

## **State Association Weekly Washington Report 5.5.17**

### **First Perdue Policy Speech Long on Reassurances, Biofuels, Trade**

With USDA billing his remarks as the first major agriculture policy speech since his confirmation, Secretary of Agriculture Sonny Perdue last week ignored a prepared speech prepared for an Iowa audience, instead giving his farm audience their first experience of Perdue's informal communications style. His remarks focused on reassurances that ag trade will be protected, that labor shortages will be addressed, that biofuels are a very good thing, and that science, facts and data will drive USDA decision making.

Perdue at one point said USDA's "new motto" is "Do right and feed everyone."

The native Georgian, saying he'd be proud to be an adopted son of Iowa, didn't cover much new ground in his speech held at a Nevada, Iowa, cattle ranch, complete with ethanol plant in the background. He stressed he'll work with Gov. Terry Branstad, expected to be confirmed as U.S. ambassador to China, to kick open the doors for renewed Chinese beef imports. He said he'd travel to China with Branstad to "sell all of the beef we can." "The Chinese will tell you they want American beef, and we're going to figure out a way to get it to them," he added, explaining the holdups are technical issues, but they're "tough."

He said he wants to exploit the international trust trading partners place in the USDA inspection process, becoming the "chief salesman" for U.S. agriculture. "If you grow it, we're going to sell it," the former Georgia governor said.

When it comes to biofuels, Perdue reiterated the Trump administration's support for the Renewable Fuel Standard (RFS) – "we're not going to mess with the RFS" – and praised Iowa's ethanol industry, but threw in he's a big supporter of technological advances that have led to viable wind and solar renewable energy sources. The Iowa Renewable Fuels Assn. (IRFA) said in a statement it "fully expects (Perdue) will continue the USDA's legacy in this area and continue to aggressively pursue greater access to renewable fuels at the pump."

Perdue also said President Trump's creation of a federal interagency rural development task force he'll chair reinforces the administration's commitment to regulatory reform for farmers and ranchers. "The President is committed to having a Team USA – a holistic government that works for the U.S. people and not against them," he said.

### **Perdue Working with White House on USDA Subcabinet; Northev Frontrunner for Deputy Slot**

With regulated industries nervous over the lack of White House subcabinet nominees, Secretary of Agriculture Sonny Perdue last week said he and his team have "interviewed some people and we'll be passing their names along to the White House to be sure that they agree with us, or they may have other names which we'll agree to."

Perdue says to expect personnel announcements within a couple of weeks because "we've got to get these people through the process," adding he wants to fill the jobs as soon as possible. Perdue's own nomination took three months from the day he was announced as President Trump's pick for ag secretary to his final Senate confirmation vote.

Subcabinet jobs are the deputy, under and assistant secretaries who administer the various divisions of USDA. All of these positions require Senate confirmation. There are over 250 subcabinet jobs to fill at USDA.

Talk in Washington, DC, over who will get the deputy USDA secretary slot – the department's number two job and its chief administrator – continues to focus on Iowa Agriculture Secretary Bill Northeby as frontrunner. Many contend Northeby is a perfect fit because of his resume and experience, but also because the White House needs to regionally balance a Georgian secretary with a Midwestern deputy secretary. Northeby as a candidate for a "senior position at USDA" is strongly and vocally supported by Sen. Chuck Grassley (R, IA).

Other names mentioned for the deputy slot include Kip Tom, owner of Indiana's Tom Farms and a close friend of former Indiana governor Vice President Mike Pence; Indiana ag director Ted McKinney; A.G. Kawamura, former head of the California Department of Food & Agriculture, and Charles Herbster, billionaire Nebraska Angus grower, agribusinessman and chair of Trump's agriculture advisory committee during his campaign.

### **Lighthizer, Gottlieb Senate Votes Set for this Week**

Final Senate confirmation votes will finally put drivers behind the wheel at the Office of the U.S. Special Trade Representative (USTR), and at the helm of FDA. Floor votes on Dr. Scott Gottlieb to be commissioner of FDA and Robert Lighthizer to be USTR are expected this week.

Lighthizer's confirmation, finally cleared when a waiver needed to proceed with his vote was included in the FY2017 omnibus spending package signed by the president last week, will finalize the White House trade team. The waiver was needed, Democrats said, because Lighthizer represented foreign governments while in private sector legal practice.

### **Michigan Hearing Continues Senate Moves to Craft 2018 Farm Bill**

The long and painful process of crafting the 2018 Farm Bill is officially underway, with the House Agriculture Committee's series of subcommittee hearings moving into the field, and the Senate Agriculture Committee having just completed its second listening hearing, this time at Michigan State University in the home state of the panel's ranking member, Sen. Debbie Stabenow (R, MI).

In a development related to the Senate's Michigan hearing, the chairs and ranking members of both the House and Senate agriculture committees have publicly said they're dedicated to getting a negotiated Farm Bill completed by the end of this year, with final votes in early 2018.

Stabenow said there will be Farm Bill, but budget cuts will need to be fought. Saying the Farm Bill has done more than its fair share in reducing the deficit, Stabenow told her Michigan audience the 2014 Farm Bill will save the federal government \$80 billion more than expected. Senate Agriculture Committee Chair Pat Roberts (R, KS) concurred, and said differences will be hammered out. House Agriculture Committee Chair Mike Conaway (R, TX) said the bill will get done and done on time, and his ranking member, Rep. Collin Peterson (D, MN), agreed if members avoid political land mines such as "monkeying around" with the Supplemental Nutrition Assistance Program (SNAP).

Roberts kicked off his chamber's efforts with a major producer listening session in Manhattan, Kansas, at which several dozen farmers testified. Stabenow's Michigan event last Saturday, highlighted the

priorities of her state's diverse agriculture. While Roberts' witness list was long on crop and cattle producers, Stabenow's invited witnesses included specialty crop growers, sugar beet farmers, corn, soy, wheat, hay, turkey, dairy, cattle and swine producers.

While farm income support programs and their success or lack thereof dominated the witness testimony, labor issues, environmental concerns and even tax reform found their way into producer messages.

Crop insurance was described by many witnesses as the only reason many farmers are still working. Roberts called himself "the self-declared godfather of crop insurance," and his support rivals that of Stabenow who is trying to get milk designated as a pure crop-insurance eligible commodity. "There are not going to be deep cuts in crop insurance," Roberts said. "There just aren't."

A familiar message during Farm Bill hearings – "we have to do more with less" – was often heard during the Michigan event, and while it would be great to increase farm program spending, the committee will be challenged to find budget cuts.

Specialty crop producers stressed their need to tap into USDA's Market Access Program (MAP) as a way to find new export markets.

### **Dairy Weighs In**

Dairy producers, facing global overproduction and historically low dairy prices, are focused like a laser on reinventing the Margin Protection Program (MPP) created in the last Farm Bill, but also told the Senate Agriculture Committee their industry is suffering due to immigration/labor shortages, tax reform priorities, child nutrition, environmental sustainability, and a need for North American Free Trade Agreement (NAFTA) "fixes" to Canada's pricing policy that's slashed U.S. dairy access to Canadian markets.

The hearing came just a week after dairy lost a tug of war over the final FY2018 spending package. MPP fixes were supposed to be part of the final package, but Stabenow and Sen. Patrick Leahy (D, VT) offered a last-minute dairy deal, paid for by taking \$800 million out of a new \$4-billion House Agriculture Committee program to qualify cotton producers for federal farm program payments. When no agreement between Stabenow, Leahy and the cotton industry could be achieved – Stabenow said the House ag panel "didn't reach out to me" when it crafted its cotton deal – the lawmakers forced both programs out of the final omnibus spending deal signed by President Trump last week.

At the Michigan hearing, state producer Darrin Siemen testified for the Michigan Milk Producers Assn. (MMPA) and the National Milk Producers Federation (NMPF), saying MPP "has failed to deliver the protection farmers need and expect. While MPP remains the right model for the future of our industry, changes are needed if Congress wants to prevent dairy farmers like me from going out of business."

NMPF designed the original MPP model, but the version adopted in the final 2014 Farm Bill deviated significantly from the original proposal. MPP is designed to help farmers insure against either low milk prices or high feed costs, but the final formula used by USDA to calculate the relative value of "feeds" – corn, soybean meal and hay – "fundamentally altered" the safety net designed by NMPF and others. "Unfortunately, as a direct result of these changes, the MPP safety net has failed to deliver the protection farmers need and expect," he said.

"I'm not asking for a program that guarantees a profit, nor do I want a program that will incentivize excess production," Siemen said. "When Congress made changes...rendering MPP ineffective, dairy farmers...lost faith MPP could serve as a viable risk management tool. If Congress makes changes to ensure MPP more accurately reflects the actual costs of production for businesses like mine, participation in the program will increase." Congress should also reassess MPP's premium rate structure and expand access to the Livestock Gross Margin (LGM) program, he said.

### **Animal Ag, Vets Want Disease Prevention, Response Program in Farm Bill**

More than 65 national livestock and poultry producer groups, allied with animal science and veterinary organizations, have called on Congress to include a new Animal Disease & Disaster Prevention Program in the 2018 Farm Bill. The Michigan Turkey Producers unveiled the program and the request during testimony at the Senate Agriculture Committee's hearing at Michigan State University last week.

The group wants Congress to use the proposed program as a template to create within USDA "a forward-looking disease prevention program with rapid response and robust laboratory capacity creating a network of specialists focusing on minimizing disease impacts."

The concept and the Farm Bill priority are the result of coalition members' concern that an outbreak of a foreign animal disease could cripple the entire agricultural sector with long-lasting economic ramifications that could devastate livestock and poultry production, the group said. The threat of a food-and-mouth (FMD) outbreak in the U.S. and recent outbreaks of avian influenza are constant reminders, industry said.

"In the 2015 outbreak of Highly Pathogenic Avian Influenza, farmers, rural communities and companies shouldered the personal burden of the virus and learned that you can never be prepared enough," said Joel Brandenberger, president of the National Turkey Federation (NTF). The industry wants to work with the federal government to create "a more robust safety net that relies on expert resources of federal and state research and veterinary science," he explained.

The program would be funded through the National Animal Health Laboratory Network (NAHLN) and a new state-specific block grant program designed to increase safeguards for animal disease prevention. The two-tiered program will deliver "sufficient development and timely deployment of all measures necessary to prevent, identify and mitigate the potential catastrophic impacts that an animal disease outbreak would have on the nation's food security, export markets, and overall economic stability."

The effort would include a "concerted boots on the ground" prevention effort administered by USDA's Animal & Plant Health Inspection Service (APHIS) focusing on early detection and rapid response, and building upon the 2014 Farm Bill's authorization of NAHLN to mix resources with states, industry, and universities to reduce disease impact, provide rapid detection and response, as well as develop disease prevention and mitigation to include vaccines, prevent entry and spread of foreign animal diseases into the U.S., as well as identifying and supporting critical research.

### **Portman, Heitkamp Introduce Regulatory Reform Act**

Food safety and environmental activists aren't happy, but business is thrilled with a new bill introduced by Sens. Heidi Heitkamp (D, ND) and Rob Portman (R, OH) to inject cost-effectiveness into the regulatory process in a much bigger way than before. A similar, but not identical bill has already passed the House

with American Farm Bureau Federation (AFBF), National Corn Growers Assn. (NCGA) and other ag group support.

The Regulatory Accountability Act (RAA) would require federal regulation writers to find and use the most cost-effective way to regulate industry, a move that will increase transparency and accountability in the regulatory process. Portman said the bill will make regulations “smarter and more effective so they better support businesses, families and jobs.”

The Natural Resources Defense Council (NRDC) says the bill would “cripple the government’s ability to protect people from dirty air, contaminated food, polluted waters and other serious health threats.” In a call with reporters, NRDC said the House and Senate rules would “make it difficult if not impossible for new regulations to be put into effect.”

The bill would require analysis of the costs and benefits of new regulations. To hold agencies accountable, the bill would permit a judicial check on an agency’s cost-benefit analysis of major rules — the 40 to 80 costliest regulations out of the more than 3,000 issued each year. This review by the courts would ensure agencies don’t rely on “irrational assumptions or treat cost-benefit analysis as a mere afterthought.” The bill would require federal agencies to disclose the information they rely upon, ensuring that there is greater transparency, and ensure agencies use sound scientific and technical data to justify new rules.

The bill would also make permanent key bipartisan regulatory executive orders in place since the Reagan administration. Federal agencies would also be required to better consider the concerns of people and businesses regulations would directly impact. The bill would require federal agencies to build in an automatic review for the largest, most significant rules at least once every 10 years to ensure rules are meeting regulatory objectives and work as intended. The measure would require federal agencies to follow a more evidence-based approach in crafting rules that will cost more than \$1 billion annually. The legislation would give those impacted by the regulations access to an agency hearing to test the “key disputed facts.” While it would require additional work on the front end, the result would be lower costs and “more stable regulatory outcomes.”

The Portman-Heitkamp bill is supported by AFBF, the National Federation of Independent Businesses (NFIB), National Association of Manufacturers (NAM) and the National Association of Wheat Growers (NAWG) among others.

#### **Feinstein, Leahy Introduce Worker Protection Plan**

Sen. Dianne Feinstein (D, CA) and Sen. Patrick Leahy (D, VT) are among five Democrat Senators who have introduced the Agricultural Worker Protection Program Act, a bill designed to give safe harbor to undocumented farm workers at risk of deportation under President Trump’s immigration enforcement actions. Sens. Michael Bennet (D, CO), Mazie Hirono (D, HI) and Kamala Harris (D, CA) joined the two senior Senators.

If an undocumented ag worker has worked at least 100 days in each of the last two years, that person would earn 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 exchange their blue card for a green card, or legal permanent residency status.

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."

Feinstein said that despite their contributions to the \$54-billion state agriculture industry, farm workers are now a priority for deportation, a Trump policy she calls "shameful."

#### **EPA Notes**

**WOTUS Rescission Order Heads to OMB** – The Trump administration's strategy for undoing EPA's "waters of the U.S." (WOTUS) rulemaking has been sent to the Office of Management & Budget (OMB) for its blessing. OMB review is the first of a two-step process, first to rescind the rule than then to rewrite the rulemaking by first formally putting in place a 1986 guidance on how EPA and the U.S. Army Corps of Engineers is to regulate bodies of water under the federal Clean Water Act (CWA) until a new rulemaking can begin. Meanwhile the U.S. Supreme Court is expected this fall to hear a case challenging whether state and industry-brought court actions against EPA should be heard in federal district or federal appeals court. The high court will not judge the rule *per se*; only the federal jurisdiction question. However, if EPA has not finalized its WOTUS rulemaking and the Supreme Court decides that district courts must hear the challenges, then the currently blocked rule could go into effect, legal experts said.

**E15 Waiver Supported by Pruitt** – EPA Administrator Scott Pruitt last week said he supports using the agency's waiver authority to allow E15 – a 15%-85% blend of ethanol and gasoline – to be used all year long, not just seasonally as is currently the case. "We are looking at that internally to allow E15 to be sold throughout the year," Pruitt said. "A national waiver, if you will." The E15 action in part would be taken to make certain Senators happy, including Sen. Charles Grassley (R, IA), who willing to block action on oil/gas industry methane rule relief.

**Pruitt to Recuse Himself from WOTUS, State Lawsuits** – One of the big criticisms of President Trump's nomination of Oklahoma Attorney General Scott Pruitt to head EPA was that Pruitt was one of the lead authors/attorneys general of state legal challenges against the agency. Last week Pruitt said he's recusing himself from ongoing lawsuits in which he participated in his previous job. A four-page memo lists the cases from which Pruitt is recusing himself, including the Obama administration's Clean Power Plan, waters of the U.S. (WOTUS), the Clean Water Plan, and a smaller list of cases dealing with clean air, methane in the oil and gas industries, and mercury standards for power plants. He'll also be hands off when it comes to the diesel emissions scandal plaguing Volkswagen AG.

**Environmentalists Sue EPA over Water Pollution Rules** – A fistful of environmental and public health groups last week filed suit against EPA in the U.S. Court of Appeals for the District of Columbia to reverse agency action by Administrator Scott Pruitt to rewrite water rules requiring utilities to reduce the presence of heavy metals in cooling waters pumped into rivers and lakes. During the Obama administration, action was taken because, EPA said, arsenic, lead and mercury leached from ash pits into

nearby waterways when coal-powered utilities cooled down. The Waterkeepers Alliance said, "The EPA didn't even pretend to seek public input before plowing ahead with this rollback that could allow millions of pounds of preventable toxic pollution to go into our water."