal trade treaties. “Congress will vigilantly monitor any developments concerning them as well, he said.”

The lawmaker also made it clear the president’s request for TPA will be reviewed not just by his committee, but by the House Ways & Means Committee, a process that ensures “the administration must adhere to the TPA negotiating objectives and to encourage the president to seek new agreements with our trading partners.”

TPA permits the president to negotiate directly with trading partners, then submit to Congress final draft treaties for up or down votes with no amendments. The last battle over TPA was in 2015 when President Obama was nearing the finish line in negotiating the Trans-Pacific Partnership, and needed TPA to provide assurance to other nation’s he had the authority to make deals. It took an all-out, full-court press by agriculture and other businesses to get Congress to go along. That authorization expires in a few months.

### **Congress Passes FY2018 \$1.3-trillion Spending Package Avoiding Shutdown, Fixes Sec. 199A**

By healthy margins in both chambers, Congress this week approved a \$1.3-trillion FY2018 omnibus spending package, with the president likely poised to sign the 2,232-page bill as soon as it arrives on his desk. The action, condemned by fiscal conservatives as a “spending spree,” gets White House grudging

approval – and the president made last-minute ominous noises about a veto – but avoided a federal government shutdown at midnight March 23.

Instead of holding the line on several controversial policy riders, House and Senate appropriators deferred to their leadership and tucked into the spending package fixes for a number of policy issues as Congress runs up to the November midterm elections.

A classic Democrat-GOP tug-of-war took place in the Senate when President Trump publicly insisted on about \$1.6 billion to build a border wall with Mexico, while Senate Minority Leader Charles Schumer (D, NY) wanted \$900 million to build/modernize a commuter rail tunnel between New York City and New Jersey. When the dust settled, Schumer got out of the way of about \$641 million for 100 miles of border “fencing,” and more than \$1 billion for new border security technology, and Trump held his nose as \$541 million was included for the massive rail tunnel project.

Included in the package is the fix for the “unintended consequences” of the new Sec. 199A – lawmakers dubbed it the “grain glitch” – that loaded up farmer-owned cooperatives with enough tax credits and deductions to make them the go-to choice for selling grain and oilseeds, leaving private companies and grain elevators contemplating whether to reincorporate as co-ops to level the market playing field. The glitch also affected dairy, livestock and biofuels producers.

The solution was endorsed by the National Grain & Feed Assn. (NGFA) and the National Council of Farmer Cooperatives (NCFC). Senate Agriculture Committee ranking member Sen. Debbie Stabenow (D, MI), a fix supporter, joked with the reporters this week that Sec. 199A made selling to cooperatives so lucrative, she was thinking of incorporating herself as a co-op.

The fix repeals the 20% deduction for cooperatives’ gross sales, putting them on an even playing field with other entities which enjoy only the new 20% net business income deduction. Farmers selling to co-ops can deduct 20% of their net business income, with some limits for entities with higher incomes or capital gains. The deduction is reduced by the lesser of either 9% of the farmer’s income from sales to cooperatives, or 50% of wages pegged to those sales. They could also claim any pass-through deduction from the co-op. C corporations don’t qualify for the farm deduction, with co-ops setting their deduction based on the old rules governing the Domestic Production Activities Deduction (DPAD), the old Sec. 199.

Senate Democrats held the Sec. 199A fix hostage in return for a \$200-million low-income housing tax credit, the so-called “transaction cost” of getting the tax reform mistake corrected. Initially, the Senate agreed to include the housing tax credit, but House leadership pushed back. However, Rep. David Young (R, IA) and Rep. Rick Crawford (R, AR) rallied over 80 House members to push Speaker Paul Ryan (R, WI) to include the Sec. 199A fix and the housing tax credit, with several GOP members threatening to vote against the final package if the glitch fix was not included.

The overall spending package scores as a “win” for agriculture. The USDA/FDA section of the omnibus provides \$23.3 billion in discretionary spending through the September 30 end of FY2018, or \$2.4 billion more than last year. USDA gets a \$139 million bump in research spending to about \$3 billion, while global food aid programs see funding increases of about \$2.1 billion. FDA’s share of the pot is about \$3 billion, with most directed to battling the opioid epidemic and Food Safety Modernization Act (FSMA) implementation.

Included in the spending bill are the following ag highlights:

- There's a new \$600 million for a USDA pilot loan program to expand broadband internet service in rural communities, money in addition to the existing \$60-million annual USDA broadband land/grant program;
- For the first time in 10 years, the spending bill does not cut conservation program spending, but does exempt some small farmers, registered as "business entities," from what's called SAM registration – required for doing business with the federal government – and Dun & Bradstreet or DUNS number reporting – required for contracts or grants – under cost-share USDA programs. Agriculture Secretary Sonny Perdue praised the language as "clearing away red tape for participants in conservation programs;"
- Farmers and ranchers operating "normal farming operations" are now exempt from CERCLA reporting requirements on air emissions from animal waste, legislating an administrative exemption EPA had in place until it was nullified by a federal district court, and
- Livestock haulers are exempt until September 30 from having to install electronic logging devices (EDLs) in their trucks.

EPA funding at \$8.1 billion, is nearly unchanged from a year ago, with money allocated to several clean air and water projects the White House budget recommended defunding. Last year's budget agreement already directs extra federal dollars in loans and grants to the states for enforcement, infrastructure and drinking water programs.

The bill does not contain any substantive changes to federal immigration, including a fix for the so-called "Dreamers" program or visa availability. There is no language allowing EPA to dodge the public input process to expedite its repeal/replace efforts on the "waters of the U.S. (WOTUS)" rulemaking, nor is there language to move the new Pesticide Registration Improvement Act (PRIA), but does allow the agency to continue collecting registration fees under the old system.

#### **RFS/RIN Cap Standoff Continues; Perdue Hints Congress May Act**

The ongoing battle between the petroleum industry and biofuels feedstock suppliers and refiners over whether the Renewable Fuel Standard (RFS) and its Renewable Identification Numbers (RIN) program need to be capped continued this week, but Agriculture Secretary Sonny Perdue hinted the White House may kick the issue to Congress rather than take administrative action.

At the same time, five GOP Senators sent yet another letter to President Trump warning him of the error of even contemplating a temporary cap on RIN prices as a possible way to make RFS compliance costs go down.

The lawmaker letter, authored by Sens. Chuck Grassley (R, IA), Joni Ernst (R, IA), Deb Fischer (R, NE), John Thune (R, SD) and Roy Blunt (R, MO), told Trump that to impose a RIN cap would make it impossible for him to live up to his pledge to support biofuels and the RFS. "Enacting such a policy makes it impossible for you to honor your commitment of a 15-billion gallons RFS," the letter said. Later, Grassley tweeted, "I want to shake up what u might be planning abt a RINS cap for a short period. It will be CATASTROPHIC to ethanol. U will only believe me when u find ethanol in the doldrums. That's where your idea leads."

Perdue and EPA Administrator Scott Pruitt are expected to provide a list of RFS/RIN options to the president in early April. In a National Ag Day presentation at the National Press Club this week, Perdue

indicated the White House may be looking to kick the RFS/RIN issue to Congress, backing away from capping RIN prices or biofuels credits. The administration is looking at a year-around market for E15 to put downward pressure on RIN values in lieu of a cap.

“The White House is trying to determine whether they need to make a call on a decision or allow Congress to do it,” Perdue said. At the same time, some members of Congress are asking the administration to stay out of the RFS tug-of-war and leave it to the lawmakers.

“We will not see RINS capped, but market prices affecting the renewable vapor-pressure waiver, that allows 15%, E15, to be sold year-around, which we believe will increase RIN availability, driving RIN prices down,” Perdue said. He also noted that market uncertainty over what the president may do has already reduced RIN prices.

For himself, Pruitt reminded players it is still not clear if EPA has the legal authority to increase E15 sales or whether Congress needs to act, but allowed he’d have a final opinion soon. He also alluded to recommendations from some quarters that RIN market controls may be necessary, including “not hoarding or playing the market” similar to how futures markets are regulated. He said he’s contacted the CME Group and ICE, as well as individual exchanges, to see if they have ideas how “a more transparent RIN market” can be created.

### **Dems Refuse to Talk, House Farm Bill Remains in Flux; Senate Begins to Move**

With House Agriculture Committee Democrats continuing their unwillingness to negotiate work requirements for food stamp recipients as part of the evolution of the House Farm Bill, committee Chair Mike Conaway (R, TX) says he’s willing to move the bill on a party-line vote, but wants the Democrats on board.

“If they have no interest in negotiations, we’ll have to move forward. My responsibility now is to get this through the House,” Conaway said. “I’m deeply disappointed and hurt, quite frankly, that Collin led his team to the sidelines.” He said he’d welcome Democrats “with open arms” if they want to reengage in Farm Bill discussions.

Committee ranking member Rep. Collin Peterson (D, MN) said this week the Farm Bill effort is “on life support,” and that the shrinking legislative schedule means a simple extension of the 2014 law may be needed.

The ranking member of the committee’s nutrition subcommittee, Rep. Jim McGovern (D, MA), had good things to say about Peterson’s leadership on his side of the committee table, but said the process needs to be more bipartisan and transparent.

“This is ridiculous. This isn’t a top-secret, classified document. We shouldn’t have to call (special prosecutor) Robert Mueller to subpoena the damn farm bill,” McGovern said. He called for “trust and transparency” if Conaway wants to get a Farm Bill done.

A Farm Bill nutrition title linking eligibility to job training, while expanding the number of current recipients who would fall under the work requirement is the issue. The Senate Agriculture Committee has already said publicly it will not include work requirements in its Farm Bill nutrition title, and that it will begin seriously drafting its bill next month when it has a solid Congressional Budget Office (CBO) baseline numbers in hand.

Critics allege Conaway has been ordered by House Speaker Paul Ryan (R, WI) to showcase Ryan's welfare reform agenda by shifting the nutrition title's Supplemental Nutrition Assistance Program (SNAP) requirements, an assertion Conaway and Ryan deny. At the same time, Peterson is adamant he and his committee Democrats have not been "ordered" by House Minority Leader Nancy Pelosi (D, CA) to stall the Farm Bill because Democrats may take back the House majority in November, allowing them to write their own kind of Farm Bill.

"She doesn't know what we're doing," Peterson said. "Our side is so poisoned to this that if I came to them and said that I wanted to do something, they'd hand me my head. It's just the reality."

Meanwhile on the other side of Capitol Hill, Senate ag lawmakers are moving forward with their efforts to rewrite omnibus farm legislation.

Sen. Charles Grassley, (R, IA) told reporters this week a GOP-only Farm Bill, like that contemplated in the House, is a no-go in the Senate. "I don't think it has any chance of getting through the Senate if it isn't bipartisan. Consequently, we'll write our own farm bill and it will be a bipartisan bill," the ag committee member said.

Ag committee Chair Pat Roberts (R, KS) – supported by panel ranking member Sen. Debbie Stabenow (D, MI) with whom he met this week – said the committee will approve and the full Senate will support – he and Stabenow are targeting 70 votes – a bill that's the product of "a broad bipartisan coalition to support a comprehensive bill. That's how we got it done before."

However, Roberts also acknowledged a committee markup in April is critical. "If we push this past April, then we get into extension talk," Roberts told the *Agri-Pulse* Ag & Food Summit in Washington, DC, this week.

### **Young CDL Drivers to get Interstate Highway Access under New Bill**

Commercial truck drivers holding commercial drivers' licenses (CDL) and who are 18-21 years old will be permitted to drive trucks across state lines using the federal interstate highway system if a new House bill introduced this week is enacted.

The bill got immediate major support from the American Trucking Assn. (ATA) and the International Foodservice Distributors Assn. (IFDA).

The "Developing Responsible Individuals for a Vibrant Economy Act" (DRIVE-Safe Act) is designed to address a growing shortage of commercial truck drivers, and was introduced by Rep. Duncan Hunter (R, CA) and Rep. Trey Hollingsworth (R, IN). It addresses the incongruity of federal law allowing a CDL to be obtained at 18 years old, but prohibiting those drivers from crossing state lines until they're 21 years old.

The bill requires 18-21-year-old CDL holders to undergo a rigorous two-part training program, and then participate in two additional probation periods. Requirements include at least 400 hours of on-duty time, and 240 hours of driving experience with an experienced operator in the cab. All trucks used in training must be equipped with the up-to-date safety equipment, including active braking collision mitigation systems, video event captures and a speed governor set at 65 miles per hour or lower.

### **New Mississippi Senator to be Agriculture Commissioner Cindy Hyde-Smith**

President Trump isn't happy – she used to be a Democrat before she was a Republican – but Mississippi's newest Senator is state Agriculture Commissioner Cindy Hyde-Smith. Gov. Phil Bryant made the announcement this week, explaining she will take the seat of Sen. Thad Cochran (R, MS) when he steps down April 1 due to ill health.

Hyde-Smith will run to complete the two years left on Cochran's term in a nonpartisan special election to be held November 6. She's being challenged by state Sen. Chris McDaniel.

She and Bryant went out of their way to hammer home her conservative credentials. "I've been conservative all of my life, and that's demonstrated by my conservative voting record as a three-term state senator and my conservative accomplishments as agriculture commissioner," Hyde-Smith said this week. Bryant called her "the most reliable vote I had for conservative causes."

### **EU Gives Green Light to Bayer-Monsanto Deal After Concessions**

The European Union (EU) approved Bayer AG's takeover of Monsanto this week, but the OK came only after both companies agreed to dump about \$7.4 billion in assets and other concessions. The deal is valued at \$57 billion.

Margrethe Vestager, the EU's antitrust commissioner, said the divestitures and other actions offered by Bayer-Monsanto "meet our competition concerns in full." She said the divestitures eliminate all overlap in seed and pesticide markets and streamline the combined company's research/development process. Vestager said the company is also formally committed to open the emerging market in digital farming, which uses data to guide ag production.

The deal is still under review by U.S. authorities, and opponents – one called the Bayer AG move "a marriage made in hell" – will shift their focus to Washington, DC. Vestager said regulators from Europe and the U.S. have talked, but she stressed, that Europe and the U.S. are "markets very different" when it comes to biotechnology and other cultural differences in production and marketing.