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April 24 Set for Perdue Senate Confirmation Vote

There's finally light at the end of agriculture secretary-designate Sonny Perdue's confirmation tunnel as Senate Majority Leader Mitch McConnell (R, KY) late this week announced the full Senate will vote on Perdue's nomination when the chamber returns from spring recess on April 24. The vote will be held at 5:30 p.m.

House Agriculture Committee Chair Mike Conaway (R, TX) and panel ranking member Rep. Collin Peterson (D, MN) sent a letter this week to McConnell, Minority Leader Chuck Schumer (D, NY), Senate Agriculture Committee Chair Pat Roberts (R, KS) and ranking member Sen. Debbie Stabenow (D, MI), thanking the ag committee for its swift approval of Perdue's nomination, acknowledging Perdue's qualifications, and telling the Senate leaders, "We support and eagerly await his confirmation in the full Senate."

Perdue dodged a bullet earlier in the week when Sens. Bob Menendez (D, NJ) and Marco Rubio (R, FL), the Senate's strongest critics of normalizing trade relations with communist Cuba, put holds on the former Georgia governor's nomination based on concerns they have over his position in support of lifting the U.S. embargo on trade with Cuba. After personal calls from Perdue explaining he supports removing financing restrictions on currently allowed trade, both men lifted the holds.

Perdue now has a fairly clear road to confirmation, his nomination nearly unanimously approved by the Senate Agriculture Committee. The lone "nay" vote was cast by Sen. Kirsten Gillibrand (D, NY), who said at the 11th hour she was concerned about Perdue's stand on federal food stamps, despite his public statement of support for the program in response to a Gillibrand question during his confirmation hearing.

It was hoped the Democrats would cooperate and allow a voice vote on the Perdue nomination this week. However, the partisan politics surrounding the full Senate vote to confirm Judge Neil Gorsuch to the Supreme Court – including the over-hyped "nuclear option" by McConnell to change Senate rules to allow Gorsuch's nomination to be approved on a simple majority vote – nixed the voice vote option.

House Ag Committee Talks Tax Reform as Ryan, White House Work on Plans

With the House GOP unable to get all of its caucus members on the same page when it comes to efforts to "repeal and replace" the Affordable Care Act (ACA), House leadership is now talking up federal tax reform as the ACA battles move behind the scenes in hopes of overcoming conservatives' objections. The first formal hearing on tax reform was held this week by the House Agriculture Committee.

The agriculture committee – led by two certified public accountants (CPAs) – held a full committee hearing on "Agriculture and Tax Reform: Opportunities for Rural America," and it's clear rural lawmakers are not going to simply sit and wait for leadership to come up with a tax reform plan. The ag panel's hearing featured witnesses ranging from producers to CPAs, to Rep. Kristi Noem (R, SD) and Rep. Lynn Jenkins (R, KS), who sit on the House Ways & Means Committee.

"The devil is in the details," said committee Chair Mike Conaway (R, TX). "Providing for a simpler, fairer tax code means that many parts of the tax code may have to change, but these individual proposals cannot be evaluated in a vacuum."

“Both the ranking member (Rep. Collin Peterson (D, MN)) and I are CPAs, and many of our colleagues in Congress are small business owners in their own right,” Conaway said. “With the upcoming potential for tax reform, it is important to highlight the unique challenges of the agricultural industry and explore opportunities within the tax code to better support a vibrant farm sector.”

House leadership floated what it calls a “blueprint” for tax reform, and during the House ag panel hearing, that blueprint came in for some criticism. Reps. Bob Gibbs (R, OH) and Steve King (R, IA) took special exception to one part of the blueprint that would kill the tax deduction for interest expenses. “I can’t understand why anyone would come up with that,” Gibbs said during the hearing. “This is ludicrous.”

The witness for the American Farm Bureau Federation (AFBF), Patricia Wolff, explained to the panel most of agriculture is heavily debt financed and incurs massive interest expense, particularly on equipment and land. She told the panel losing the interest deduction would hurt cash flow, cut into large purchases, and fall disproportionately on young and beginning farmers. Another witness, a CPA and financial consultant, supported the notion that the interest deduction proposal would fall harder on certain industries, and targeted exemptions would need to be examined.

Another suggestion made by more than one witness included killing off the federal estate tax, or the “death tax” as producers call it. The president advocated such a move during the campaign, and this week 30 agriculture groups sent a letter to Ways & Means Committee Chair Kevin Brady (R, TX) and ranking member Rep. Richard Neal (D, MA) calling for an end to the inheritance levy. While most acknowledge the estate tax, which kicks in on estates over \$5.49 million, would hit relatively few farmers, some contend a federal elimination of the tax would inspire states to repeal their “death taxes” as well.

Both President Trump and House Speaker Paul Ryan (R, WI) have said they want to complete at least the corporate rewrite of federal tax laws this year. The obvious challenge to reform is the sheer size of the federal tax code, its complexity and the approach the GOP is contemplating in enacting reform. Trump and his advisors led by Treasury Secretary Steve Mnuchin and National Economic Council head Gary Cohn, huddled this week on what the White House wants to see in tax reform, even though Trump had a campaign tax reform plan and a separate plan developed quietly during the transition between the election and his inauguration.

Meanwhile Ryan, his lieutenants and Brady are hammering together a separate strategy. Having learned their lesson from the political fate of the initial ACA repeal-and-replace effort, Brady is reaching out to members of the House Freedom Caucus, not leaking drafts and outlines to the media, and pledging to hold several hearings on tax reform broadly, as well as on the controversial border adjustment tax notion specifically. Leadership has also decided to not put a self-imposed deadline on action.

HELP Committee Hears Gottlieb as FDA Commissioner Nominee

Dr. Scott Gottlieb, President Trump’s nominee to be FDA commissioner, had his day in the Senate this week when the full Senate Health, Education, Labor & Pensions Committee (HELP) held his confirmation hearing. FDA is the primary regulator of the animal food and animal drug industries.

The tenor of the committee was split between GOP members who consistently thanked Gottlieb for “sacrificing” a lucrative private sector career to lead the FDA, and Democrat members who saw that successful career, including investment in venture capital firms and consulting contracts with major pharmaceutical companies, as creating possible conflicts of interest. Sen. Orrin Hatch (R, UT) at one point asked Gottlieb, “Why would want to do this?”

As to his personal financial situation, Gottlieb submitted to the committee prior to his hearing formal documents outlining his divestiture of regulated industry investment, and his intention to recuse himself for at least a year from any issues related to his former employers or investments. Committee Chair Lamar Alexander (R, TN) reminded the committee Gottlieb’s actions met the criteria for federal conflict of interest avoidance.

The morning-long hearing focused mostly on the human health side of FDA, with questions related to human drug approval speeds, medical device issues and opioid addiction intervention taking most of the time. On the food side of the FDA equation, Sen. Pat Roberts (R, KS), chair of the Senate Agriculture Committee, got Gottlieb on record favoring setting implementation priorities for the Food Safety Modernization Act (FSMA). Gottlieb told the committee he supports FSMA, and wants to ensure “FSMA is implemented in the proper way, and that we’re striking the right balance with respect to that implementation.”

Roberts also told Gottlieb he wants to see greater coordination between FDA and USDA on food labeling issues, particularly as USDA moves to implement the consumer information biotech labeling law enacted last year. Gottlieb committed to greater coordination as an issue of public health.

Sen. Lisa Murkowski (R, AK) once again brought up her dissatisfaction with FDA’s 2015 approval of genetically modified (GM) Atlantic salmon eggs, the first such food animal approval by FDA. Murkowski continues to vilify the fish, implying environmental threats, but mainly because her state’s Pacific salmon fishermen see the Atlantic salmon as marketplace competition even though their product enjoys a premium market, and Atlantic salmon – 95% of the fish sold in the U.S. is imported from Europe, Canada and South America – sells for one-sixth the price of Pacific “wild-caught” fish.

Dismayed FDA declared at the time of approval that the GM Atlantic salmon needed no special labeling because it is equivalent in safety and nutrition to conventional Atlantic salmon, the Alaska lawmaker introduced legislation this year to require the GM salmon, developed by AquaBounty Technologies, Maynard, MA, to carry the words “genetically engineered” or “GE” on its label, directly conflicting with the Roberts’ biotech labeling law enacted in 2016.

She wanted Gottlieb to commit to revisit the issue. The nominee sidestepped the issue, saying he was aware of the Senator’s concerns, but would have to study the issue before working with Murkowski.

A similar response was given to Murkowski when she demanded Gottlieb revisit a consumer guidance issued by FDA last January that the public limit consumption of certain fish because of mercury concerns. She argued people are better off eating more fish than less.

The committee must still vote to approve the Gottlieb nomination – which looks highly likely – but that won’t happen until after Congress returns from its Easter recess on April 24.

Lighthizer Nomination Stuck

Senate Majority Leader Mitch McConnell (R, KY) continues to try and break loose the nomination of Robert Lighthizer to U.S. Special Trade Representative (USTR).

While approved by the Senate Finance Committee, Lighthizer's nomination is mired in a debate over whether the Senate must vote to waive a Senate rule that would block a nominee who's represented a foreign "entity" as Lighthizer did while in private law practice. McConnell says the waiver is unnecessary; Democrats say it's necessary, but mainly because they'd like to tack a miners' health bill on to the waiver action

EPA Notes

SCOTUS Won't Mess with WOTUS – The Supreme Court this week denied a petition from the Department of Justice to halt ongoing cases in federal court relative to whether federal district court or federal appeals court is the proper venue for hearing challenges to the Obama Administration's "waters of the U.S." (WOTUS) rulemaking. In his February executive order, President Trump told EPA to begin the formal process of rescinding the WOTUS rulemaking – held in abeyance by federal court order since it was finalized – and review how best to repropose the rule. DOJ asked the high court to stay industry and state challenges to the rule while the EPA conducts its review. However, because the case before the Supreme Court is deals only with district versus appeals court jurisdiction, the stay is unnecessary the high court said. In a related development, 11 Senators sent a letter to EPA Administrator Scott Pruitt asking him to explain how the agency will go about reproposing the water rule, contending more details are needed to avoid "uncertainty among farmers, developers and other stakeholders that want clarity about what water bodies the law protects from pollution."

NRDC, Pesticide Action Network Want Fed Court to Order Ban on Chlorpyrifos – With EPA Administrator Scott Pruitt's announcement last week that his agency will not move to ban the pesticide chlorpyrifos, the Natural Resources Defense Council (NRDC) and the Pesticide Action Network this week petitioned a federal court to order the agency to ban the chemical as soon as possible. NRDC, building on its 2007 petition to EPA to ban chlorpyrifos, said the pesticide should be banned based on health risks, but EPA's decision said a regular review to be completed in 2022 will deal with any health allegations made about the chemical. NRDC and the pesticide activist group said EPA has spent enough time studying the effects of chlorpyrifos – a point reiterated by at least one court decision – especially when it comes to the health effects on children. They also reference a 2015 EPA study that concludes the ban is justified.

New Group Battles RFS Proposal – A new organization was launched this week designed to battle billionaire investor Carl Icahn's desire to see the compliance obligation under the Renewable Fuel Standard (RFS) shifted away from fuel blenders to marketers. The Main Street Energy Alliance is made up of fuel marketers, fuel marketing trade associations and major oil companies, including Shell and BP. The alliance was formed to push back on Icahn's proposal, backed by Valero Energy and Monroe Energy. "Shifting the point of obligation would add complexity for businesses, decrease the use of biofuels and potentially increase costs for consumers," the new group said in a statement.

State Ag Departments: Fully Fund USDA, FDA and EPA Discretionary Spending

Farmers need all the help they can get during the current depressed farm economy, and the National Association of State Departments of Agriculture (NASDA) told Congress it needs to fully fund USDA, EPA and FDA discretionary spending.

NASDA sent congressional appropriators a letter this week in which it requested \$100 million be allocated for state obligations under the Food Safety Modernization Act (FSMA), and called for full funding of USDA's competitive research grant program. It also wants to see about \$950 million appropriated for the Animal & Plant Health Inspection Service (APHIS) at USDA to bolster animal and poultry disease response.

Full funding for the Specialty Crop Block Grant Program for the states is requested, along with an end to a ban on USDA-regulated horse slaughter. The group of state ag commissioners and secretaries wants the National Agricultural Statistics Service (NASS) to get about \$177 million in FY2018. At EPA, NASDA wants to see about \$128 million allocated to the Office of Pesticide Programs, \$165 million to assist states in controlling non-point source water pollution, and \$5 million for state pollinator programs.

FTC Calls for Sale of U.S. Assets in Okaying China National, Syngenta Merger; EU Gives Green Light

By divesting three types of pesticides, China National Chemical Corp. (ChemChina) and Syngenta AG got a green light this week to merge from the Federal Trade Commission (FTC), settling allegations the \$43-billion combination of companies would harm competition in the U.S. The merger still needs approval by China, India and Mexico.

In related action, the European Union approved the merger as well, requiring a range of pesticides, along with 29 generic products under development, to be sold. As with the U.S. action, the divestiture requirement focused on product overlap. The European Commission (EC) also approved Dow and DuPont's proposed \$130-billion merger last week, but the U.S., Brazil and China must still approve the combination. The EC will begin its review of the Bayer-Monsanto merger soon with the goal of completing it by June, part of a 30-nation review of the proposed merger.

The three pesticides in question for ChemChina and Syngenta are paraquat, used to "clear fields prior the growing season;" abamectin, an insecticide used on citrus and tree nut crops, and chlorothalonil, used to protect peanut and potato crops. Syngenta owns the branded version of each of these chemicals, the FTC said, "giving it significant market shares in the United States. ChemChina...focuses on generic pesticides and is either the first- or second-largest generic supplier in the U.S. of these products."

ChemChina is required to sell all rights and assets of its U.S. paraquat, abamectin and chlorothalonil crop protection businesses to AMVAC, a California agrochemical company, the agency said.

The FTC said its competition enforcement review was cooperatively done with similar agencies in Australia, Canada, the European Union (EU), India and Mexico. The FTC said it will publish the formal proposed consent agreement in the *Federal Register* and will accept public comment until May 4.