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Perdue Gets Committee Approval, Gillibrand Won't Support, Floor Vote Remains Elusive

Former Georgia Gov. Sonny Perdue, President Trump's nominee to be secretary of agriculture, sailed through his confirmation hearing last week, and this week his nomination was just as easily approved by the full Senate Agriculture Committee on a voice vote taken just off the Senate floor during regular business. However, when the full Senate will vote on Perdue's nomination and why committee member Sen. Kirsten Gillibrand (D, NY) decided to vocally oppose Perdue during the voice voting process is still unclear.

The final Perdue vote could come at any time next week if Democrats cooperate, but most floor time is expected to be taken up by the tough, partisan debate over the nomination of Judge Neil Gorsuch to replace the late Justice Antonin Scalia on the U.S. Supreme Court. Senate Majority Leader Mitch McConnell (D, KY) all but guaranteed this week Gorsuch will be confirmed by April 7, after which the Senate recesses for a two-week spring/Easter break. "We are optimistic that Democrats will not be successful in keeping a good man from joining the Supreme Court real soon," McConnell said.

Insiders speculate McConnell is willing to use the so-called "nuclear option" to ram the Gorsuch vote through the process by changing Senate floor rules with a simple majority vote. In this case McConnell aims at shifting the rules governing filibusters, used to prolong debate and block final votes. Currently a filibuster is ended with a 60-vote "supermajority," but McConnell could use his 52-vote GOP majority, change the rule so that filibusters are ended with a simple 51-vote majority vote which invokes cloture – an end to floor debate – and moves the Senate to approve or reject the Gorsuch nomination, again by a simple majority vote.

According to reports, Gillibrand's outspoken opposition to Perdue's committee approval was a surprise to most on the ag committee, including panel Chair Pat Roberts (R, KS), who had hoped for a unanimous vote. Gillibrand's 11th-hour concerns were also surprising given committee ranking member Sen. Debbie Stabenow (D, MI) publicly announced her support and intent to vote for Perdue following his confirmation hearing, and Gillibrand said nothing specific to her concerns during Perdue's hearing.

Gillibrand, Senate partner to Minority Leader Chuck Schumer (D, NY), said in a statement after the successful voice vote she was "worried about his record on nutrition assistance," alleging while Perdue was governor, "many families in his state did not have access to the assistance they needed." She also later referenced concerns about requiring employment to qualify for food stamps. She said food stamps is a big issue in New York, and one of the main reasons she's on the ag committee. The statement was surprising to some because Gillibrand asked Perdue during his confirmation hearing if he supported federal food stamps. Perdue said he did.

If Gillibrand votes against Perdue on the floor, it will be the first time since 1986 that an agriculture secretary nominee has not received a unanimous Senate vote. In that year, former Secretary Richard Lyng's nomination received two "nay votes," according to reports,

Senate HELP Panel Narrowly Approves Acosta Nomination for Labor Secretary

Law school dean R. Alexander Acosta, President Trump's nominee to be secretary of labor, saw his nomination this week approved by the Senate Health, Education, Labor & Pensions (HELP) Committee

on a narrow 12-11 party line vote. Acosta got the labor secretary nod when Trump's original pick, fast food executive Andrew Puzder withdrew his name from consideration.

Acosta, a Cuban American former Justice Department civil rights division lawyer, and a former member of the National Labor Relations Board (NLRB), has been dean of Florida International University law school since 2009.

Democrats, led by committee ranking member Sen. Patty Murray (D, WA), said they opposed Acosta's nomination because he hasn't demonstrated a willingness to push back on Trump administration labor policies. Questions about workplace rules asked during his confirmation hearing, Murray said, were evaded, and Acosta wouldn't give his opinion on Obama administration labor rules on overtime pay, new requirements on retirement advisors and worker protection rules.

Committee Chair Lamar Alexander (R, TN) called Acosta's career "impressive," and said, "We're fortunate to have a presidential nominee...who understands how a good-paying job is critical to helping workers realize the American dream. He's been confirmed by the Senate three times, and I expect we'll confirm him a fourth."

With Acosta's committee approval, and agriculture committee near-unanimous endorsement of former Georgia Gov. Sonny Perdue's nomination to be secretary of agriculture, only the nomination of Robert Lighthizer to be U.S. Special Trade Representative (USTR) needs committee approval.

House Ag Subcommittee Talks ARC, PLC

National farm groups of both political stripes joined with program crop producer organizations this week in telling a House Agriculture Committee subcommittee during a hearing on the 2018 Farm Bill they want to see both the Agriculture Risk Program (ARC) and the Price Loss Coverage (PLC) income support programs retained. The groups said they want the programs "made more effective and fairer to all farmers," but stopped short on providing specific recommendations on how to hit that mark.

The American Farm Bureau Federation (AFBF), National Farmers Union (NFU), and the commodity groups representing soybeans, corn, canola, barley, wheat and sunflowers, also told the subcommittee PLC and ARC should be programmed off base acres, not planted acres. Cotton, peanuts and rice groups also worked with the commodity crowd, but don't yet have policy supporting the joint statement.

Most of the discussion centered on recommendations for broad changes, but hedged by witnesses who said "options are under study." General concerns centered on disparities in county payments, a need for a new method of providing yield data, moving up the ARC payment dates to the same fiscal year in which the crop is grown, increases in the PLC reference price to reflect the cost production, etc.

ARC and PLC cost the federal government \$7.8 billion for the 2015 crop year, one reason why the conservative think tank the Heritage Foundation wants to see both programs repealed. Heritage says PLC and ARC "insulate farmers from market forces by guaranteeing against lower-than-expected revenue and against price changes, going way beyond any concept of a safety net."

Farm bill hearings scheduled for next week include a second run on April 4, at how commodity programs are working before the Subcommittee on General Commodities & Risk Management; an April 4 hearing before the Subcommittee on Commodity Exchanges, Energy & Credit to look at farm bill credit

programs, and the rescheduled April 5 hearing before the full committee on “agriculture and tax reform opportunities for rural America.”

Trump Orders End to Obama “Clean Power Plan,” Climate Change Actions

President Trump this week enraged environmentalists while elating his base when he signed a sweeping executive order seeking to dismantle President Obama’s controversial “clean power plan.” Trump says Obama energy rules – “a war on coal” – needed to be rolled back to “reverse government intrusion” and create jobs in the energy sector.

Flanked by coal miners at the order-signing ceremony, Vice President Mike Pence wasted no time in telling the country, “President Trump is committed to an all-of-the-above energy policy.” Also present at the White House ceremony were EPA Administrator Scott Pruitt, Secretary of Energy Rick Perry and Interior Secretary Ryan Zinke.

However, the National Farmers Union (NFU) isn’t happy with the move. “For American farmers, truck drivers, shipping companies, distributors, retailers and customers, climate change poses very real and immediate threats to their pocketbooks,” said NFU President Roger Johnson in a statement. “By disregarding climate change science and considerations, the president is putting our nation’s food system at risk.”

House Speaker Paul Ryan (R, WI) said, “Today’s executive order is based on a fundamental truth: Energy drives our economy. President Obama disregarded this, and the result was a barrage of regulations that crippled America’s energy industry. That is all in the past now.”

The order requires EPA to conduct an immediate review of the co-called “power plan,” the foundation of which are two rules requiring both old and new coal-fired utility plants to switch to cleaner fuels to reduce carbon dioxide emissions. Those orders also place the onus on the states to come up with energy options.

The executive order also ends a moratorium on coal mining on federal lands and makes easier actions to control methane releases at oil/gas facilities. Trump also told federal departments and agencies to identify rules and policies that they think obstruct “the safe, efficient development of domestic energy resources,” with agencies and departments ordered to “abandon the social cost of carbon” used in calculating several permitting requirements.

The clean power plan has been held up since early 2016 because of a U.S. Supreme Court stay ordered so a thorough legal review could be completed. Last September, the DC Circuit Court of Appeals heard oral arguments in the action.

While the Obama power plant rulemakings are key to the U.S. successfully meeting its obligations under the Paris climate change accord signed in 2015, the executive order signed by Trump this week does not address the Paris deal. United Nation’s officials, however, weren’t happy, saying it makes better economic sense to cut the use of carbon-based fuels given the array of renewable power sources.

EPA Items

Science Underlying EPA Decisions Needs Public Disclosure: House – A bill that would require EPA to make available to the public all science and data underlying human health and environmental regulatory

decisions was approved this week by the full House on a 228-194 vote. “The days of ‘trust me’ science are over,” said Rep. Lamar Smith (R, TX), chair of the Science, Space & Technology Committee. Opponents of the bill argued on the floor the requirement will impede EPA’s ability to do research based on confidential medical information, and risks privacy violations by exposing personal patient data. The bill now heads to the Senate.

EPA Rejects Enviro Petition on Chlorpyrifos Dangers; Lawsuit Likely – Saying that despite several years of study the science of the issue is “unresolved,” EPA this week rejected a petition by environmental groups demanding the agency ban the pesticide chlorpyrifos. The agency said it will take up questions raised by the petition – including allegations of neurotoxicity in children – in a broader review of the chemical set to be completed in 2022, but that the petition, supported by the Obama EPA, moved the agency outside the rules set by Congress for such chemical reviews. “Because that process was breached, we said ‘no;’ we denied the petition. Process is going to be respected,” said Scott Pruitt, agency administrator, adding the action is part of the new direction of the agency, namely to restore the rulemaking process “to its rightful place, and work with the states. The Natural Resources Defense Council (NRDC) and the Pesticide Action Network (PAN), which filed the petition, say they’ll return to federal court to force the agency to ban the chemical’s uses, arguing the law requires the agency to take extra precautions with the safety of children when it permits pesticides. “The court said the time for study is over,” said Earthjustice attorneys.

CAFO FOIA Information Release Deal Finalized – EPA and agriculture groups have reached a formal agreement on how much information related to regulated farming and ranching can be released under the Freedom of Information Act (FOIA). The agreement, approved by a federal judge this week, was signed by the American Farm Bureau Federation (AFBF) and the National Pork Producers Council (NPPC). EPA agreed only the city, county and zip code of a concentrated animal feeding operation (CAFO) in certain states included in FOIA requests will be released, as well as the status of permits under the Clean Water Act (CWA). The settlement brings to a close litigation brought by AFBF and NPPC back in 2013, when extensive personal information on more than 100,000 producers in 29 states was released to activist groups by the agency in response to an FOIA request by activist groups. The agency was set to release information on farmers and ranchers in six more states when the producer groups sued to stop the action, arguing the releases are a violation of producers’ right to privacy and potentially exposed producers to activist violence. The U.S. Court of Appeals for the 8th Circuit sided with the farmers last September.

WOTUS Reverse Set for Late 2017; Keep Federal Case Moving, says AFBF – While the White House predicts EPA’s new “waters of the U.S. (WOTUS)” rulemaking – replacing the current rule blocked by a federal court – will be on track by the end of the year, the American Farm Bureau Federation (AFBF) and other plaintiffs want their original WOTUS legal challenge to be heard by the U.S. Supreme Court. Critics of EPA’s aggressive rulemaking timeline say it’s optimistic at best, and if held to could put the new rulemaking at risk of court challenge down the road. Administrator Scott Pruitt told staff he wants to see an initial draft rewrite by the summer, according to reports, a schedule one report called “mind-boggling.” As for the Supreme Court challenge to WOTUS, the Department of Justice (DOJ) has asked the court to hold in abeyance briefings on the court action, predicated on whether challenges to the rule should be heard in federal district court or federal appeals court. The 6th District Court of Appeals said it should hear the cases, but the Supreme Court agreed with a petition filed by the National Association of Manufacturers (NAM) and will review the appeals court decision.

FDA Commissioner Nominee Gottlieb Gets April 5 Hearing after Submitting Finances Plan

Dr. Scott Gottlieb, President Trump's nominee to head FDA, will appear before the Senate Health, Education, Labor & Pensions (HELP) Committee April 5, the committee announced this week.

The hearing was scheduled after Gottlieb, who's a consultant or board member to more than 20 drug companies since leaving the Bush Administration where he served as FDA deputy commissioner for medical and scientific affairs. He presented plans this week to the committee to recuse himself for one year from any agency decisions impacting those pharmaceutical firms. He will also immediately resign from boards and consultancies, divest holdings in those companies, and resign from an investment firm and a venture capital investment company, he told the committee.

While expected to be confirmed by the HELP Committee, Gottlieb's confirmation hearing will likely focus on his finances, as well as how he'll go about implementing the newly enacted 21st Century Cures Act, a new law designed to foster and protect technologies underlying drug and medical device development, disease treatments and cures, as well as the agency's ongoing implementation of the Food Safety Modernization Act (FSMA).

Gottlieb, a physician, also sits as a resident fellow at the American Enterprise Institute (AEI) where he's written extensively on drug and medical device issues.

Big Company Compliance Date on FSMA Transport Rule Set for April 6

Large firms – companies with more than 500 employees – must be in compliance with FDA's sanitary transportation of human and animal food rule by April 6, the American Feed Industry Assn. (AFIA) reported this week. The rule is part of implementation of the Food Safety Modernization Act (FSMA).

The rule applies to shippers, receivers, loaders and carriers engaged in transport of human or animal food by motor or rail carrier in the U.S. Transport by air or ship is not covered by the rule. AFIA points out that carriers responsible for sanitary conditions under a written contract, must provide training to personnel engaged in transportation operations. That training must provide "awareness of the potential for food safety problems that could occur, basic sanitary practices to address potential problems and carrier responsibilities under the rule," AFIA reported to its members. FDA plans to develop an online course to help companies meet the training requirements.

CFTC Acting Chair Giancarlo Names James McDonald Enforcement Director

J. Christopher Giancarlo, acting chair of the Commodity Futures Trading Commission (CFTC) this week named James "Jamie" McDonald, a former federal prosecutor for the southern district of New York, to be director of the commission's enforcement division.

"Jamie McDonald's appointment as director of the enforcement division is a signal to those who may seek to cheat or manipulate the U.S. markets that there will be no pause, no let up and no relaxation of the CFTC's mission to enforce the law and punish wrongdoing," Giancarlo said in announcing the McDonald appointment.

McDonald, who will take office on April 10, has a strong track record "pursuing white collar and other crimes," Giancarlo said. In his previous position, McDonald served as an assistant U.S. attorney, most recently in the public corruption unit. Early in his career, McDonald was a law clerk for U.S. Supreme

Court Chief Justice John G. Roberts, and previously worked in the Office of White House Counsel. He originally hails from Tulsa, Oklahoma, and is a graduate of Harvard College and the University of Virginia School of Law.

Trade Notes

NAFTA Talks are Test for White House – Whether its renegotiations or “tweaks” to the North American Free Trade Agreement (NAFTA), President Trump’s actions and statements on NAFTA will have big impact on how successful the U.S. will be in other bilateral trade deals, Rep. Kevin Brady (R, TX), chair of the House Ways & Means Committee, told *Politico* this week. “Clearly the trade world will be micro-examining every comment related to NAFTA,” Brady told the Capitol Hill newspaper. Brady acknowledged Trump is taking a whole new approach to trade than other presidents, but praised Secretary of Commerce Wilbur Ross and Peter Navarro, head of the White House National Trade Council, for seeking advice from Congress on what’s working for the U.S. when it comes to NAFTA, what’s not working, and how does the agreement need to change moving into the 21st century.

Vietnam told U.S. Wants “Deeper” Trade Relations – Federal trade negotiators say stronger and deeper trade ties between the U.S. and Vietnam would benefit both nations, even though the U.S. no longer involved in the Trans-Pacific Partnership (TPP). Following a two-day meeting in Hanoi, the U.S. Trade Representative’s office said, “The U.S. urged Vietnam to promptly address bilateral issues, including those related to agriculture and food safety, intellectual property, digital trade, financial services, customs, industrial goods, transparency and good governance, as well as wildlife tracking.” All of the areas are specific components of TPP. For its part, Vietnam let USTR know its actions to improve labor reforms, and “welcomed the resumption of talks and efforts to deepen bilateral trade ties.”

NCBA Pushes Beef on White House, China Agenda – The National Cattlemen’s Beef Assn. (NCBA) wants President Trump to highlight U.S. beef exports to China when that nation’s president, Xi Jinping, makes a state visit to the U.S. in April. NCBA’s push is seconded by the U.S. Meat Export Federation and the North American Meat Institute. The three groups sent Trump a letter this week asking the president to help resolve the ongoing dispute over a U.S. beef import ban China’s had in place since 2003, when the U.S. discovered its only case of bovine spongiform encephalopathy (BSE) in a cow brought into this country from Canada. Six months ago, the Chinese government announced it would lift the ban, but no action has been taken. NCBA wants to see specific terms under which U.S. producers can resume shipping beef to China.

Producer Checkoff Programs Under Attack; HSUS Praises Action

Producer checkoff programs are under attack on Capitol Hill, and the Humane Society of the U.S. (HSUS) is thrilled, praising Congress for moving to “stop massive waste, fraud and abuse” in various commodity programs.

Sen. Mike Lee (R, UT) and Sen. Cory Booker (D, NJ) – the Senate’s avowed vegan, named by PETA as the “Hottest Vegetarian Senator,” and set to be the guest of honor at next month’s HSUS “Farm Animal Protection” gala – reintroduced a bill they say will bring “much-needed transparency and accountability to the federal government’s commodity checkoff programs.” Similar legislation has been introduced in the House by Reps. Dave Brat (R, VA) and Dina Titus (D, NV).

The bill is also supported by the Heritage Foundation and the Organization for Competitive Markets (OCM), which takes on what it considers to be anticompetitive practices in agriculture.

There are currently 22 checkoff programs overseen by USDA engaged in research and commodity promotion, each created by individual legislation unique to that commodity or product. The Lee-Booker bill would set “clear and stronger prohibitions” against checkoffs contracting with groups that lobby on agriculture policy; set program standards banning “anticompetitive behavior” and engaging in activities that may lead to conflicts of interest, while requiring publication of checkoff budgets and spending, and setting new audit standards to be used by the USDA Office of Inspector General (OIG) and the Government Accountability Office (GAO). Lee introduced separate legislation to make all checkoffs voluntary.

HSUS – taking specific direct aim at the National Cattlemen’s Beef Assn. (NCBA) and the National Pork Producers Council (NPPC) – said the legislation prevents “agribusiness trade groups...from diverting tens of millions of dollars a year to salaries, lobbying and other inappropriate and impermissible activities through the national checkoff programs.”

The world’s largest animal rights group, with a budget in excess of a \$140 million a year, and a separate lobbying arm – the Humane Society Legislative Fund (HSLF) – added “Taxes imposed on farmers and collected by the federal government are supposed to be spent to help farmers and promote their commodities, but vast sums instead go to allow NCBA and others to engage in advocacy or anticompetitive activities that hurt small farmers. This legislation...fits in President Trump’s promise to stop waste, fraud and abuse in the federal government.”