

## **State Association Weekly Washington Report 3.1.18**

### **How Many White House Meetings Does It Take to Resolve the RFS/RIN Issue?**

Three White House meetings this week to talk Renewable Fuel Standard (RFS), the Renewable Identification Number (RIN) program and the future of both involved the president, three cabinet officers, six senators and a passel of agriculture, biofuels and petroleum industry executives. By all reports, no progress was made.

At issue is Sen. Ted Cruz's (R, TX) strong assertion the RFS/RIN program is too expensive, too complicated and in bad need of a legislative or administrative repair lest it continue to put smaller, independent fuel refineries out of the business. Sen. Charles Grassley (R, IA), at his side Sen. Joni Ernst (R, IA), asserts as strongly the two programs work just fine and "adjustments" are unnecessary.

The week began with a Monday working lunch for President Trump, Vice President Mike Pence, Gary Cohn, head of the White House National Economic Council (NEC), Secretary of Agriculture Sonny Perdue and Scott Pruitt, EPA administrator. The meeting, described by one reporter as "contentious," was called to discuss a number of RFS modifications floated by Cruz and Sen. Pat Toomey (R, PA). Among the ideas are capping the price of RINs at levels substantially lower than current market prices; forgiving RIN obligations for certain refiners; banning non-program participants from speculating in the RIN market, including banks and other commercial investors, and including ethanol exports in the RIN program, all in exchange for allowing E15 to be sold year around and greater RIN "market transparency."

Attending a Tuesday meeting were Cruz, Toomey, Grassley, Ernst, Perdue, Pruitt, Cohn and the president. Grassley and Ernst, representing a bipartisan group of about a dozen senators from big ethanol states, rejected the various proposals out of hand. "The bottom line is that these changes will come at the expense of farmers in Iowa and across the heartland," Ernst said.

Following that meeting, Grassley announced to reporters, "No deal on RFS reform was reached today," adding "We reminded President Trump of his commitment to maintaining the 15 billion gallons per year of ethanol (to be blended with gasoline) under the RFS, his commitment to biofuels, ethanol and rural America." Ernst was more succinct: "No guarantees on anything. It's status quo." However, a third meeting including biofuels and petroleum executives was agreed to by Trump.

Ernst asked that Cohn and the NEC develop analyses to demonstrate the outcomes of any of the proposed RFS changes. "First, we have to define what the problem is, and we haven't seen what the problem is...we are just grasping at straws," Ernst said.

Cruz said, "I believe we are likely to reach a win-win outcome...one that is a win for Iowa corn farmers...and at the same that saves the jobs of tens of thousands of union members." Cruz referred to the recent bankruptcy filing by Philadelphia Energy Solutions (PES), in which the company cites high RIN program compliance costs as a major contributing factor. PES says its RIN costs in 2017 exceeded the company's payroll for its 1,000-plus employees.

Grassley contends PES is "scapegoating the RFS to distract from their own failings," calling on EPA this week to restate an agency finding that refinery profits aren't negatively affected by RIN credit requirements. A letter signed by Grassley, Ernst, Sen. John Thune (R, SD), Sen. Deb Fischer (R, NE) and Sen. Roy Blunt (R, MO) went to Pruitt after the White House meetings.

"We are told that action needs to be taken to lower RIN prices to help refiners. But under both Democrat and Republican administrations, EPA has found that RIN prices down affect whether refiners are successful or not," Grassley said in a statement. "That was true of President Obama's EPA and it's true of President Trump's EPA. The Obama administration also rejected calls to change which companies are obligated under the RIN program, and the current administration finalized that action this year.

A third meeting held Thursday, which included the lawmakers as well as ethanol and petroleum industry executives, was expected to yield much the same result. Invited biofuels companies were Green Plains Renewable Energy, POET, Good & Quick Tire and Auto Service, Renewable Energy Group Inc., The Andersons Inc., Absolute Energy and Western Iowa Energy. Invited oil companies were Valero, Monroe Energy, PBF Energy, along with the president of the United Steelworkers Local 10-1, a Philadelphia-area local union.

The Trump cabinet officials have taken flak from the biofuels industry, including farmers and their Senators, over where they sit on the RFS/RIN reform issue. Pruitt has been accused of quietly working behind the scenes to promote several of the oil industry's proposed RIN changes, while Grassley has publicly called out Perdue.

However, Perdue this week in a speech to the Commodity Classic, a major crop producer group meeting that was held in Anaheim, California, pulled no punches on his position when it comes to the RFS.

"Hear me clearly, all of you. I will not, I have not and will not support any policies in this country that diminish the demand for biofuels, undermine the RFS and are harmful to our agricultural producers," he told the producer audience. He told reporters he supports allowing E15 to be sold all year, but does not support lowering RFS mandates on blending by allowing ethanol exports into the RIN credits program.

#### **Northeast Quickly Confirmed as USDA Undersecretary as Cruz Gets His White House Meeting**

The agriculture community joined Secretary of Agriculture Sonny Perdue in heaving a collective sigh of relief this week as Iowa Secretary of Agriculture Bill Northe was finally confirmed as USDA undersecretary for farm programs.

Sen. Ted Cruz (R, TX), who blocked the Senate's final vote on the Northe nomination for nearly two months, dropped his hold after getting a White House meeting with President Trump and ethanol state senators to talk about a "win-win" solution to what the Texas lawmaker sees as a broken Renewable Fuel Standard (RFS) and the Renewable Identification Number (RIN) program, a system he contends is pushing small fuel refineries into bankruptcy.

Northe was up against a deadline in his home state. Had he not been confirmed in the next couple of weeks, the sitting Iowa ag secretary would have had to decide by March 15 if he was going to file and run this fall for his current job or move to Washington, DC, to work for USDA.

Technically confirmed as the undersecretary for farm and foreign agricultural services, Congress will have to enact legislation to change that title to reflect a new mission area created by Perdue during reorganization of the department, one that carries the job title of undersecretary for farm production and conservation programs. In his newly constructed job, he'll oversee the Farm Service Administration

(FSA), the Natural Resources Conservation Service (NRCS) and the Risk Management Agency (RMA), all critical to 2018 Farm Bill rewrites.

#### **Talks on 199A Amendment Continue; House Tax Chair Brady says It's Coming**

House Ways & Means Committee Chair Kevin Brady (R, TX) says an amendment is coming to the newly enacted tax reform law fixing the Sec. 199A deduction that skews grain markets in favor of farmer-owned cooperatives and away from private grain companies and elevators.

While Brady is “determined” to get the fix done, it’s unclear whether the ongoing negotiations will yield language acceptable to both sides of the issue in time to get it into the FY2018 omnibus spending package slated for March 23, when the current continuing resolution expires.

Saying he wants the fix completed “sooner rather than later,” Brady told reporters this week, “Clearly what was passed into law I think everyone agrees was a last-minute change that didn’t balance the competing players in the marketplace fairly, so we intend to do that.”

#### **Farm Bill Evolving on Track; House Ag Panel Says “No More Spending Cuts”**

The House draft 2018 Farm Bill, while still being cost-analyzed by the administration, is evolving quickly, sources say, hoping to meet Agriculture Committee Chair Mike Conaway’s (R, TX) end-of-March release of the draft legislation for committee action. To that end, the committee sent a formal message to chamber budget leaders to refrain from any further spending cuts to farm and nutrition programs in FY2019.

Committee ranking member Rep. Collin Peterson (D, MN) this week said the draft bill contemplates increasing Conservation Reserve Program (CRP) acreage caps to 30 million acres. The program, which pays farmers about \$2 billion a year to protect environmentally sensitive land, is capped at 24 million acres in the current Farm Bill, action supported by the feed and grain industries generally. He cautioned any final action is dependent on how the Congressional Budget Office (CBO) “scores” the cost of the program. Peterson wants to see a higher CRP cap, as does Sen. John Thune (R, SD). The highest number of CRP acres enrolled was 37 million in 2007.

On the budget side, the ag committee adopted its “budget views and estimates” letter to the Budget Committee on a voice vote this week, saying any further cuts to ag spending would “significantly hinder” getting a 2018 Farm Bill to the president’s desk. The committee noted that while farm income is down 52% over the last three years, the current Farm Bill is on track to save \$100 billion over 10 years, mainly because participation in federal food stamp programs is down.

“We’ve had the challenge of working through 39 programs without baseline (budget numbers) and countless requests for additional funding,” said Conaway. “It’s been quite the balancing act to write a budget-neutral bill that works for all producers and consumers.”

#### **New Tax Law to See ‘Technical Corrections’ Bill, Opens Door for Tax Extenders Ride-Along**

Congressional tax writers will need to cobble together a “technical corrections” bill to fix a number of drafting and other errors in the recently enacted federal tax reform law, House Ways & Means Committee Chair Kevin Brady (R, TX) confirmed this week. That bill provides an opportunity for including a longer extension of various tax credits which received only 2017 relief.

Committee Tax Policy Subcommittee Chair Vern Buchanan (R, FL) said this week his panel will hold a hearing entitled “Post Tax Reform Evaluation of Recently Expired Tax Provisions,” currently scheduled for Wednesday, March 14, at 10 a.m. The purpose of the hearing is for supporters of various tax credits, including the bioenergy credits, to come before the committee and make their case for extension.

Committee leadership acknowledged it’s getting serious pressure from supporters of various alternative energy/biofuels tax credits. At issue is a \$1-per-gallon blenders’ tax credit for biodiesel and renewable diesel, as well as other lesser credits, including a small blender credit and the alternative fuel mixture tax credit which pays 50 cents a gallon to companies who can use byproducts of their primary manufacturing process to fuel boilers for heat.

The last tax extenders package, enacted in February, applied retroactively to January 1, 2017, meaning those same tax credits expired again once the bill was signed by President Trump. Backers want those credits extended at least through 2018.

Members of both the House tax-writing committee and the Senate Finance Committee have spoken out in favor of the tax extenders package, modeled on legislation introduced last spring by Finance Committee Chair Orrin Hatch (R, UT), who was not happy with the one-year action taken last month. Senate lawmakers say it was the House contingent which blocked even a two-year extension of the tax breaks.

#### **NAFTA 2.0 Talks Resume, Progress Noted; Impact of Steel, Aluminum Tariffs Unknown**

The U.S., Canada and Mexico resumed formal NAFTA 2.0 negotiations March 1 in Mexico City, and it’s expected that by the end of this round on March 5, several chapters of the reinvented treaty will be completed or “closed” successfully, while most will remain open.

Just as this latest round began, the National Association for Business Economics released a survey showing 61% of business executives polled by the group on whether the U.S. should withdraw from NAFTA said such a move would have a “consequential and unfavorable impact on the U.S. economy.”

This seventh round of negotiations – the three countries still hope to wrap up the treaty reinvention by the end of March – begins with talks on agriculture, regulatory “best practices” and rules of origin. The group specifically dealing with automotive rules of origin – a major sticking point among the three countries – postponed its meeting when the lead U.S. negotiator returned to Washington, DC, for consultations.

A House delegation led by Ways & Means Committee Chair Kevin Brady (R, TX) arrived in Mexico City this week to observe the talks, with Brady evincing particular interest in a controversial U.S. proposal to make investor-state dispute resolution (ISDS) actions voluntary, a move Brady does not support.

Meeting for two straight days are the groups handling agriculture, labor, intellectual property, textiles, cross-border trade in services, environment, legal and institutional matters, state-owned enterprises, market access, government procurement, customs and trade, energy and digital trade.

It’s expected that nearly completed sections of the treaty will be formally closed and talked about on March 4-5, including sanitary/phytosanitary standards, i.e. “food safety; digital trade and telecommunications. To facilitate those presentations, U.S. Special Trade Representative (USTR) Robert

Lighthizer, Canadian Foreign Minister Chrystia Freeland and Mexican Economy Minister Ildefonso Guajardo will meet on March 5.

In a related development, President Trump's announcement this week he's moving ahead with a plan to slap Sec. 232 tariffs on imported steel and aluminum in the name of national security has several agricultural groups nervous that offended nations will retaliate against agricultural products from the U.S.

Farmers for Free Trade says it's analyzed several trade disputes going back to 1995, where other countries retaliated against U.S. ag exports. "Our trading partners are not political neophytes," the report says. "They know that targeting U.S. agriculture provides a powerful symbolic and political message, both inside and outside Washington, DC."

No fan of the Trump tariff action, Sen. Orrin Hatch, chair of the Senate Finance Committee, told the U.S. Chamber of Commerce this week, "Tariffs are taxes paid by American businesses and American families, and new tariffs would jeopardize some of the opportunities we successfully created through tax reform."

#### **Animal Drug User Fee Bill Clears Senate Committee; House Panel to Consider in Mid-March**

The bill reauthorizing the industry-government negotiated user fees paid by animal health companies to expedite new animal drug approvals, along with the generic animal drug version of the program – the Animal Drug User Fee Act (ADUFA) – was approved on a voice vote this week by the Senate Committee on Health, Education, Labor & Pensions (HELP). The House Energy & Commerce Committee will hold its first ADUFA hearing in mid-March.

The bill also contains language supported by the American Feed Industry Assn. (AFIA) designed to remove confusion and speed up approvals under the food additive petition process for feed ingredients, including requiring FDA to consider foreign investigations relative to the product's prospective approval in the U.S., and holding the agency accountable for communicating food additive petition requirements clearly and quickly.

The bill is usually noncontroversial. However, a last-minute indication by Sen. Lisa Murkowski (R, AK) that she might yet again move to amend the bill to require new multiple reviews of genetically modified animal applications to FDA under the New Animal Drug Application (NADA) process, including a third party review, as well as requiring genetically modified Atlantic salmon to be labeled "genetically engineered" or "GE" met with stiff resistance from both sides of the aisle. Murkowski did not offer the amendment or even talk about it during the markup.

#### **WOTUS Stay Lifted by Federal Court**

As expected, the 6<sup>th</sup> Circuit Court of Appeals this week formally nullified its national stay on implementation of the final rule governing "waters of the U.S. (WOTUS), after the U.S. Supreme Court last month ruled federal district courts and not appeals courts are where WOTUS legal challenges should first be heard.

EPA continues its work to repeal and replace the Obama administration WOTUS rule, and the 6<sup>th</sup> Circuit's action this week is likely to have no real effect on that action given states and industry are

already pursuing challenges in federal district courts, and without clear direction it's unlikely EPA would take any other action.

In a related matter, agriculture groups which petitioned a Texas federal judge to grant a nationwide injunction against any possible federal enforcement of WOTUS, participated in a hearing on their action last week.

### **Monsanto, Ag Groups Prevail in California Prop 65 Glyphosate Action**

A federal judge this week ruled the state of California cannot require Monsanto or any other company to put a cancer warning label on its product simply because it contains the herbicide glyphosate, giving Monsanto and a coalition of agriculture interests a preliminary injunction blocking the labeling order along with a major court victory.

"It is inherently misleading for a warning to state that a chemical is known to the state of California to cause cancer based on the finding of one organization (which only found that substance is 'probably carcinogenic'), when apparently all other regulatory and governmental bodies have found the opposite, including EPA," opined U.S. District Judge William Shubb when he enjoined the state action, preliminarily set for July.

California, under its Prop 65 law, said glyphosate is a chemical "known" to California to cause cancer, its decision based almost solely on a 2015 report by the International Agency for Research on Cancer (IARC) that said glyphosate is "probably carcinogenic to humans."

The judge said the record shows – almost all public and private research and reviews conflict with the IARC opinion – that "glyphosate is not in fact known to cause cancer, (and) the required warning is factually inaccurate and controversial."

### **USDA, HHS Announce New Approach to Dietary Guideline Development**

The development and roll out of the 2015-2020 federal Dietary Guidelines for Americans wasn't pretty by anyone's definition, so USDA and the Department of Health & Human Services (HHS) have decided to reinvent the process, starting with a call for public opinion on how the guidelines should be developed.

The two departments for the first time have called for public opinion on so-called priority topics and supporting scientific questions related to diet before an advisory committee is empaneled to develop the new 2020-2025 guidelines. Comments are being taken February 28-March 30, by going to [www.dietaryguidelines.gov](http://www.dietaryguidelines.gov).

During the last guidelines development, members and leadership of the advisory committee were criticized by industry as being biased against meat consumption, and for bringing issues, such as "sustainable" crop, fruit and vegetable production and animal welfare, into the document's development.

Here's how USDA and HHS see the guidelines developing:

The 2020-2025 guidelines topics which USDA and HHS propose are based on four criteria:

- Relevance – The topic is within the scope of the DGA and its focus on food-based recommendations, not clinical guidelines for medical treatment;

- Importance – The topic has new, relevant data and represents an area of substantial public health concern, uncertainty, and/or knowledge gap;
- Potential federal impact – There is a probability that guidance on the topic would inform federal food and nutrition policies and programs; and
- Avoiding duplication – The topic is not currently addressed through existing evidence-based federal guidance (other than the Dietary Guidelines).

After finalizing the topics and supporting questions, USDA and HHS will post a public call for the Dietary Guidelines Advisory Committee nominations. The areas of expertise needed will be based on the final topics and supporting scientific questions, resulting in a coordinated and efficient scientific review, the departments said.

In a joint statement, USDA and HHS called the guidelines “the cornerstone of federal nutrition programs and policies.” Taking public comment before selecting members of an advisory panel ensures the “integrity of the process, and ensures the transparency in communicating topics that meet the priorities of federal nutrition programs.