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by Steve Kopperud

Congress Passes CR Through December 22; Democrats Demand Immigration Fixes, Disaster Funds

The House and Senate in quick succession this week approved a two-week extension of the current continuing resolution (CR) to fund the federal government, with the initial House vote providing a preview of a building political tug-of-war over immigration and other Democrat priorities. President Trump says he'll sign the CR.

The House voted 235-193 – 18 Republicans voted "no," while 14 Democrats voted "yes" – to fund government operations through December 22, giving lawmakers time to negotiate a possible FY2018 omnibus funding package. The plan is to pass a second CR extension through December 30 – possibly into January, 2018, depending on how negotiations progress – to allow Congress to return from the Christmas recess and approve an omnibus spending bill that will run through September 30, 2018. The Senate approved the CR 81-14, with six Republicans and seven Democrats voting against the bill, joined by Sen. Bernie Sanders (I, VT).

House and Senate leadership from both sides of the aisle met with Trump at the White House on December 7, but no agreement on the budget battle was reached, according to statements from both sides of Capitol Hill.

House Democrats said the CR brought to the floor by Speaker Paul Ryan (R, WI) doesn't address their priorities including action to formally authorize the Deferred Action for Childhood Arrivals (DACA) program. Under DACA minor children brought illegally into the U.S. by undocumented parents do not face deportation if they meet certain requirements. Trump rescinded the Obama administration program in September, exposing DACA participants to deportation come March when the program expires. Democrats also want to link a related program – the Development, Relief & Education for Alien Minors (DREAM) Act – to action to fund border security. Republicans and Trump say the spending package won't tackle immigration issues because there isn't time to properly negotiate those issue.

Minority Leader Nancy Pelosi (D, CA) said her side of the aisle also wants money to help battle the opioid crisis, as well as additional financial assistance for states and regions affected by recent natural disasters, including the hurricanes which hit Texas, Florida and Puerto Rico, and last month's wildfires in Northern California. The current southern California wildfires will no doubt be factored in, as well.

Conservative GOPers, who pushed for a single CR extension through December 30, said setting the initial deadline just before Christmas creates pressure on lawmakers to approve a package containing extraneous spending. Early in the week, in a show of defiance, the conservative Freedom

Caucus blocked floor action to name conferees on the House and Senate-approved tax reform bills. They agreed to the December 22 CR end date when they received a leadership commitment on increased defense spending in the hoped-for FY2018 omnibus spending package.

House Appoints Tax Conferees; Tax Credit Extenders Bill Evolving

While House and Senate staff are already hammering away to reconcile the respective chamber's versions of federal tax cuts/reform legislation, the House this week formally appointed conferees and instructed them to sit down with their Senate counterparts and work out a final package that can be approved by Congress by Christmas.

At the same time, the Senate is putting finishing touches on a bill to extend expired federal tax credits, including a $1-per-gallon blenders tax credit for biodiesel, solar power credits and the short-line railroad maintenance tax credit, that failed to be included in the larger tax package.

Senate Finance Committee Chair Orrin Hatch (R, UT) acknowledged the extenders action is likely – "we always wind up doing it, so yeah, that's something I suspect we'll have to do" – though House discussion of an extenders bill tacked on to an end-of-the-year FY2018 omnibus spending bill has yet to begin in earnest. The National Biodiesel Board (NBB) wants to see a five-year biodiesel blenders' credit, retroactive to January, 2017, to provide greater certainty to industry.

For agriculture, two key related issues in the big tax bill – treatment of pass-through entity deductions and offsets for the lost Sec. 199 manufacturing deduction so important to cooperatives – will get particular focus during conference committee action.

The Senate pass-through provisions include a 23% deduction pegged to the earnings of partnerships, sole proprietorships, limited liability corporations (LLCs) and S-corporations, and is the favorite of agriculture interests, in part because the Senate modified eligibility to include farmer-owned cooperatives. This was done to offset the loss in both House and Senate bills of the Sec. 199 manufacturing deduction, which cooperatives have historically passed through to the member owners.

The Senate language – after "further analysis and discussion" by the National Council of Farmer Cooperatives (NCFC), which initially said the 23% deduction and broadened definition didn't go far enough – will satisfy co-ops if conferees add some technical clarifications on eligibility.

While House Ways & Means Committee Chair Kevin Brady (R, TX) acknowledged the "clearly different approaches" of the House and Senate when it comes to pass through entity treatment, he also said he's looking at the "strengths" in the Senate approach.

Also signaled earlier this week is House and Senate willingness to address state and local tax (SALT) deductibility. Both bills would kill off SALT deductions, but Senate Majority Leader Mitch McConnell (R, KY) said his conferees are willing to look at how to address the loss, and Brady said this week conferees are looking at the current proposed $10,000 cap on mortgage interest deductions, allowing both income and property taxes to qualify for a similar $10,000 cap.

Cruz Gets RFS Meeting with Trump; Next Steps Uncertain as Northey Nomination Remains Captive

After a meeting this week with President Trump and a number of department secretaries with a stake in the future of the Renewable Fuel Standard (RFS), oil and gas state Senators, led by Sen. Ted Cruz (R, TX) are sounding like legislation to overhaul the RFS and its accompanying Renewable Identification Number (RIN) program, is coming in 2018.

Trump asked Cruz and his delegation of 10 colleagues to sit down with biofuel champion Senators in the House and Senate and work out a “win-win” solution to the RFS/RIN rug-of-war. Cruz said that solution can be reached, calling the White House meeting a “meaningful step toward advancing that solution.”

While Cruz had requested the White House invite pro-RFS Senators to the meeting, they did not attend. Backing Trump during the session were Secretary of Agriculture Sonny Perdue, EPA Administrator Scott Pruitt; White House Chief of Staff John Kelly, Legislative Affairs Director Marc Short, National Economic Council Chair Gary Cohn and Deputy Energy Secretary Dan Brouillette, among others. Senators flanking Cruz included Sens. John Barasso (R, WY), Bill Cassidy (R, LA), John Cornyn (R, TX), Mike Enzi (R, WY), Jeff Flake (R, AZ), Jim Inhofe (R, OK), John N. Kennedy (R, LA), James Lankford (R, OK), Mike Lee (R, UT) and Pat Toomey (R, PA).

Cruz demanded the meeting after Sen. Charles Grassley (R, IA) and Sen. Joni Ernst (R, IA), backed by seven ethanol state colleagues, secured from Trump a restatement of his public support for the RFS, and after a meeting with Pruitt, got Pruitt to put his commitment on the RFS and several related biofuels issues in writing in exchange for Ernst lifting a hold she’d placed on Senate consideration of several high-ranking EPA nominees. Cruz has a hold on the nomination of former Iowa Agriculture Secretary Bill Northey to be USDA undersecretary for farm production and conservation, and has given no indication if the White House meeting was enough to lift his hold.

The White House said Trump agreed to the meeting to “find common ground on both sides of the debate” among the lawmakers, and “to discuss his commitment to the RFS and how to effectively address the program’s impact on independent refiners.”

While the RFS mandates how much biofuel must be blended in the nation’s gasoline supply each year, the refiners’ bigger complaint is the RIN market and its volatility. RINs are used to provide to EPA evidence refiners are meeting their fuel blending obligations, but the RIN price increase in recent months threatens smaller refiners with bankruptcy, they told the White House meeting.

Pruitt indicated EPA may be able take administrative action to lower the cost of RFS/RIN compliance, particularly when it comes to managing the RIN market. Cornyn said Pruitt’s statement “was kind of interesting” that EPA could shift the RIN market price.

Inhofe said he and Cornyn are working on a legislative fix to the RFS/RIN program, first authorized in 2005, and they’ve reached out to the corn industry, though not to Grassley and Ernst yet. “The president wants us to come up with something that’s going to make both sides happy, and I believe we can do it, and believe he thinks we can do it after this meeting,” Inhofe said.

Texas Wants RFS Waiver

While his state's two Senators were leading a charge at the White House to find a solution to the challenges posed by the Renewable Fuels Standard (RFS) program, along with the Renewable Identification Number (RIN) program, to oil and gas refiners, Texas Gov. Gregg Abbott this week formally asked EPA to grant Texas a waiver on its RFS obligations. Former Gov. Rick Perry, now secretary of energy, also unsuccessfully asked EPA to lower Texas' fuel blending obligation.

Abbott wants his state responsible for no more than 9.7% of the conventional RFS requirement, arguing his state's oil and gas industry is "threatened by a restrictive federal mandate." The governor said the current RIN price of $1.40 is creating economic hardship for refiners, small retailers, consumers and others.

Bob Dineen, president of the Renewable Fuels Assn. (RFA) said Texas' economic plight doesn't meet the RFS waiver threshold for proving severe economic harm.

"EPA's threshold for action specifically notes that an impact on any particular industry would not trigger a waiver," he said. "Rather, the agency will look at the impact on the economy as a whole and with ethanol today being less expensive than gasoline, and providing consumers a significant savings at the pump that is a threshold that simply is not met today.

E15 Year-Round Sales Will Happen if CAA Allows: Pruitt

If it's legal under the Clean Air Act (CAA), EPA Administrator Scott Pruitt said this week he's all set to issue a waiver to the current rule restricting gasoline with a 15% blend of ethanol (E15) to be sold only during the winter.

Pruitt told a biofuels audience in Iowa this week that restricting E15 to winter months rather than year-round "practically doesn't make any sense." E10, the most prevalent ethanol/gasoline blend available, has a waiver allowing it to be sold 12 months a year; that waiver was never extended to E15.

"If the statute doesn't allow us to do it, we'll communicate that to Congress," Pruitt said. "If the statute authorizes us to do it, we'll do our job and provide the waiver."

Trump Meets with Senators on Trade; Cargill Goes Grass Roots to Promote Trade

Several Republican Senators lunched with President Trump this week, hammering again and again the importance of NAFTA to the agriculture and rural economies. Concern has increased in recent weeks that Trump's hard line tactics on reinventing NAFTA mean he's willing to pull out of the 23-year-old treaty if he doesn't get his way on key issues.

While the lawmakers were keeping their pro-NAFTA message in front of the president and his staff, including U.S. Special Trade Representative Robert Lighthizer, the Business Roundtable, a group comprised of corporate CEO released the following statistics:

- Food manufacturers exported about $25 billion in food products to Mexico and Canada in 2015, and absent NAFTA would have faced nearly $4 billion in tariffs, including tariffs average 28.3% on meat products and 22% on dairy products.
- Farmers and ranchers exported about $15 billion in farm production to Canada and Mexico in 2015, and without NAFTA would have paid $657 million in extra tariffs, including an average of 6.6% on oilseeds and grains.

In a related development, Cargill, Inc. launched “Fedby Trade,” a program to provide “relatable stories” by employees, farmers, ranchers and others illustrating how U.S. trade helps feed the world. The effort is considered a counter-message campaign to the Trump administration’s harangue on U.S. trade deficits and threats to pull out of long-standing trade treaties. Details can be found by going to www.cargill.com/fedbytrade.

Monsanto Asks Judge to Stop Arkansas on Dicamba

As telegraphed by the company, Monsanto this week petitioned an Arkansas county judge to issue a preliminary injunction stopping the state from banning the use of dicamba during prime planting and growing seasons while the company challenges actions by the Arkansas Plant Board (APB).

Earlier this year, the state moved to approve a temporary ban on the herbicide’s sale and use, and most recently the APB proposed dicamba use be halted April 16 through October 31. The board’s recommendation is set to be heard by a state legislative committee next week.

At issue is actual and potential drift damage to other crops and plants based on dicamba spraying. In the last few years, farmers have begun using more dicamba on soybean and cottons fields where newly engineered seeds are resistant to the chemical.

“Monsanto is presently losing sales every day the ban on in-crop use of dicamba remains in effect. The losses cannot be recovered in an action against the state,” the company said in its filing.

In October, EPA said it reached a deal with Monsanto, BASF and DuPont – all dicamba herbicide makers – to set up new voluntary restrictions on the use of the chemical.

OSHA Injury/Illness Tracking Rule Compliance Date Extended

The compliance date for OSHA’s new rule requiring employers to electronically report injury and illness information to the agency has been extended to December 15, the agency said. The original deadline was December 1. The new reporting system – the Injury Tracking Application (ITA) – was launched by OSHA August 1, but the agency said more time is needed for employers to familiarize themselves with the new system.

The new rule applies to companies with 250 or more employees which are currently required to keep OSHA injury and illness records. It also applies to companies with 20-249 workers classified by the agency as "certain industries" with historically high rates of occupational injuries and illnesses. Feed and equipment manufacturing facilities are covered under "manufacturing" and are required to comply with the new rule, according to the American Feed Industry Assn. (AFIA).

Several states with OSHA-approved state plans have not yet adopted the ITA, and establishments in these state are not currently required to submit summary data through the ITA. OSHA said its reviewing other portions of the proposed rule and may go to proposed rulemaking to "reconsider, revise or remove" some portions. Details can be found at www.osha.gov.

FDA Says Antibiotic Sales to Ag Declined in 2016

For the first time since 2009, sales of antibiotics and other antimicrobial drugs used in food-producing animals dropped in 2016, according to FDA's annual report of antibiotic sales and use. Domestic sales and distribution of all antimicrobials dropped by 10%, and those deemed "medically important" in human medicine decreased 14%, the agency said.

The report was the first to break down by species the sale/distribution of the animal health products, showing that 43% of domestic sales and distribution of medically important antibiotics were for cattle, with 37% going to swine, 9% for turkeys and 6% for chickens. It should be noted, however, a separate class of antimicrobials – ionophores – are available to poultry producers. These drugs were developed exclusively for use in poultry, with no human medicine application.

The agency, as always, stressed the data does not represent actual antibiotic use. "The sales and distribution data submitted by animal drug sponsors and summarized in this report are not indicative of how these antimicrobial drugs were actually used in animals," the agency said.

State California Egg Law Challenge Heading to SCOTUS?

Having failed once to legally challenge a California law holding only eggs produced under identical conditions to those legally required in the state can be sold in California – Massachusetts, Rhode Island and Michigan may follow suit – 13 state attorneys general have petitioned the Supreme Court of the U.S. to hear the case under a revamped petition.

Led by Missouri, the new petition says California's regulation of egg production, the result of the 2008 Proposition 2 ballot initiative prohibiting egg layer housing in cages, violates the Constitution's

Commerce Clause giving Congress the exclusive authority to regulate commerce among the states, and the Supremacy Clause of the Egg Products Inspection Act (EPIA), a federal law that holds states can't impose parochial standards on egg laying hens raised in other states.

The complaint says while supporters of Proposition 2 argued the California regulations increased chicken welfare, there's been positive impact on animal welfare and the law's true goal was to impede competition.

Previously, Missouri and five other states were held to lack standing to bring a related action against California, according to the Ninth Circuit Court of Appeals. With the addition of a detailed economic impact analysis, the new petition purports to overcome that lack of standing.

The economic study said farmers outside of California have suffered or will suffer between $228-912 million in additional costs to meet that state's requirements. Egg prices have jumped nationally, the complaint says, costing U.S. consumers $351 million a year. Also included in the analysis is the charge that welfare recipients are paying $96.5 million a year more for eggs because of the California rules, and that the prison budgets in six states have jumped $75-300,000 per year as a direct result of the state regulations. The states point out the prison budget figures don't include additional costs to other state agencies and institutions.

"These regulations are unconstitutional and a clear attempt by big government proponents to impose job-killing regulations on Missouri. This discrimination against Missouri farmers will not stand. I will continue to defend our farmers and protect the interests of Missouri consumers," said Missouri Attorney General Josh Hawley at the annual meeting this week of the Missouri Farm Bureau where the new legal action was announced.

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