

State Association Weekly Washington Report 4.20.17

Perdue Set for April 24 Vote; Committee to Clear Gottlieb April 26, as Nominations Increase

Former Georgia Gov. Sonny Perdue will be cleared to move into the agriculture secretary's office next Tuesday if his Senate floor vote April 24 goes as smoothly as expected. Then April 26, Dr. Scott Gottlieb will be one step closer to taking the reins at FDA when the Senate Health, Education, Labor & Pensions (HELP) Committee is scheduled to clear his nomination for a Senate floor vote.

Perdue has proven to be the least controversial, and most popular of President Trump's nominations, with only one Senator – Sen. Kirsten Gillibrand (D, NY) – speaking against him. Gottlieb, who was a deputy FDA commissioner under President George W. Bush, was criticized for consulting with several pharmaceutical companies and his position with a major venture capital company, but he's committed to recusing himself for a year on any agency issues affecting any of the 20 or so companies he assisted.

Meanwhile, the White House is moving to nominate key lieutenants for nominated and approved cabinet picks.

EPA's Office of Chemical Safety & Pollution Prevention gets a new number two in the person of Nancy Beck, currently senior director for regulatory science policy at the American Chemistry Council (ACC). Beck previously worked as a toxicologist at the Office of Management & Budget (OMB) for a dozen years, and before that had a two-year stint as a policy fellow at EPA. Her job does not require Senate confirmation.

OMB Director Mick Mulvaney's director of the Office of Information & Regulatory Affairs (OIRA) will be Neomi Rao, a law professor specializing in constitutional and administrative law at Virginia's George Mason University. She worked in the White House counsel's office during the Bush administration and was a staffer on the Senate Judiciary Committee.

Mulvaney also gets an OMB deputy director in the person of Russ Vought, formerly an executive with Heritage Action for America, and a member of the Trump transition team. He was budget staff to the former Rep. Mike Pence (R, IN), now Vice President Pence, and served as executive director of the House GOP Study Committee.

Finally, former Sen. Scott Brown (R, MA), who won a special election in 2010 to be Massachusetts' first Republican Senator in decades only to lose that seat to Sen. Elizabeth Warren (D, MA) in 2013, is Trump's nominee to be ambassador to New Zealand. Brown was on the short list of possible vice presidential candidates, as well as a contender for secretary of veterans' affairs.

Trump Returns to Tough Talk on NAFTA at Wisconsin Speech

Speaking to a Wisconsin audience this week gathered to hear his "hire American, buy American" message, President Trump made the dairy producers in the audience happy when he talked tough on the renegotiation of the North American Free Trade Agreement (NAFTA), at one point suggesting if the talks are not fruitful, "we might get rid of it."

Returning to his campaign rhetoric that NAFTA is "a disaster for the U.S., a complete and total disaster," he departed from comments made in February that talks with Canada may result in just " tweaks" to the

existing trade deal. He said he wanted to see “big changes or we’re going to get rid of NAFTA for once and for all.”

The deal is particularly thorny for dairy, which has argued since the treaty was signed 22 years ago it favors Canadian access to U.S. markets. And with Canada recently reimplementing its new classification system on dairy imports under its National Ingredient Strategy, a move that has allowed domestic dairy producers to undercut import prices, it’s effectively locked high-filtered U.S. milk for cheese processing out of the market.

This week, Canadian Ambassador David MacNaughton sent letters to the governors of New York and Wisconsin telling them recent complaints over the Canadian reclassification system and its impact on U.S. producers are misplaced. Instead, he shared with them USDA statistics that he said demonstrate U.S. and global dairy overproduction are responsible for depressed U.S. producer incomes.

However, the tough NAFTA talk makes those who export to Mexico nervous a bad situation between the two NAFTA partners could worsen if the U.S. tries to renegotiate the tariff suspension sections of the treaty. At stake is \$18.3 billion in annual exports, including corn, soybeans, wheat, dairy, pork, beef and rice.

White House Split on Whether to Exit Paris Climate Change Accord

A top level internal White House meeting this week designed to get President Trumps’ senior advisors on the same page when it comes to whether the U.S. will remain part of the 200-nation Paris agreement on climate change was cancelled with no word on when it will be rescheduled.

The goal, however, remains to decide on the fate of the U.S.’s participation in the Paris treaty by the end of May when the heads of state of the G-7 nations meet in Sicily.

White House Council of Economic Advisors (CEA) Chair Gary Cohn, backed by presidential son-in-law and senior advisor Jared Kushner, wants the U.S. to remain a signatory to the agreement which obligates signers to specific reduction targets for greenhouse gas emissions, especially carbon. EPA Administrator Scott Pruitt and Trump senior policy advisor Steven Bannon want the U.S. to pull out of the climate accord.

Those for staying in the pact argue it’s good for the U.S. image and leadership on the broad issue of climate change. Those for pulling out argue it forces on the U.S. unreasonable carbon reduction goals – 20-24% by 2025 – while allowing major polluters, including China and India, to enjoy lower reduction goals and a longer timeline to achieve them.

This week, over a dozen GOP House members sent a letter to Trump calling for the U.S. to exit the treaty. They told the president they favor a “complete withdrawal from the deal,” siding with Pruitt’s argument that supporters of President Obama’s Clean Power Plan will use the Paris accord as evidence such a regimen is needed.

Rep. Kevin Cramer (D, ND) meanwhile is circulating a letter calling for the U.S. to stay in the Paris deal, but with a much smaller carbon reduction obligation.

EPA Moving Ahead on WOTUS Reinvention; No Plans to “Outsource” Reg Writing

EPA continues its plan to rescind EPA’s controversial “waters of the U.S.” (WOTUS) rulemaking and in separate action repropose the rulemaking in its image, and regulators went out of their way this week to make sure it’s understood EPA will not “outsource” the new rule to private attorneys.

Talk began circulating in Washington, DC, earlier this week when reports surfaced alleging EPA had begun discussions with the Water Advocacy Coalition (ADC), to use its attorneys to draft the repropose rule dealing with agency jurisdiction under the Clean Water Act (CWA). The private attorney option is reportedly to speed up the reproposal process.

But when contacted by the media, the American Farm Bureau Federation (AFBF), which chairs the coalition, stressed the notion of outsourcing is “something that our coalition has not talked about nor would be take a position on.”

However, even if Administrator Scott Pruitt was on board with such a strategy – it’s unclear if he’s been approached or even if the agency *per se* has been contacted – the action would effectively privatize the federal regulatory process, raising not only serious legal questions, but heavy ethical concerns as well, not the least of which would be transparency on EPA’s part as the redrafted rulemaking evolves.

Ethanol Exceeds 10% Blend Rate for First Time

Gasoline refiners used enough ethanol in the last year to exceed the federal 10% maximum blend rate, according to Federal Energy Information Agency (FEIA) data, hitting 10.4%, a first, and demonstrating the “blend wall” warnings of petroleum refiners are a myth, says the ethanol industry.

The blend wall warnings “mislead consumers and undermine the Renewable Fuel Standard (RFS),” said the Renewable Fuels Assn. (RFA).

The “blend wall” is that point at which the inclusion of ethanol at higher than 10% is unsafe in older engines, and that point at which gasoline makers are forced to use what they consider to be excessive biofuels to hit mandated blend rates at 15% and higher the oil and gas industry opposes such a move.

FEIA says total gas use in the last reporting periods was 143.6 billion gallons, of which 14.4 billion gallons was blended ethanol.

DOC, ITC Begin Biodiesel Antidumping Investigation against Argentina, Indonesia; Tax Credit Assailed

The Department of Commerce (DOC) and the International Trade Commission (ITC) have begun an antidumping and countervailing duty investigation of biodiesel exports to the U.S. from Argentina and Indonesia, DOC said this week.

The action comes at the behest of a petition filed by the National Biodiesel Board (NBB) Fair Trade Coalition, a coalition of NBB members and others in the domestic biodiesel industry. NBB said the DOC/ITC preliminary investigation “validates our petition.”

NBB contends 2016 should have been a “banner year for U.S. biodiesel production.” Instead, “dumped and subsidized imports from Argentina and Indonesia” surged 464% from 2014 to 2016, usurping 18.3% of domestic market share for U.S. producers.

In other biodiesel-related developments, Rep. Randy Weber (R, TX) reintroduced a bill that would strip the animal biodiesel industry of its \$1-per-gallon blenders' tax credit. Weber contends the federal credit for blending animal-fat based biodiesel is robbing the cleaning and personal care product manufacturers of a vital ingredient by increasing its cost 116% over the last decade. The bill is identical to one he introduced in the last Congress.

Chemical Companies Push to Suspend EPA Organophosphate Review by Fisheries Unit

Three major chemical companies are calling on EPA and the Department of Commerce (DOC) to immediately withdraw from National Marine Fisheries Service (NMFS) review a study by EPA of the effects of three organophosphates on certain endangered species.

Dow, FMC and Makhteshim Agan sent letters to DOC Secretary Wilbur Ross and EPA Administrator Scott Pruitt asking that EPA research on chlorpyriphos, malathion and diazinon be "pulled back" from NMFS before that agency's review is completed.

The review is part of a 2010 federal court settlement of a case brought against EPA by environmental groups contending the agency was make safety decisions about certain chemicals without ensuring those decisions were in line with Endangered Species Act (ESA) requirements. The court agreed and ordered reviews to be completed by December, 2017.

In the case of chlorpyriphos, Pruitt recently rejected a bid to ban the chemical, instead deciding its safety will be judged as part of a broader chemical review set to conclude in 2022.

Organic Production Growing Fast: USDA

Facilities in the U.S. certified to provide organic production under USDA's national organic standards now number 24,650, 13% more than in 2016, and the biggest increase since 2008, the department reported this week. Globally, there are 34,032 certified organic entities.

Organic production is what USDA calls a voluntary "opt in" program, but once a producer decides to go organic, the farm must be certified as meeting the National Organic Standards Program (NOSP). USDA oversees 80 business and state certification inspectors.

A full list of certified organic producers can be found at the NOSP Organic Integrity Database at <http://organic.ams.usda.gov/integrity>.