

State Association Weekly Washington Report 5.11.17

New Trade Undersecretary Job Key to USDA 'Significant Reorganization': Perdue

The long-awaited undersecretary for trade and foreign agricultural affairs slot at USDA is finally going to be filled, and that new subcabinet slot – to be nominated by President Trump – is allowing for “significant reorganization” of department operations, writes Secretary of Agriculture Sonny Perdue in the May 11 *Wall Street Journal*.

The secretary unveiled the new department organization this week at a speech in Cincinnati, with no doubt more information coming forward next week when Perdue is the sole witness at a May 17 House Agriculture Committee hearing on the state of the rural economy.

“I commend Secretary Perdue and the administration, after just two weeks in office, for putting forward a thoughtful reorganization plan that seeks to ensure all the critical mission areas at USDA are operating efficiently and effectively, said Rep. Mike Conaway (R, TX), chair of the House ag panel. “I look forward to the new Undersecretary for Trade playing an active role in gaining additional market access for our products, while working to ensure that our trading partners honor the commitments they have made. The committee will take a very close look at each of the proposed changes, and this will be one of many important topics we cover when the Secretary appears before the committee next week.”

Trade has emerged as the top priority of U.S. agriculture as it adjusts to the Trump administration. There is general nervousness about how the White House views trade given the president has realigned administration authority on trade negotiations – shifting the lead slot to Secretary of Commerce Wilbur Ross and away from the U.S. Special Trade Representative (USTR) – pulled the U.S. out of the Trans-Pacific Partnership (TPP), returned to tough campaign rhetoric surrounding the future of the North American Free Trade Agreement (NAFTA), and the U.S.-Korea Free Trade Agreement. Perdue, using a U.S. map, was instrumental in getting the president to back off his plan to possibly scrap NAFTA by illustrating for Trump that his political base coincides with those “fly-over” states likely to be most negatively affected by a NAFTA loss.

Perdue, who’s said trade is his “number one, two and three” priorities, teased the USDA “reorganization” announcement throughout week as a clearer focus for the department, one split between domestic production and foreign sales promotion. He explained the new undersecretary slot – broadly supported by agriculture – was authorized in the 2014 Farm Bill, but “finishing touches” had never been applied and “no final plan was acted upon” by his predecessor Secretary Tom Vilsack.

However, now USDA is ready to move forward with the realignment, described by Perdue as “promoting U.S. food, fiber and fuel around the world...helping me, as ag secretary, to be an unapologetic advocate for American products.” He reiterated his “simple message” for farmers: “You grow it and we’ll sell it.” The U.S. exports about \$135 billion in agriculture products yearly, up from \$71 billion 10 years ago.

“Food is a noble thing to trade, and I have always been a grow-it-and-sell-it kind of guy. Trade is critical for American farmers and the economy as a whole. By value about 20% of U.S. agriculture products are sent abroad,” Perdue writes. “Each dollar of these exports creates another \$1.27 in business activity, and every \$1 billion in exports supports 8,000 jobs across the economy.”

With creation of the new trade undersecretary slot, USDA will shift the Foreign Agricultural Service (FAS), which deals with overseas markets, into the new mission area. Under the current set-up, FAS is housed in the same program area as the Farm Service Agency (FSA) and Risk Management Agency (RMA), both domestic programs, and those two agencies will move under a newly reinvented undersecretary of farm production and conservation, giving farmers and ranchers “one-stop shopping,” the secretary writes. When the dust settles, the undersecretary for rural affairs slot will disappear, leaving eight mission areas as the law requires, he said. No personnel cuts are expected, the department said.

Rural development programs will report directly to Perdue under the new plan, “ensuring rural America always has a seat at the table.” The secretary said nearly 85% of the countries persistently impoverished counties are in rural areas, with 25% of rural children living in poverty, a rate not seen since 1986.

Perdue said the recent White House meeting between farmers and President Trump yielded an executive order on rural prosperity, and the unanimous conclusion of the White House meeting was that America produces more food than it can consume, so expanding trade is imperative.

USDA Subcabinet Announcements Expected Soon: News Service

A handful of USDA subcabinet nominations, including deputy secretary, are expected to be announced by the White House soon, according to a May 12 story by **AgriPulse**, a national agriculture news service. Several new names are in the mix.

Given Secretary of Agriculture Sonny Perdue’s announcement this week of USDA’s reorganization to accommodate a new undersecretary of trade and foreign affairs, the announcements would allow USDA to gear up its program mechanism quickly, if the Senate cooperates in the confirmation process.

AgriPulse reports Steve Censky, currently the CEO of the American Soybean Assn. (ASA), will be named deputy secretary of agriculture, the department’s number two position and the chief administrator at USDA. Hailing from a South Dakota corn and soybean operation, Censky held USDA jobs during both the Reagan and Bush administrations, including head of the Foreign Agriculture Service (FAS). Censky was also senior agriculture staff to the late Sen. James Abdnor (R, SD) in the 1980s. Iowa Secretary of Agriculture Bill Northey had been talked up as a frontrunner for the deputy secretary slot.

Northey, however, is reported to be the man who will become the first undersecretary for the realigned mission area covering farm production and conservation, including the Farm Service Agency (FSA), the Risk Management Agency (RMA), which administers federal crop insurance programs, and the Natural Resources Conservation Service (NRCS).

Indiana Agriculture Director Ted McKinney, another talked-about candidate for the deputy secretary slot, gets the nod to be the first undersecretary for trade and foreign affairs, according to *AgriPulse*. A former director of global affairs for Elanco Animal Health, McKinney is a close friend of Vice President Mike Pence, former House member and former Indiana governor.

Dr. Sam Clovis, a co-chair of President Trump’s national campaign, a member of his ag advisory committee and now a senior advisor to Perdue, will be named undersecretary for research, education and economics, the new service reports.

USTR's Lighthizer, FDA's Gottlieb Approved by Senate

After months of political maneuvering and debate, the Senate this week voted 82-14 to confirm Robert Lighthizer as U.S. Special Trade Representative (USTR). The Lighthizer vote came just 48 hours after the full Senate approved Dr. Scott Gottlieb as commissioner of FDA on a 57-42 vote.

Lighthizer, who served as a deputy USTR during the Bush administration, found his nomination hung up on a demand by Democrats that Congress approve a waiver from conflict of interest rules because Lighthizer represented foreign governments while an attorney in private practice. That waiver was approved as part of the FY2017 omnibus spending bill approved by Congress and signed by President Trump last week.

Gottlieb's nomination was never really in jeopardy though Democrats did wave red flags because he consulted to nearly 20 pharmaceutical companies while in the public sector, and was an officer of a major venture capital investment firm. Gottlieb agreed to recuse himself for one year from any decision affecting any of his private sector consulting clients.

Branstad Gets Senate Committee Approval as Next Ambassador to China

Iowa Gov. Terry Branstad, the nation's longest serving state chief executive, was approved this week by voice vote in the Senate Foreign Relations Committee to be President Trump's new ambassador to the People's Republic of China.

No Senate floor vote has been scheduled for the Branstad nomination, but floor action could come as early as next week.

Branstad takes on one of the toughest diplomatic posts in the administration. During his committee testimony, he said he would champion human rights and intellectual property protections, but he'll also have to do battle on U.S. beef and biotechnology exports, along with currency disputes and battles over financial transactions between the two nations.

Smoothing the negotiating road a bit is Branstad's long-time friendship with Chinese President Xi Jinping, whom he met in the 1980s when Xi traveled to Iowa as a relatively low-ranking provincial leader.

White House Reports Deal Cut with China on Beef, Cooked Poultry Trade, Biotech Products

A wide-ranging trade agreement between the U.S. and China will clear the way for resumed Chinese imports of U.S. beef has been reached, Secretary of Commerce Wilbur Ross announced late this week. Beef will begin to enter China "under certain conditions" consistent with international standards no later than July 16, reopening what the cattle industry estimates is a \$2.6-billion market. Also, a new U.S. rule allowing cooked chicken from China to enter this country about the same time will be promulgated, according to a Department of Commerce announcement.

"It was pretty much a Herculean accomplishment to get this done," Ross told reporters. "This is more than has been done in the whole history of U.S.-China relations on trade."

China halted U.S. beef imports in 2003 when the U.S. had its first confirmed case of bovine spongiform encephalopathy (BSE) in a cow brought to the U.S. from Canada. In 2016, China said it was lifting its ban on U.S. beef imports, but "technical disagreements" – mainly focused on cattle sourcing and

identification – held up trade resumption. There is one round of talks remaining between U.S. and Chinese trade negotiators before beef sales will resume.

The rule allowing precooked poultry meat to be imported from China will no doubt raise congressional hackles. The Obama administration contemplated a similar rule, but was blocked by Rep. Rosa DeLauro (D, CT), a strong champion of food safety. Ross apparently brushed off concerns Chinese poultry imports could hurt the domestic industry, or that food safety priorities were being lowered. He said the domestic industry will not be injured, adding, “We do not intend to endanger anybody’s health or safety in the U.S.”

On approving biotech traits, China agreed that by the end of May it will finish its scientific review of eight pending U.S. applications, with import approvals to be granted or denied with 20 days of completing the technical reviews.

The deal covers 10 areas, and is the result of the “100-day” dispute resolution agreement reached between President Trump and Chinese President Xi Jinping when Xi met with the Trump at the White House in April. Other markets opening to U.S. exporters include liquid natural gas and new “cooperation” between the U.S. and China over regulation of financial transactions, including Chinese bond underwriting licenses granted to two qualified U.S. financial institutions.

Roberts Pledges PRIA Move within Weeks

The Pesticide Registration Improvement Act (PRIA) will get Senate Agriculture Committee action, and hopefully, full Senate action “in a matter of weeks,” said committee Chair Pat Roberts (R, KS) during a hearing on the legislation this week. Blocking consideration could be the Senate “outrage of the week,” the Kansas lawmaker quipped.

PRIA, the fourth reauthorization of the program since 2003, sets the fees for registering and reregistering pesticides – the income making up about 30-35% of EPA’s Office of Pesticide Programs (OPP) budget – as well as setting food tolerances and outlining several other requirements of the Federal Insecticide, Fungicide & Rodenticide Act (FIFRA). The House approved its PRIA bill in March.

EPA Notes

NRDC Sues EPA for Pruitt Records, Conflicts – EPA Administrator Scott Pruitt’s potential conflicts of interest related to lawsuits and other actions in which he participated as Oklahoma attorney general are the subject of a lawsuit filed in New York this week by the Natural Resources Defense Council (NRDC). “Scott Pruitt’s EPA sounds more like an industry association than a public health agency,” the group said in a statement. Last week, Pruitt released a signed memo detailing his plans to recuse himself from ongoing lawsuits and other actions in which the state of Oklahoma was involved. Some question whether he should have recused himself from rulemakings related to those suits as well. NRDC said Pruitt’s memo “creates more questions than it answers.” According to reports, the group wants to see documents related to a February 17 press release on Pruitt’s confirmation, EPA filings in the ongoing WOTUS lawsuits since Pruitt’s confirmation, settlement and consent decree policies and Pruitt’s ethics and recusal waivers.

States Asked for WOTUS Input – All 50 state governors received a letter this week from EPA and the U.S. Army Corps of Engineers asking them to provide input on how the Trump administration’s “waters

of the U.S.” (WOTUS) rewrite should proceed. “We want to clearly understand what definition will work best for your state as we develop a new federal definition of ‘waters of the U.S.’ consistent with the Scalia opinion,” the agency’s wrote, referencing an opinion on EPA/Army Corps jurisdiction under the Clean Water Act (CWA) written by the late Supreme Court Associate Justice Antonin Scalia. “In addition, we are interested in understanding how your state might respond to a reduced scope of federal jurisdiction under the CWA.” The states have until June 19 to comment. OMB is reviewing EPA’s rescission of the controversial Obama administration rulemaking.

Pruitt Delays Worker Protection Regs – A one-year reprieve has been gained by industry as EPA Administrator Scott Pruitt this week announced he’ll delay yet again final agency rules written by the Obama administration to modernize pesticide worker protections. Pruitt said the delay is based on input from the states, industry and other stakeholders and will allow more time for the agency to develop guidance documents and training for compliance with the rule. The rule requires additional training and certification for pesticide applicators using certain chemicals, and specifies licensed applicators must be at least 18 years old.

EPA Slogging through Chlorpyrifos Comments – More than 50,000 comments filed in January on EPA’s chlorpyrifos risk assessment are getting agency review, EPA told the Senate Agriculture Committee this week. Most of the comments question the epidemiological study that underlies the assessment, and urge the agency to have the study peer reviewed again before finalizing its action. Environmentalists sought a ban of the chemical, but in March EPA rejected that call saying its plan to roll its chlorpyrifos review into the agency’s broader chemical risk review to be completed in 2022 would represent use of the best possible science. The agency assured the committee it continues to evaluate whether the chemical should remain on the market.

Half of Science Review Panel Let Go by EPA – EPA will not renew the contracts of about half the scientists on its Board of Scientific Counselors after their latest three-year term expired April 30. While nine of the 18-member board are eligible to serve a second term, they’ve been told their services won’t be needed. Several scientists both inside and outside of the review board process said they were shocked by the dismissals and alleged politics was being mixed with science at EPA. The agency said it wasn’t going to “rubber stamp the last administration’s appointees,” but would rely on a competitive process and was looking to consider a more diverse group of scientists, including corporate scientists where no conflict of interest can be proven.

OPP Looking to Streamline Rules Process, Collaboration – EPA’s Office of Pesticide Programs says it’s reaching out to other federal agencies to create opportunities for collaboration to find ways to reduce regulation. “We’re beginning to reach out to stakeholders to identify areas of regulation that either may be duplicative or could be streamlined or modified and still protect public health and the environment,” the agency said in testimony delivered to the Senate Agriculture Committee this week. One option being explored by the agency is memorandums of understanding (MOUs) among other federal agencies where “there may be opportunities to share our work.” The effort is in response to President Trump’s executive order on regulatory relief.

Fischer Wants to See E15 Sold All Year, Bill Gets Markup in Methane Rule Deal

A bill to allow a 15% ethanol/85% gasoline blend – E15 – to be sold at the nation’s gas stations all year long will be marked up the Senate Environment & Public Works Committee, according to the bill’s author Sen. Deb Fischer (R, NE).

The announcement comes just as National Marine Manufacturers Assn. began a legislative push to block E15. The boat makers say E15 will harm small boat engines, a claim the Renewable Fuels Assn. (RFA) said is more to block ethanol than protect engines.

Fischer’s bill is supported by 17 other lawmakers, including Sen. Chuck Grassley (R, IA), a member of the Senate Agriculture Committee and chair of the Judiciary Committee, and Sen. John Thune (R, SD), an ag panel member and chair of the Senate Commerce Committee.

Currently, E15 cannot be sold during the summer in several parts of the country due to emissions issues. Some in the ethanol industry think EPA Administrator Scott Pruitt, who supports year-around E15 sales, could administratively allow the vending of the blended fuel, while others want Congress to formally authorize the sale.

Fischer said she and committee Chair John Barrasso (R, WY) reached an agreement for Fischer to support Barrasso’s resolution to rescind an Obama administration rule on methane recapture from public land oil and gas installations in exchange for the mark-up of her bill.

Thune said, “What they agreed to give us was a hearing and a markup on Fischer’s bill. And if it can be reported out, then help us get it attached to a vehicle that moves.”

Did Icahn Break RIN Rules?, Senate Democrats Demand Investigation

Senate Democrats are calling for a formal investigation into whether billionaire investor and President Trump’s close friend Car Icahn broke federal market protection rules in his buying and selling of renewable identification numbers (RINs) in the biofuels market.

One of Icahn’s holdings, CVR Energy, is a regular buyer of RINs as one way to comply with the gasoline/biofuels blending requirements of the Renewable Fuel Standard (RFS). The Democrat lawmakers wrote to EPA, the Commodity Futures Trading Commission (CFTC) and the Securities & Exchange Commission (SEC) wanting to know whether Icahn broke insider trading rules, along with “anti-market manipulation laws or any other relevant laws based on his recent actions in the market for renewable fuel credits.”

Reuters recently reported that at the end of 2016, CVR sold off RINS, considered unusual since CVR is a firm which conventionally buys RINs to meet its RFS requirements on fuel blending. The Senate letter alleges a \$50-million “windfall” for Icahn’s company, a move they call “impossible.”

CVR didn’t comment on the Senate letter, explaining it does not speak on behalf of Icahn, who has been a special advisor to Trump on regulatory reform issues. Reports over the last few weeks indicate Icahn has been pushing to change the point of obligation under the RFS, meaning the federal requirement to ensure blending would fall on retailers, not refiners. EPA is reviewing a rulemaking on the issue.

The Senators signing the letter calling for the investigation are Sen. Elizabeth Warren (D, MA); Sen. Sherrod Brown (D, OH); Sen. Sheldon Whitehouse (D, RI); Sen. Tammy Baldwin (D, WI); Sen. Tammy Duckworth (D, IL); Sen. Amy Klobuchar (D, MN); Sen. Tom Carper (D, DE), ranking member of the

Environment & Public Works Committee, and Sen. Debbie Stabenow (D, MI), ranking member of the Senate Agriculture Committee.

ITC's First Vote Favors Biodiesel Dumping Complaint Against Argentina, Indonesia

A complaint by the U.S. biodiesel industry that Argentina and Indonesia are dumping excess biodiesel production into U.S. markets received its first victory this week when the International Trade Commission voted to advance its investigation of the complaint.

The commission said there is a reasonable indication that the U.S. biodiesel industry is “materially injured by reason of imports of biodiesel” from the two countries, exports that are deemed to be “subsidized and sold in the U.S. at less than fair value.”

Ag Needs Visa Revamp, Enforcement as Part of Feinstein “Blue Card” Plan for Ag Workers

A bill designed to give safe harbor to undocumented farm workers at risk of deportation under President Trump’s immigration enforcement actions was introduced last week by Sen. Dianne Feinstein (D, CA), and collective agriculture doesn’t see the bill solving all of ag’s immediate labor problems.

Rep. Luis Guterrez (D, IL) is expected to introduce the House version of the legislation “within a week.” “We benefit greatly from their hard work, but we don’t respect their work by allowing them to work legally,” he said.

Under the Feinstein plan, if an undocumented ag worker has worked at least 100 days in each of the last two years, that person earns what’s called “blue card” status. Those workers who maintain their blue cards for the next three to five years – depending on the total number of hours worked – would be eligible to trade their blue card for a green card, or legal permanent residency status.

Feinstein compared her bill to the 2013 bipartisan comprehensive immigration reform package hammered together in the Senate, but ignored in the House. The Senate bill passed 68-32, and her proposed “blue card” program is a portion of that larger bill that “everyone agreed to.” However, the previous Senate bill carried a major ag priority the Feinstein measure does not, namely a revamped visa program that would let thousands of ag workers enter the U.S. on a seasonal basis. Agriculture also wants to see a strong enforcement section in the bill. No Republicans are cosponsors of Feinstein’s bill.

For Feinstein, the issue of undocumented farm workers is a major challenge as the University of California at Davis estimates that more than 556,000 workers or 70% of those employed in California’s agriculture industry are undocumented.

“Farm labor is almost exclusively performed by undocumented immigrants – a fact that should surprise no one,” Feinstein said. “By protecting farm workers from deportation, our bill achieves two goals – ensuring that hardworking immigrants don’t live in fear and California’s agriculture industry has the workforce it needs to thrive.”

Bayer to Sell Liberty Herbicide, LibertyLink Seed

To clear potential hurdles in its purchase of Monsanto Corp., Bayer AG has agreed to sell its Liberty brand herbicide and its LibertyLink seed operations. Concerns raised by South Africa’s Competition Commission and a request for about \$2.5-billion in asset sales preceded this week’s announcement, the first time the two multinationals acknowledged Liberty might be part of an asset sell-off.

The divestitures were expected in large markets, including the U.S. and the European Union (EU), but not necessarily in smaller markets like South Africa, according to reports.

“Bayer will continue working with regulators globally with a view to receiving approval of the proposed transaction by the end of 2017,” Bayer said in a statement.

Global Poultry Group Says Human Antibiotics Should Be Restricted to Animal Disease Treatment

The International Poultry Council (IPC) this week said the world poultry industry should use antibiotics important in human medicine only to treat livestock and poultry diseases and only with the oversight of a veterinarian, a position echoing that of FDA.

The group didn’t acknowledge a smoking gun connection between agriculture’s use of antibiotics and increased antibiotic resistance in humans, but said the industry needs to minimize its “potential contribution” the phenomenon.

“We don’t yet have all the answers as to the extent by which use of antimicrobials in livestock production contribute to antimicrobial resistance, but we know that the IPC has a key leadership role in understanding and minimizing the poultry sector’s impact,” the group said. IPC also called for greater transparency, saying the industry should reveal how many antibiotics it uses and why.

Ten nations are members of IPC, including the European Union (EU), and the group called its position a “science-based course for the global poultry industry,” the goal being to protect the effectiveness of the antibiotics in human medicine. The group also made statements about animal welfare, consumer concerns and food safety.

Winter Wheat Crop Could Be Off 25%: USDA

A late season Kansas blizzard could cut 2017 winter wheat production by as much as 25%, USDA projected this week in its monthly Crop Production Report. The report says wheat production will likely hit 1.246 billion bushels, down from 1.67 billion last year. Average yield is pegged at 48.8 bushels per acre, significantly lower than last year’s 55.3 bushels per acre.

Kansas production will drop 177.6 million bushels year over year, said USDA, with 1.3 million fewer acres harvested. Projected average yield is off 15 bushels per acre, the department said. Colorado and Oklahoma, hit by the same snow storm and freezing temperatures, will see combined production drop over 80 million bushels from last year on 1 million fewer acres harvested.

The corn crop is projected at 14.1 billion bushels, down from a year ago due to a decrease in acres planted and yields. The average cash price was pegged by USDA as unchanged as global outlooks call for lower production, increased use and lower ending stocks. The soybean crop is projected to hit 4.25 billion bushels, creating increased crush, exports and ending stocks. The total soybean crop is expected to be down 52 million bushels from last year.