

State Association Weekly Report 4.27.17

Perdue Confirmed – Finally; Hits the Ground Running

Former Georgia Gov. Sonny Perdue is now officially Secretary of Agriculture Sonny Perdue as the Senate this week approved his nomination 87-11, the first time in over 30 years an agriculture secretary nominee didn't get unanimous Senate approval. While Perdue is arguably the least controversial and most popular of President Trump's cabinet picks – his nomination was formally supported by more than 700 agriculture/agribusiness/consumer/ag policy groups and all living former secretaries of agriculture – his nomination pended for nearly four months due to paperwork, political and procedural delays.

Said the American Feed Industry Association (AFIA) of the Senate vote: "We applaud the Senate's decision to confirm Sonny Perdue as secretary of agriculture. We expect Secretary Perdue's government and agriculture experience to align with the industry's initiatives, and plan to provide our industry's input and support on various issues including trade and the coming Farm Bill. The feed industry looks forward to working closely with Secretary Perdue, assisting him and his staff on animal food-related topics, and how our industry relates to other agriculture sectors and to consumers."

"I'm pleased the U.S. Senate was able to work in a bipartisan fashion to confirm Gov. Perdue," said Senate Agriculture Committee Chair Pat Roberts (R, KS) said. "I have faith Gov. Perdue will put the needs of farmers and ranchers first, and I know rural America is thankful to have such a qualified Agriculture Secretary on their side." On the Senate floor, committee ranking member Sen. Debbie Stabenow (D, MI) said, "'We need a secretary of agriculture who will be a relentless advocate for our nation's farmers and the important services USDA provides."

"Today is a great day for American agriculture. Secretary Perdue is a strong friend of America's farmers and ranchers, and I know he will work to ensure that agriculture is a top priority in the new administration," said House Agriculture Chair Mike Conaway (R, TX).

Perdue was confirmed Monday evening as USDA's 31st chief executive – his cousin, Sen. David Perdue (R, GA), presided over the Senate, voted "present" and announced the vote outcome – and Tuesday morning was officially sworn in at the U.S. Supreme Court by fellow Georgian Associate Justice Clarence Thomas. He traveled to USDA where he addressed headquarters employees. In unscripted remarks, he told the assembled civil servants and other observers, "The only legacy I seek is the only one that any grandparent or parent seeks – to be good stewards, and to hand off our nation, our home, our fields, our forests and our farms to the next generation in better shape than we found it. I will be an unapologetic advocate for American agriculture."

During his USDA appearance, Perdue doffed his coat and tie and rolled up his sleeves, telling the audience, "I was a farmer first, and we are going to get comfortable in working clothes." He said he'd get to know headquarters employees by dropping by their offices, and he promised a department picnic.

Perdue then headed to the White House to participate in a roundtable meeting between Trump and 14 farmers and ranchers at which the president signed an executive order – presenting the ceremonial pen to Perdue – creating a 21-member Interagency Task Force on Agriculture & Rural Prosperity, participants including most cabinet secretaries and the heads of both independent and major agencies. As the president entered the meeting room, he's reported to have said, "Great farmers! We love our farmers," and referred to "America's noble farming tradition."

To be chaired by Perdue, the task force's charge is to "...promote American agriculture while protecting and supporting the rural communities where food, forestry, fiber and renewable fuels are grown...to promote economic development and revitalization, job growth, infrastructure, innovation and quality of life issues for rural America. It is in the national interest to ensure regulatory burdens do not unnecessarily encumber agricultural production, constrain economic growth, hamper job creation or increase the cost of food for Americans and our customers around the world." The task force has 180 days to study what ails U.S. agriculture, particularly problems and hurdles created by the federal government.

The newly minted secretary also had his first "sit-down" meeting with House agriculture leaders, hosting a Thursday morning breakfast at USDA. Attending were Agriculture Committee Chair Mike Conaway (R, TX), ranking committee member Rep. Collin Peterson (D, MN), Rep. Robert Aderholt (R, AL), chair of the House appropriations subcommittee on ag/FDA, and Rep. Sanford Bishop (D, GA), appropriations subcommittee ranking member.

Perdue affirmed he wants to make policy decisions based on science and supports technology solutions to rural and agriculture challenges, and the list of pending policy challenges is long.

His first challenge will be Trump's notion to cut USDA's FY2018 budget by 21%. Perdue met with European Union (EU) ag commissioner Paul Hogan on Thursday, before heading to Kansas City, and is set to be in Wisconsin soon. He says his personal agenda starts with trade, including creation of a long-pending undersecretary for trade office, promotion and market development, but also NAFTA renegotiations, particularly the dairy access and soft lumber disputes, along with making nice with Mexico as part of NAFTA and immigration; bilateral trade discussions with Japan; broad immigration reform and agricultural labor needs; Farm Bill evolution on Capitol Hill, and biotechnology labeling "The message that we want to send to the agriculture community," said Perdue, "is that we are here, we are working hard and we are on their side."

Trump Talks Tough on NAFTA, Relents After Major Ag, Business Push Back

President Trump, backed by a bipartisan chorus of U.S. politicians, more than once this week referred to the North American Free Trade Agreement (NAFTA) as a disaster, and last week while speaking to a Wisconsin audience about his "hire American, buy American" program, told U.S. dairy producers angry with a new Canadian milk classification system that if NAFTA talks aren't fruitful, "we might get rid of it."

Returning to campaign tough talk, Trump said NAFTA is "a disaster for the U.S., a complete and total disaster." Trump wants to see "big changes, or we're going to get rid of NAFTA for once and for all." Agriculture and business organizations' collective temperatures soared and lobbying efforts ramped up late this week when it was reported Trump drafted an executive order to withdraw the U.S. from the 23-year-old North American tripartite trade treaty.

The U.S. Food & Agriculture Dialogue for Trade, a coalition of 130 agriculture and agribusiness associations and companies, including the American Feed Industry Assn. (AFIA) and the National Grain & Feed Assn. (NGFA), told the media in a prepared statement, "Trade Dialogue is pleased to work with the Trump Administration to expand jobs and exports through modernization of NAFTA. U.S. engagement in constructive, substantive negotiations with Canada and Mexico as soon as possible should be the singular priority and focus regarding NAFTA."

The American Soybean Assn. (ASA) said pulling out of NAFTA is “a terrible idea.” Another ag group said it was “shocked and distressed” by the notion, according to *AgriPulse*. The National Cattlemen’s Beef Assn. (NCBA) told *Politico*: “There are some things which sound good politically, but are potentially dangerous in the real world. For the U.S. beef industry, withdrawing from NAFTA is one of the most dangerous moves we can make at this time.”

Allowing he had originally planned to terminate NAFTA “as of two or three days from now,” Trump, barraged by media questions throughout the week, said at a White House press gaggle he fully expects NAFTA can be successfully modernized through renegotiation given his close relationship with the Mexican and Canadian heads of state. But he repeatedly warned he is willing to pull the U.S. out of the trade pact even if such a move is “a pretty big shock to the (economic) system.” “If I’m unable to make a fair deal for the U.S., meaning a fair deal for our workers and our companies, I will terminate NAFTA,” the president said, pledging to give talks a “good, strong shot.”

Late Wednesday night, the White House released a statement: “Late this afternoon, President Trump spoke with both President Pena Nieto of Mexico and Prime Minister Trudeau of Canada...President Trump agreed not to terminate NAFTA at this time and the leaders agreed to proceed swiftly, according to their required internal procedures, to enable the renegotiation of the NAFTA deal to the benefit of all three countries. President Trump said, ‘It is my privilege to bring NAFTA up to date through renegotiation...I believe the end result will make all three countries stronger and better.’”

Trump Releases Tax Reform Outline Long on Headlines, Short on Detail

The media went into overdrive this week when the White House released a one-page outline of what President Trump would like to see when it comes to comprehensive federal tax reform, and as expected, while Trump claims his plan will be “the biggest tax cut...and the largest tax reform in history, opponents said it’s just a way to make the rich folks richer.

Treasury Secretary Steve Mnuchin, joined by White Council of Economic Advisors (CEA) chair Gary Cohn, told reporters, “We’ve been clear on what the president’s objectives are for tax reform – middle-income tax cuts, a priority of the president’s. Simplification. The average American should be able to file their taxes on a large postcard. Business tax reform. We need to make business taxes competitive.”

The Trump plan is part of the broader GOP strategy for rolling out to the public the party’s strategy for reforming the federal tax code while slashing tax rates for both companies and individuals. The House leadership is putting the final touches on its tax reform plan – expected to differ in some major respects from the White House plan – and Office of Management & Budget (OMB) Director Mick Mulvaney said he won’t be able to release details of the president’s plan until June at least.

Several lawmakers are nervous the plan might increase the deficit. However, the devil is in the details and until they’re released, it’s not possible to put a price tag on the plan, the White House said.

Both House and Senate Republican leadership said the Trump outline amount to “critical guideposts for Congress and the administration to work together to overhaul the American tax system.” Sen. Ron Wyden (D, OR), ranking member of the Senate Finance Committee, however, called the outline, “This is an unprincipled tax plan that will result in cuts for the one percent, conflicts for the president, crippling debt for America and crumbs for the working people.”

Trump, as he said throughout his campaign, wants to see the top corporate tax rate slashed from 35% to 15%, a move the American Farm Bureau Federation (AFBF) said must apply to all businesses. Farmers and ranchers are also eager to see details on what expenses they'll be able to deduct.

The White House also expects to offer U.S. multinational corporations likely a one-time opportunity to repatriate what's estimated to be over \$2.5 trillion in profits held overseas to avoid taxes. The repatriation tax rate was not specified in the White House plan, but it's reported the administration is looking closely at a 10% rate.

The plan is silent on a so-called controversial border adjusted tax (BAT), a move popular among House leadership that would tax imports, but not U.S.-made exports, and it's expected even the House BAT version will be modified from the 20% discussed publicly. Many in the House like the BAT concept because it would generate billions in income needed to help pay for the tax cuts. The White House did not rule out including a version of the BAT down the road, but allowed current proposals don't pass muster with Trump.

On the personal income tax side, the Trump plan would cut from seven to three the number of tax rates, with rates set at 10%, 25% and 35%. The plan does not specify income levels for the new rates. The plan also allows self-employed business owners to pay taxes at the 15% corporate rate rather than at their personal income tax rate as most do now. The outline envisions doubling the standard deduction, but would eliminate all other deductions – including state and local taxes – but would retain deductions for mortgage interest and charitable contributions. The plan would eliminate the 3.8% tax paid on investment income by high income earners to fund the Affordable Care Act (ACA), and would repeal the Alternative Minimum Tax (AMT), but keep credits for child and dependent care.

A gift to the agriculture community is the proposal to repeal the federal estate tax – called the “death tax” by most ag groups. While the exemption for couples from estate taxes sits at \$11 million, effectively protecting most ag and rural estates, nevertheless the National Cattlemen's Beef Assn. (NCBA) continues to contend the tax “threatens the existence of many multinational farms and ranches,” and forces producers and small business owners to “waste countless hours and resources on complicated estate planning” to ensure they're exempted from the tax.

No Government Shut-down likely as One-Week CR Readied before FY2018 Omnibus Gets Vote

With President Trump having backed away from demanding more than \$3 billion be included in a draft FY2018 omnibus spending bill to pay for a southern border wall, and Democrats having dropped various partisan demands, the House and Senate will very likely approve a one-week continuing resolution (CR) allowing the finishing touches to be applied to the FY2018 spending package before a final vote next week. The current CR expires April 28.

Appropriations committee staff say the short-term CR approval should be relatively easy, although House Democrats were coy about whether their caucus would vote for it. In the Senate, Minority Leader Charles Schumer (D, NY) threatened to block the short CR if the GOP proceeded with votes on repealing the Affordable Care Act (ACA).

The final FY2018 omnibus spending bill is expected to carry “fixes” to the federal cotton program, as well as minor changes to the USDA Margin Protection Plan (MPP), an income support mechanism for dairy producers which is undersubscribed.

Acosta Confirmed as Labor Secretary, Gottlieb, Lighthizer Nominations Advance, Subcabinet Needed

On a 60-38 vote, the Senate late this week confirmed Dr. Alex Acosta to be secretary of labor, the last of President Trump's cabinet nominees to be confirmed. Nominations which were approved by committees this week are those of Robert Lighthizer to be U.S. Special Trade Representative (USTR), and Dr. Scott Gottlieb to be FDA commissioner.

As the number of A List nominations dwindles, insiders are now concerned about so-called "subcabinet" jobs at the departments and agencies, jobs which also require formal Senate confirmation. Only the Department of Homeland Security has a deputy secretary, and it's estimated over 500 jobs need to be filled across all cabinet departments, including about 200 at USDA. Trump has said he's not sure if he'll fill all subcabinet jobs as he's not convinced all are necessary.

Acosta, dean of a Florida law school, the son of Cuban immigrants, was praised by Sen. Tim Scott (R, SC) saying Acosta's focus should be "promoting labor policies that are free of unnecessarily burdensome federal regulations." Scott is one of several lawmakers who want Acosta to rescind Department of Labor (DOL) rules on financial advisers and adding Americans eligible for overtime pay.

Acosta, a former federal prosecutor, a civil rights attorney at the Justice Department and a member of the National Labor Relations Board (NLRB), was not Trump's first choice for secretary. Restaurant chain executive Andrew Puzder withdrew his name from consideration last month.

Lighthizer, who was deputy USTR during the Reagan administration, was approved by the Senate Finance Committee in a quick meeting during which the nomination was unanimously approved, along with a waiver to serve due to his private sector legal work for foreign governments. The waiver issue had tied up his nomination for weeks, and both the House and Senate must approve the waiver before the full Senate can vote on Lighthizer's nomination.

After the Senate Health, Education, Labor & Pensions (HELP) Committee earlier this week delayed its vote on Gottlieb's nomination to head FDA – ranking member Sen. Patty Murray (D, WA) said members needed more time to review additional financial disclosure records – the full committee voted 14-9 Thursday to approve the nomination and move it to the Senate floor. Gottlieb was supported by all Republicans on the committee, plus two Democrats – Sens. Sheldon Whitehouse (D, RI) and Michael Bennet (D, CO) – despite Murray's concerns about Gottlieb's private sector consulting work with pharmaceutical companies and his role in a venture capital company. Gottlieb has promised to recuse himself for one year from any agency actions involving any of the 20 drug companies with which he worked.

WOTUS Hearing Adds Fuel to Recision Fire

A former Army Corps of Engineers general told the Senate Committee on Environment & Public Works this week his agency was "marginalized from substantive participation" by EPA in developing the controversial "waters of the U.S." (WOTUS) rule.

Now retired Major General John Peabody, who was head of the Corps, was the author of a now famous memo to EPA written just before the WOTUS rule was finalized in 2015, a note which complained his agency was effectively locked out of the regulatory process. It was Peabody's first public appearance and statements about the WOTUS controversy.

Committee Chair John Barrasso (R, WY), a long-time WOTUS critic, and EPA Administrator Scott Pruitt issued a joint statement following the hearing, a committee session which covered the “technical, scientific and legal basis” for WOTUS.

“Today’s hearing demonstrates that the WOTUS rule is not supported by technical expertise, science or the law. By including state and local governments, Administrator Pruitt has shown he will not repeat the mistakes made by the last administration as he begins the important work of rewriting this fundamentally flawed rule.”

Also testifying at the hearing were Dr. Michael Josslyn, principal, Wetlands Research Associates; Misha Tseylin, Wisconsin solicitor general; Ken Kapocis, associate professor, American University College of Law, Washington, DC, and Collin O’Mara, president of the National Wildlife Federation.

Biofuels Challenges EPA RFS Mandate, Waiver Authority in Federal Court

EPA’s self-defined “latitude” in setting blending requirements for biobased fuels with gasoline under the Renewable Fuel Standard (RFS) may be on its last legs. A number of biofuels supporters, including ethanol makers and the National Biodiesel Board (NBB), told the DC Circuit Court this week that EPA’s use of its so-called “waiver authority” to mandate gasoline blending rates that are lower than congressionally mandated levels must end.

The lawsuit, a consolidated action after several different interests filed similar actions, was heard by a three-judge panel which didn’t seem to buy the Department of Justice’s (DOJ) argument that EPA is within its authority to set blend rates different from those set by Congress as it did in its 2014-2016 RFS mandate. Biofuels advocates contend EPA can use its waiver authority only if doing so avoids severe environmental or economic harm or if there’s “inadequate domestic supply.” Plaintiffs argued neither condition was met in last round of blending mandates.

The court seemed unconvinced by the DOJ argument that an extensive EPA analysis of the biofuels market led to the decision to use its waiver authority. “I don’t see the statute as necessarily giving that grant of authority to EPA,” said Judge Brett Kavanaugh. “It’s a separation of powers issue – if it’s screwed up, Congress can fix it.

The arguments also pivoted on the definition of “supply.” The industry says “adequate supply” must include the potential of the industry to produce a biofuel. EPA doesn’t agree and did not count biofuels in distribution as part of the national “supply” when set RFS levels.

Said the NBB: “Today’s case provides a strong opportunity to defend higher advance biofuels volumes. Clear market signals from more robust EPA requirements will encourage continued growth in America’s advance biofuel: Biodiesel.”

Grassley, Cantwell want to Shift Tax Credit Benefit to Biodiesel Makers

A bill that would shift the \$1-per-gallon “blenders” federal tax credit paid to the gasoline makers for using biodiesel and renewable diesel would become a producers’ tax credit under legislation introduced this week by Sen. Charles Grassley (R, IA) and Sen. Maria Cantwell (D, WA).

The bill, also introduced in the last Congress, enjoys 16 Senate cosponsors, and would create the producers’ tax credit for three years, upping the credit 10 cents per gallon for small producers.

U.S. May Remain in Paris Climate Accord, but only with Changes: Perry

Whether the U.S. remains a signatory to the controversial Paris agreement on climate change – an Obama administration project obligating signers to carbon reduction goals by dates certain – will hinge on whether modifications to the accord can be worked out, said Energy Secretary Rick Perry this week. A final decision on U.S. membership in the deal is expected before G7 nation leaders meet in Sicily May 26-27.

Perry supports staying in the deal, a growing bone of contention within the White House, and joins Secretary of State Rex Tillerson and Jared Kushner, President Trump's son-in-law and a senior advisor, against senior advisor Steve Bannon and EPA Administrator Scott Pruitt who want the U.S. to pull out.

This week, 13 multinational corporations representing a broad segment of U.S. manufacturing sent Trump a letter urging him to keep the U.S. in the Paris agreement, already signed by 195 nations. The U.S. is currently voluntarily obligated to reduce its carbon dioxide emissions by 26-28% by 2025 over 2005, but that obligation may be reduced.

At issue, Perry told a New York meeting, is the level at which the U.S. is assuming most of the responsibility for reducing greenhouse gas emissions while the rest of the world continues to use less-than-renewable fuels to generate electricity. He called out Germany, which had higher emissions in 2016 than the year before along with higher coal use, and France, with a similar record.

"My point is you don't sign an agreement and then expect us to stay in an agreement if you're not going to really participate and be part of it," Perry said. "The U.S. has taken actions to affect in a positive way...I'm not going to tell the president 'let's just walk away from the Paris accord,' but we probably need to renegotiate it and they need to get serious about it."

USDA to Study On-Farm, Feedlot Antimicrobial Use

The use of antimicrobials, including antibiotics, on farms, ranches and feedlots will be part of a new USDA National Animal Health Monitoring System (NAHMS) study set to begin in May. NAHMS will partner with the National Agricultural Statistics Service (NASS) in looking at "antimicrobial use and stewardship practices" on farms and in feedlots with at least 50 head.

The study is a new data collection and reporting system approach first proposed by USDA in its 2015 Antimicrobial Resistance Action Plan. It's important to note, all antibiotics are "antimicrobials," but not all antimicrobials are antibiotics, and next month NASS will contact farm and feedlot owners to get consent to participate in the study. In July, 2017, owners who agree to participate will be contacted to set up in-person interviews with veterinarians.

The study will look at use practices in feed and water; estimate the percentage of feedlots and farms using specific antimicrobials in feed and water and why; provide baseline data on antimicrobial use practices in place before FDA set its prudent use policies, ended certain claims for antibiotics used in food producing animals and required veterinarian consultation, and describe antimicrobial stewardship practices on U.S. farms and feedlots.