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No Date Set for Perdue Confirmation Hearing; FDA Nominations Unknown

Despite being the least controversial cabinet nominee put forth so far by President Trump – support is strong on both sides of the aisle – former Georgia Gov. Sonny Perdue still doesn't have a date for his confirmation hearing before the Senate Agriculture Committee.

Committee Chair Pat Roberts (R, KS) said this week during a press conference prior to his panel's field hearing on the 2018 Farm Bill that "Sonny Perdue is just waiting," explaining the committee has still not received the paperwork package from the White House needed to proceed. The delay means Perdue, if confirmed as expected, won't see the inside of the USDA secretary's office until late March at the earliest.

Capitol Hill newsletter *Politico* reports GOP Hill sources allege nominees for Trump's cabinet, diplomatic posts and judgeships are frustrated with delays and what they see as a lack of White House support, especially given fast food executive Andrew Puzder's recent withdrawal of his name to be secretary of labor. Puzder was replaced by Alexander Acosta, dean of the Florida International Law School, who would be the first Latino in Trump's cabinet, but is generally an unknown entity to regulated industry.

Critics contend the Administration must be closely engaged in nominations and confirmations to keep the process moving quickly and to avoid more Puzder situations. The White House says the blame goes to the Democrats who are blocking the process. No Democrat is blocking Perdue's nomination.

With the confirmation of Rep. Tom Price (R, GA) to be secretary of Health & Human Services (HHS), Trump's pick to be FDA commissioner remains unknown. Three names have circulated in the last month as possible nominees. The first would be a first – the head of a capital management company, rather than a physician or recognized scientist as has been the pattern for over 50 years. Jim O'Neill, who works for Trump supporter Peter Thiel, co-founder of PayPal, held jobs in the Bush Administration Department of Health & Human Services (HHS) and Department of Education.

O'Neill, who has no scientific background or FDA experience, is countered by the heavy resume of Dr. Scott Gottlieb, now with the American Enterprise Institute (AEI), but formerly deputy FDA commissioner during the President George W. Bush administration. Gottlieb also advised former GOP presidential contenders, including Wisconsin Gov. Scott Walker, and is part of Trump's HHS transition team.

On the list as well is Joseph Gufo, a health sciences professor at Fairleigh Dickinson University and a big critic of FDA, focusing mainly on slow approval times that block research/development of new drugs, devices and treatments. Gufo is also highly critical of the agency's "mindset," which he contends is biased against new product development. Both O'Neill and Gufo's nominations are controversial within and without the FDA regulated industry.

Pruitt Confirmed to Head EPA Despite Major Opposition; Tells Employees 'Regulators mean certainty'

Former Oklahoma Attorney General Scott Pruitt is now the administrator of EPA, overcoming major political and media opposition to his nomination by President Trump. Opponents contended Pruitt's work on 14 state lawsuits opposing Obama Administration EPA rulemakings and his relationship to Oklahoma's oil and gas industry made him unfit to run an agency dedicated to environmental protection.

Senate Minority Leader Chuck Schumer (D, NY) at one point called Pruitt “the worst cabinet nominee ever, at least in my lifetime.” However, despite an all-out assault on his nomination by environmental groups, along with a letter signed by 770 former agency employees opposing his nomination, Pruitt was confirmed this week on a 52-46 vote.

House Agriculture Committee Chair Mike Conaway (R, TX) said of the Senate vote, “I am pleased with today’s confirmation of EPA Administrator Scott Pruitt. For too long farmers and ranchers have suffered from unnecessary, burdensome regulations as a result of EPA overreach. Administrator Pruitt understands that farmers and ranchers are the original, and best, stewards of the land...”

While Democrats tried procedural ploys to delay and block the Pruitt vote, Senate Majority Leader Mitch McConnell (R, KY) led the opposition party and forced the vote. GOP Senators repeated the same mantra as they took to the floor defending Pruitt: EPA under Obama was out of control. The clean power plan was anti-coal, and the waters of the U.S. (WOTUS) rule was glaring regulatory overreach by the agency. While Pruitt lost the vote of Sen. Susan Collins (R, ME), Sen. Heidi Heitkamp (D, ND) and Sen. Joe Manchin (D, WVA) – both critics of previous EPA actions – broke with their party to vote in favor of the Pruitt nomination.

Later in the week Pruitt addressed employees at EPA, telling them it’s possible to disagree and still be productive. “Civility is something I believe in very much,” he said.

“Regulators exist to give certainty to that they regulate. Those that we regulate ought to know what we expect of them so that they can plan and allocate resources to comply,” he told the employees gathered at EPA headquarters. “That’s really the job of the regulator, and the process that we engage in in adopting regulations is very, very important because it sends a message.”

He also said the agency needs to cease “abuses” in the process, including “guidance through rulemaking, or using the guidance process to do rulemaking, or engaging in litigation – regulation through litigation, consent decrees that actually bypass the Administrative Procedures Act (APA).”

Confirmations Include OMB’s Mulvaney; Rulemaking Machine Restarted

While the pace of Senate confirmations is slow – some say historically so – President Trump’s cabinet is coming together. One of the most significant approvals is that of Rep. Mick Mulvaney (R, SC) to head the Office of Management & Budget (OMB), the budget arm of the White House which must bless all federal rulemakings, assessing cost and need.

Mulvaney’s Senate approval means OMB’s rule review and release program kicks back into gear, though more slowly than in previous administrations given Trump’s aggressive agency/department rule rollback effort, and efforts on Capitol Hill to kill off objectionable rulemakings from the Obama administration. Mulvaney, who overcame stiff opposition, must also name key operational personnel.

Other cabinet-level confirmations in hand include Rex Tillerson as secretary of state; Steve Mnuchin as treasury secretary; James Mattis as defense secretary; Sen. Jeff Sessions (R, AL) as attorney general; Elaine Chao as transportation secretary; Betsy DeVos as secretary of education; David Shulkin as veterans affairs secretary; Gen. John F. Kelly, ret., as secretary of homeland security; former South Carolina Gov. Nikki Haley as ambassador to the United Nations; Scott Pruitt as administrator of EPA, and Linda McMahon as head of the Small Business Administration (SBA).

Still unconfirmed are Gov. Sonny Perdue to be agriculture secretary; Ryan Zinke to be secretary of the interior; Wilbur Ross to be secretary of commerce; R. Alexander Acosta to be secretary of labor; Dr. Ben Carson to be secretary of housing and urban development; Gov. Rick Perry to be energy secretary; Sen. Dan Coats (R, IN) to be director of national intelligence, and Robert Lighthizer to be U.S. Special Trade Representative (STR).

Congressional Regulatory Rollback in High Gear

President Trump February 14 signed into law HJRes 41, action under the Congressional Review Act (CRA) that repeals a number of “burdensome” energy industry regulations implemented under Dodd-Frank. This was the first CRA action approved by Trump, followed this week by CRA action to nullify an SEC rule considered harmful to U.S. gas and oil companies in global markets.

On deck for presidential signature is CRA action repealing a Social Security Administration (SSA) rule background checks on gun ownership. The House has passed 10 other CRA actions awaiting Senate action, most of which take down rules ranging from resource management planning to unemployment insurance drug testing, and rules to increase savings at the Department of Labor.

RFS Revamp in Bullseye for Bipartisan House Group, Pruitt Told “Hands Off” on RFS

A bipartisan group of House members this week said they’re crafting a bill to overhaul the Renewable Fuel Standard (RFS), the federal mandate on how much biofuel must be blended annually with gasoline. Meanwhile, a bipartisan Senate group told newly confirmed EPA Administrator Scott Pruitt to stay hands off on the RFS and its “obligation.”

In a related development, President Trump this week sent a letter to the National Ethanol Conference reaffirming his support for alternative biofuels. “Rest assured your president and this administration value the importance of renewable fuels to America’s economy and to our energy independence,” Trump wrote. He also told the group of his dedication to regulatory reform by eliminating unnecessary rules, and the Renewable Fuels Assn. (RFA) said it needs some rules eliminated to “thrive,” most notably the EPA requirement that ethanol carry an additive so that it cannot be used in human beverages, as well as prohibitions on blends higher than 10%.

The RFS has been controversial since it was created by federal law in 2007. Supporters say it’s necessary to create demand for new and growing biofuels makers, while opponents contend it creates arbitrary demand and an artificial market for biofuels that distorts prices for biofuels’ feedstocks, including corn for ethanol production. For farm state lawmakers, the RFS is a difficult issue, putting them squarely between their livestock and poultry producers and their corn and soybean producers. Oil and gas state lawmakers have never been happy with the RFS.

Rep. John Shimkus (R, IL) is leading the House RFS revamp effort, along with Rep. Bill Flores (R, TX) and Rep. Peter Welch (D, VT). Flores and Welch introduced legislation in the past to cap the amount of ethanol in the national fuel supply at 9.7%, a move supported strongly by the American Petroleum Institute. (API).

Shimkus’ willingness to participate is significant. He’s a senior member of the House Energy & Commerce Committee, which oversees the RFS, sitting as chair of the panel’s subcommittee on environment/economy, and as a member of the energy and power subcommittee.

Over in the Senate, Sens. Joni Ernst (R, IA), Deb Fischer (R, NE), Ed Markey (D, MA) and Tammy Duckworth (D, IL) sent Pruitt a letter this week asking the new administrator to not change the “obligation” – that which must be blended on a yearly basis – arguing that changing anything now creates an administrative burden for the agency, and “needlessly injects uncertainty into the fuels market and deters future investment in biofuels.”

The House effort effectively hopes to strike a compromise on how the RFS can be modernized, again to create “certainty” in the industry by ending the feedstock battles, ethanol volume harangues, Renewable Identification Number (RIN) controversies and mileage standard debates. Shimkus told the media, “This is going to be very hard to do. Sometimes I think we can get there, and sometimes...well, I think this will be hard to do.”

The key date is 2022 when the current law expires ending congressionally set blending levels. At that point, blending authority reverts to EPA. Shimkus said if various stakeholders want certainty, they need to weigh in now. Renewable fuels interests, as well as oil industry groups, have met with Shimkus. Automobile makers are key to the deal and have not yet engaged, according to reports.

House leadership is willing to take up an RFS fix if one can be hammered out. However, the Senate future is unclear given it’s less a political issue than one that pits farmers against farmers, oil against agriculture and so forth.

Farm Bill Action Kicks into Gear on both Sides of Hill

The first of a series of House and Senate agriculture committee listening sessions to help build the foundation for framing a 2018 Farm Bill kicked into gear over the last 10 days, with the House ag panel holding a major hearing on the “economic outlook for rural America,” and the Senate kicking off its effort in the chair’s home state.

Prior to either hearing, a letter bearing the signatures of over 500 state and national organizations, a blend of ag, food, hunger and environmental groups, was sent to lawmakers with a simple message: “Don’t cut the Farm Bill; no cuts or caps.” The groups pointed out the 2014 version carried \$23 billion in program cuts, and that current department spending on crop insurance and nutrition assistance is dropping.

In the House, members heard from the USDA’s chief economist, as well as a number of university economists and think tank experts on where the U.S. ag economy is going. Currently, farm income is at near record lows, with overproduction and low prices plaguing most producers both domestically and in global markets.

Conaway said the current economic state of affairs “is a real potential for a crisis in rural America. Net farm income has fallen 50% over the past four years with the collapse in commodity prices...these economic realities must be front and center.”

Conaway added he’s eager for Gov. Sonny Perdue to be confirmed so that consultations with the administration can begin in earnest, stressing he believes income safety nets are to help in bad times, not in good times. He said he’s going to “measure what farmers need” before moving forward.

Senate Agriculture Committee Chair Pat Roberts (R, KS), as expected used his Kansas State University hearing where the witness list included over a dozen farmers to focus on expected changes to the

Agriculture Risk Coverage (ARC) program, citing inconsistent payments by county and other problems. Crop insurance defense was tougher to defend as some independent groups have criticized the programs – particularly premium subsidies – as wasteful.

Trump Releases Immigration Enforcement “Guidances;” New Travel Ban Expected Next Week

The Trump White House this week released two “guidance memos” to be used by federal immigration officers and border control agents to arrest, detain and deport undocumented immigrants and illegal and legal immigrants with criminal records, according to reports. President Trump says his priority is on identifying, catching and deporting serious criminals. However, this recent action includes undocumented workers charged with crimes, and illegal workers who’ve committed acts that could lead to a “chargeable offense.”

The president’s executive order creating his controversial travel ban – targeted at seven predominantly Muslim nations in the Mideast connected to terrorist activity and now snared in federal court – will be rewritten and reissued likely next week in an effort to avoid federal court intervention.

In a related development, however, Sen. Tom Cotton (R, AR) and Sen. David Perdue (R, GA) introduced legislation that would take a three-step approach to limiting legal immigration to approximately 500,000 people yearly. The two lawmakers would not touch the visa program for high-skilled workers, but would limit the number of “family-based” visas to spouses and unmarried minor children. The bill would also kill the “diversity lottery” in the visa program which is aimed at granting up to 50,000 visas to immigrants from countries with low levels of U.S. emigration. Lastly, the bill would cap the refugee program at 50,000.

The Trump immigration action comes on the heels of statements made in Idaho this week that the president’s immigration enforcement moves may deal a “crippling blow” to the state’s crop and dairy industry, and ultimately, the entire state economy.

“The economic vitality of rural Idaho stands on the shoulders of foreign-born laborers,” said the executive director of the Idaho Dairymen’s Assn., as quoted in the Idaho Statesmen this week. He said immigrant workers in his state represent about 85% of 8,300 dairy operation employees. The largest immigrant group is Hispanics, who earned a reported \$1.1 billion in 2014, paying nearly \$85 million in taxes.

House Ag Clears Two Pesticide Bills

A bill to ease pesticide regulation and one to make registrations easier were approved this week by the House Agriculture Committee.

The first, HR 953 – Reducing Regulatory Burdens Act – once again “clarifies” what Congress meant when it regulated the who and where of pesticide use around waters. Going back to a 2009 federal court decision, certain pesticide use around waters was effectively required by the Obama EPA to be double permitted – once under FIFRA and again under NPDES. The bill would eliminate the NPDES permitting if the pesticide is FIFRA registered. This action has been taken five times by the House; the Senate has never taken up the issue.

HR 1029 – Pesticide Registration Enhancement Act – reauthorizes the Pesticide Registration Improvement Act (PRIA), to create a “more predictable” evaluation process for affected pesticides. PRIA

links the collection of fees with specific decision review periods, and promotes a shorter review for lower-risk pesticides. The PRIA reauthorization – current programs expire in September – also carries fee adjustments, increases program transparency, encourages Good Laboratory Practices (GLP) and adds flexibility in how fees can be used.

How's That NAFTA "Renegotiation" Going?

If there's an area of Trump administration policy making both animal and plant agriculture nervous it's the president's evolving trade policy. Having killed off the Trans-Pacific Partnership (TPP), attention is now turning to the future of the North American Free Trade Agreement (NAFTA).

In a related development this week, 16 House Democrats released a "Blueprint for America's New Trade Policy," an effort led by Rep. Peter DeFazio (D, OR), designed to get Trump to go forward with a "thorough overhaul" of NAFTA. DeFazio included creation of a "limited free trade zone" with Mexico, where both sides of the border would have zones where big rig trailers could be handed off to domestic drivers. Others have called on Trump to create a "greener" NAFTA by including stronger environmental protections.

Trump slammed NAFTA as the "worst trade deal we've ever signed" during his White House bid. During a state visit to Washington this month by Canadian Prime Minister Justin Trudeau, Trump toned down his rhetoric, saying he and Trudeau emerged from their talks dedicated to "improving" NAFTA, but allowing changes to the U.S.-Canada portion of the deal will be "tweaks" and not a wholesale rewrite of the pact as many industries fear.

Trump later said "it's a much less severe situation (with Canada) than what's taking place on the southern border," prompting some to speculate the U.S. may try to break NAFTA into two bilateral deals, leaving Canada and Mexico to work out their own treaty.

However, this week the foreign ministers of Mexico and Canada said any discussions involving NAFTA will take place as three-nation discussions. "We very much recognize that NAFTA is a three-country agreement and were there to be negotiations, those would be three-way negotiations and we really value our partnership with Mexico there," said Canada's Freeland. Trade officials from all three nation's said those who want to see talks begin by June, culminating by the end of 2017, will likely be disappointed.

And as a move to strengthen its leverage in upcoming talks on NAFTA, as well as Trump's open speculation about a 20% import tax on Mexican goods to finance the infamous "wall" along the southern border, Mexico this week said it is considering a ban on U.S. corn imports, which amounted to about 13 million metric tons in 2016. Mexico is the largest customer for U.S. corn.

Prior to Trudeau's visit, House Speaker Paul Ryan (R, WI) met with Canadian Foreign Minister Chrystia Freeland. "Minister Freeland and I share a common commitment to the U.S.-Canada relationship," said Ryan. "We can enhance these ties, including strengthening NATO and improving dairy market access." Rarely has Canadian dairy market access been linked to international military defense of the Western Hemisphere, said one insider.

The next test of agriculture resolve will be Japan. Trump met with Prime Minister Shinzo Abe this month, emerging from that session talking a bilateral trade deal with a key TPP player. Ag hopes such a deal will build off the “floor” that was increased TPP market access for dairy and other commodities.

Branstad Says Ag Trade Priority in China Talks

Iowa Gov. Terry Branstad, President Trump’s nominee as ambassador to China, says the chance of a trade war with China is slim, but the president wants to improve the treaties this country has signed, as well as boost relations with major customers like China where treaties don’t yet exist.

Speaking to USDA’s Outlook Conference this week, Branstad, who is not yet confirmed in his new post, said his priorities include being a major advocate for agricultural trade with China, emphasizing an end to China’s beef import ban brought on by the U.S.’s single case of BSE in 2003. He also wants to see a speed up in biotech plant variety approvals by the Chinese, and elimination of a restriction on Chinese imports of dried distillers’ grains.

Branstad said the Obama administration didn’t focus enough on opening new markets for U.S. goods, but stopped short of commenting on any type of bilateral treaty the U.S. and China might work out. He added Vice President Mike Pence is also dedicated to removing global non-scientific barriers to food trade.

CFTC Grants Six-Month Transition on Collateral Requirements

Businesses that must meet the requirements of a Commodity Futures Trading Commission (CFTC) rule on collateral requirements by March 1, just received a six-month reprieve from the commission. The relief is to allow “transition” to the new requirements of the “variation margin” requirement rule.

Under the rule, by September 1, trading entities must comply with collection and posting of every uncleared swap subject to the March 1 deadline, the commission said. “This action by the CFTC does not change the scheduled time of arrival for the agreed margin implementation,” the commission said. “It just foams the runway to ensure a safe landing.

The March 1 deadline was set to affect thousands of financial institutions, including asset managers, pension funds and insurers. Smaller end-user companies said they simply could not have completed their required contract changes by March 1.

Dodd-Frank House Hearings Begin in March: Hensarling

Rep. Jeb Hensarling (R, TX), chair of the House Financial Services Committee, is out to “repeal and replace” parts if not all of the controversial Dodd-Frank law, and will begin the process in March with a series of full committee hearings. The effort could be ready for the full House by April.

Hensarling will begin the process by introducing legislation to modify Dodd-Frank. Hensarling is focused in part of the Consumer Finance Protection Bureau (CFPB). Several have urged Hensarling to modify the bureau by removing the director and replacing the position with a bipartisan commission. However, the Texas lawmaker is said to be favoring a director position, but one answerable to the president, with limited authority overall.

Rep. Wayne Luetkemeyer (R, MO) said he'll reintroduce his bill to modify how enhanced prudential standards apply to banks with over \$50 billion in assets, modifying a Dodd-Frank requirement banks say is too onerous.