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House Struggles to Get CR with MFP Funding Intact; Senate Tries to Catch Up on Approps Action

With just a few working days left to reach House agreement on a continuing resolution (CR) to avoid another federal government shutdown, lawmakers are battling partisan issues that threaten that deadline, including whether to fully fund President Trump's second tranche of Market Facilitation Payments (MFP).

The CR is needed because the 12 formal spending measures necessary to fund the federal government have not made it through Congress. While the House has approved nearly all its bills, the Senate has just begun the process. This week Appropriations Committee Chair Richard Shelby (R, AL) began positioning two spending measures to go straight to the Senate floor without markups in hopes of accelerating the process to match the House's progress.

To illustrate the partisan divide, the House's approved formal ag/FDA FY2020 spending package includes language to forbid Agriculture Secretary Sonny Perdue from relocating the Economic Research Service (ERS) and the National Institute for Food & Agriculture (NIFA) to Kansas City, while the Senate bill approved by ag appropriations subcommittee this week includes $25 million to facilitate the move, a tacit Senate approval of the relocation. The ERS/NIFA relocation promises to be controversial in reconciling the two spending packages.

When it comes to avoiding another shutdown, the House is still expected to vote this week on a CR to keep the government open through November 21, with the Senate following next week. However, the House Rules Committee, set to meet this past Tuesday evening to tee up the CR for floor action, unexpectedly cancelled the markup.

House Democrats earlier this week released an initial version of a "clean" CR to fund the government, but that bill did not include the MFP money, with some critics contending Trump's program disproportionately benefits large and wealthy producers. The 2018 MFP program spent $8.6 billion out of $12 billion authorized on direct tariff relief payments to farmers; the 2019 version so far has paid out $3.3 billion out of an available $14.5 billion set aside for the program under the Commodity Credit Corp. (CCC) emergency borrowing powers. However, the CCC's borrowing authority for MFP and other routine agency programs is dwindling as the fiscal year nears a close and a CR cash infusion is needed.

This week, senior appropriations committee member Rep. Rosa DeLauro (D, CT) sent a letter to Perdue demanding a briefing on how the MFP money is being spent. However, the politics of cutting off aid to farmers and ranchers, the chief victims of the ongoing U.S.-China tariff wars, don't favor either party. While House moderates on both sides of the aisle contend any CR approved is likely to carry the needed CCC/MFP monies, there will likely be MFP accountability and transparency provisions included, new strings on how the money can be doled out.

“Although we mutually have concerns with President Trump’s approach to trade negotiations, we refuse to engage in the same tactics that punish our constituents and harm our communities that rely on agriculture,” said House Agriculture Committee Chair Collin Peterson (D, MN).

While Peterson remains sanguine about the likelihood of uninterrupted payments, the noise surrounding the MFP payments could get louder if Trump announces a third round of payments if there’s no resolution to the U.S.-China trade war any time soon.

Lots of “Goodwill” Actions as both Sides Optimistic Prior to Resuming U.S.-China Tariff Talks

President Trump says he’ll delay his latest round of tariffs on Chinese imports until October 15, while China is on a U.S. soybean buying spree and exempting a small share of U.S. ag exports from its retaliatory tariff schedule, all actions designed to signal “goodwill” ahead of the next round of U.S.-China tariff talks next month. Insiders say the actions also reflect economic realities in both nations.

Preparation for the next round of face-to-face talks in Washington, DC, in early October has already begun, and Treasury Secretary Steve Mnuchin said last week China’s targeting of U.S. ag exports for retaliatory tariffs is a major subject for discussion.

Mnuchin told the Senate Banking Committee, “We want to make sure that China treats our farmers fairly and doesn’t retaliate against the farmers in an unfair way. I tell you that’s top of the agenda for the conversations we’re having this month.” He said the U.S. has pushed for an “interim agreement” to the Chinese to buy more ag products, action committed to by the Chinese but on which they’ve reneged. For Trump, easing the pain of U.S. farmers is a key demand, he said.

In remarks to the U.S. Chamber of Commerce this week, U.S. Special Trade Representative (USTR) Robert Lighthizer didn’t mention any “interim” agreements, but said the outcome the U.S. is seeking is a “real agreement,” achieved one step at a time.

Going into the next round of talks, China wants to table national security discussions and focus on trade in hopes of getting the global marketplace close to normal and easing tensions between the two superpowers. Providing assurances of intellectual property protections, buying more U.S. agriculture and relaxing access to Chinese markets is part of a two-track approach.

China announced a list of 16 types of products for which it will issue tariff exemptions under its first round of tariff hikes, the exemptions running through September 16, 2020. Exporters can petition China to add items to the exemption list, with the most recent round of petitions beginning earlier this month and running through October 18. Some products on the list will be exempted from tariffs moving forward, while others will be eligible for refunds on tariffs already paid, Beijing said. The U.S. has also exempted some Chinese exports from tariffs.

The initial Chinese list took effect September 17, and includes medicines, insecticides and fish meal, but no major ag products. However, on September 13, China announced it will grant tariff exemptions to soybeans, pork, alfalfa, feed whey and other U.S. ag products, a move signaling the world's second largest economy may begin significant purchases of U.S. farm products. Trump has said repeatedly China is "committed" to buying "large amounts" of U.S. ag production, but gives no details. He has also alluded to "an interim trade deal" between the two countries, though he wants a broad deal.

"A lot of people are talking about it, and I see a lot of analysts are saying: an interim deal, meaning we'll do pieces of it, the easy ones first," the president told reporters. "But there's no easy or hard. There's a deal or there's not a deal. But it's something we should consider, I guess."

A broadened list of Chinese tariff exemptions for U.S. goods came just after reports surfaced China reentered the U.S. soybean market. Reuters reported private Chinese buyers scooped up "10 boatloads of U.S. soybeans" last week, the biggest purchase since late June, though still well below normal U.S. soybean sales to China. USDA confirmed China bought 204,000 metric tons of soybeans last week and another 256,000 tons this week for the 2019-2020 marketing year. Physical shipments from the U.S. to China are estimated by private sources to be running about 400,000-600,000 tons per week, and Agri-Pulse reports some Chinese companies have permission from the government to buy up 5-6 million tons of U.S. soybeans at a 3% tariff rate.

The U.S. tariff increase from 25% to 30% Trump threatened set for October 1, on $250 billion in Chinese exports will be delayed until October 15 as a "gesture of goodwill," the president said, explaining it was also an action requested by China's Vice Premier Liu He. The request, Trump said, is because of China's October 1 70th anniversary of the establishment of the People's Republic of China.

White House, House Dems Ramp Up USMCA Horse Trading

With Congress back in session and lawmakers hoping to wrap their first year of the Congress by Thanksgiving, negotiations necessary to get Democrats to "yes" on the U.S.-Mexico-Canada Agreement (USMCA) are kicking into high gear, with actual language "horse trading" going on.

Language to mitigate Democrat concerns over labor, environment, enforcement and drug pricing is being actively traded between U.S. Special Trade Representative (USTR) Robert Lighthizer's office and the nine-member working group named by House Speaker Nancy Pelosi (D, CA) to protect caucus interests in the treaty. Lighthizer has sent one set of proposals to House Ways & Means Committee Chair Richard Neal (D, MA) and Neal is expected to return counterproposals this week.

"It's clear we're making headway," Neal said while assuring reporters there's still much work that needs to be done, particularly on the labor side of the trade deal. Rep. Henry Cuellar (D, TX), who's been working with Pelosi on interfacing with Mexican officials on that nation's recently enacted labor reforms, is confident the treaty will be voted on this year despite some Democrats insistence they want new language on enforcement added to the treaty.

Another stumbling block is a demand by more than 100 Democrats that USMCA carry binding language on climate change and environmental standards. The group also wants to see "meaningful action" to address climate change and a commitment from the U.S. to remain in the Paris climate accord.

Neal says a "side letter" is not enough as letters prove pointless in previous treaties. Pelosi is on the same page. "If you have a sidebar letter that says we're going to have enforcement, that does not have the force of a treaty. You have to have enforcement in the body of the treaty," she said, stressing such a change can be done "surgically – not opening it up for one and all, but surgically."

A concession by the White House to the Democrats is President Trump's agreement to "fix" problems with dispute resolution among the three nations party to USMCA, an issue discussed but not resolved in the original treaty negotiations.

Last week, several farm groups were backed by several House members from both sides of the aisle in a "Farmers for Free Trade (FFT)" rally on Capitol Hill. The American Farm Bureau Federation (AFBF), the American Soybean Assn. (ASA), the National Corn Growers Assn. (NCGA), the U.S. Apple Assn., the National Milk Producers Federation (NMPF) and smaller groups joined with lawmakers led by House Agriculture Committee Chair Collin Peterson (D, MN), Ways & Means Committee ranking member Rep. Kevin Brady (R, TX), former ag committee chair and current ranking member Rep. Mike Conaway (R, TX), Cuellar and former Senate Agriculture Committee Chair and FFT spokesperson Blanche Lambert Lincoln to push for ratification.

The administration and most moderate Democrats, including Peterson, are pushing for a treaty ratification vote within 30-60 days, but Pelosi will not be rushed. "We've made an offer, they've made an offer, now we sit down and see where we can find our common ground," she said.

Trade Developments

U.S.-Japan Trade Deal Set for Completion – An ag/auto "mini-treaty" between Japan and the U.S. could be ready for formal agreement by the time the United Nation's General Assembly meets at the end of the month and both President Trump and Prime Minister Shinzo Abe are in New York City for the event. "I think they have a deal pretty much worked out. I don't see any problems on the horizon," said Treasury Secretary Steve Mnuchin. Trump and Abe announced they had a "handshake agreement" when the two met in Biarritz, France, for the recent G-7 economic summit, but Abe still needed to see from Trump written assurances Japan would be exempted from any automobile tariffs Trump may impose on other countries for "national security" reasons. The Japan deal doesn't need congressional approval as does the U.S.-Mexico-Canada Agreement (USMCA) as Trump is cutting the deal under his trade promotion authority granted by Congress. Trump formally notified Congress this week the deal is expected "in the coming weeks." The anticipated start date for the new agreement would be January 1, 2020, and tariff cuts can be expected for U.S. exports of beef, pork, ethanol, distillers' grains and soybean meal.

India Trade Deal Could Also Debut at UN Meeting this Month – President Trump is going for a two-fer at this month's United Nations General Assembly session in New York City when he announces a U.S.-Japan trade deal is a done deal and follows it up with a second announcement about a trade treaty with India. The White House is working to knock the rough edges off several issues in time for Trump to announce an agreement when he meets with India's Prime Minister Narendra Modi during the UN meeting. Trump and Modi met last month at the G-7 meeting in

France and will be able to rehearse their potential UN announcement as they'll both be in Houston next week for an event called "Howdy Modi! Shared Dreams, Bright Futures." A treaty could calm troubled waters between the two nations after Trump kicked India out of the Generalized System of Preferences (GSF), a program that granted the south Asia country up to $5.6 billion in exports to the U.S. duty free. At the same time, 44 House members sent U.S. Special Trade Representative (USTR) Robert Lighthizer a letter this week urging the president to let India back into the tariff reduction program because retaliatory actions by India were hurting U.S., industry, including apple, walnut and almond growers.

Trump Wants Brazil Trade Deal – Washington, DC, trade observers are expecting a visit shortly from Brazil's foreign minister, the first step in a long road to forging a U.S.-Brazil bilateral trade agreement, something sorely wanted by President Trump. The trade talks begin with a "strategic partnership dialogue," reports Agri-Pulse, designed to find the rough spots that need ironing out. However, there are 11 Democrat Senators who want Trump to walk away from any talks with Brazil to punish President Jair Bosonaro "until (Bosonaro) takes decisive action to protect the Amazon rainforest.." which recently suffered wildfires said to be caused by clear cutting for cattle grazing and agriculture. The same senators want USDA to cease all efforts to allow Brazil to resume beef exports to the U.S.

Taiwan Goes Where China Will Not Tread – The government of Taiwan this week sent a strong signal to Washington, DC, this week that the pesky U.S.-China trade war is not affecting its love of U.S. agriculture products. Taiwan announced it will buy $3.6 billion in U.S. farm products, including soybeans, corn, wheat and meat. A letter of intent will be signed this week, officials said. "While the U.S.-China relationship is deeply trapped by trade disputes, Taiwan instead has been a trustworthy trading partner of the U.S. and is taking substantial action to enhance a closer U.S.-Taiwan economic cooperation," the government said in a statement.

White House Pushing Deal on Biofuels to Boost RFS/RVO, Limit SREs, Reallocate Gallons

The biofuels industry – including corn and soybean farmers – seems to have pulled off a possible trifecta in negotiations with the White House last week, reworking not only how and how many small refinery exemptions (SREs) from Renewable Fuel Standard (RFS) blending mandates EPA can issue, but it got itself a long-sought reallocation of the gallons lost to SREs this year and a bump in the gallons the agency will require to be blended with gasoline come its November declaration.

"There was a feeling like an agreement," was how biofuels champion Sen. Charles Grassley (R, IA) described his take on the outcome of a meeting last week of biofuel state senators and Iowa Gov. Kim Reynolds with President Trump and Vice President Pence. Agriculture Secretary Sonny Perdue and EPA Administrator Andrew Wheeler called in.

Trump met earlier with the leaders of Valero Energy and Marathon Petroleum to discuss a RIN price cap. Grassley said a cap won't fly with the biofuels industry. Biofuels company representatives met with staff from the National Economic Council (NEC) earlier in the week, and petroleum company representatives also met with the NEC which urged both sides to embrace the tentative deal.

Any deal with biofuels makers has only Trump's tentative agreement at this point, according to reports. He needs to mollify the biofuels industry while not irritating the petroleum industry, both huge reelection constituent bases.

Reports indicate the administration floated a 13-point plan to help biofuels, particularly ethanol, but the document was not released. It reportedly will also increase by 10% the amount of biofuel petroleum refiners must buy to blend with gasoline to meet their RFS/Renewable Volume Obligation (RVO). The increase would come from EPA's calculation of a three-year rolling average of the number of gallons exempted by EPA under the SRE program, adding that average figure into the coming year's total blend mandate.

On paper that means the 2020 mandate would hit about 22.4 billion gallons, including 500 million more gallons of corn ethanol and 500 million more gallons of advanced biofuels. In addition, the plan would hike the 2021 biodiesel mandate by 250 million gallons. The agency's current proposed blend level is just over 20 billion gallons. The average add-in is less market disruptive, sources said.

Grassley, who refuses to get too excited about the meeting until he sees EPA "paperwork," confirmed to reporters the deal he thinks is coming includes reallocation of lost gallons of ethanol and biodiesel gallons that would have been bought by 31 small refineries ultimately granted exemptions from the blending mandate by EPA.

"I've been hoodwinked so many times, not just by the EPA on this issue, but by other bureaucracies as well, so I'm going to see if what we talked about is the end product. If it comes out on paper like I described to you, the industry and agriculture community are committed to saying the president has delivered on what we want," Grassley said, but added until he sees the agreement in writing, "you know what I've said about EPA being a tool of big oil."

Petroleum state senators are set to meet with Trump and Pence this week to push for a cap on the price of Renewable Identification Numbers (RINs), offsets to fuel blending available to refiners.

The deal will also include a limit on the number of SREs EPA can approve and provide additional resources to commercialize more broadly the sale of E15 by allowing dealers to sell the higher blend at their E10 pumps rather than installing new equipment.

In a related development, the DC Circuit Court of Appeals last week ruled in favor of environmental groups by ordering EPA to consult directly with federal agencies protecting wildlife when setting RFS fuel blending mandates. While stopping short of nullifying the agency's 2018 mandate, the court ordered the agency to conduct an Endangered Species Act (ESA) review of the rule by consulting with the Department of the Interior (DOI).

The court said EPA violated its obligation under the ESA by "…concluding it is impossible to know whether the 2018 rule will affect listed species or critical habitat. That is not the same as determining that the 2018 rule 'will not' affect them."

USDA Announces $3 Billion in Disaster Aid Available

Farmers hit with losses as the result of 2018-2019 natural disasters, including Hurricane Dorian, can now enroll in programs doling out more than $3 billion in disaster assistance under the Wildlife & Hurricane Indemnity Program Plus (WHIP+), USDA announced.

The money is part of a broad disaster assistance package approved by Congress and signed by President Trump in June, and includes coverage of uninsured on-farm stored grains and oilseeds and milk that was dumped or removed from the market due to flooding, storms or other natural disasters. Included too are prevented planting supplemental disaster payments for the 2019 crop year, USDA said.

The full details of the WHIP+ program, eligibility and formulas for calculating payments for 2018 and 2019, along with directions to USDA disaster aid sites can be found at https://www.usda.gov/media/press-releases/2019/09/09/usda-resources-available-farmers-hurt-2018-2019-disasters.

Payments from WHIP+ will be limited to $125,000 or $250,000 per crop year or a maximum of $500,000 for the two-year period. Farmers will receive 100% of 2018 eligible assistance, but only 50% for losses so far in 2019, with more to be paid after January 1, 2020, if the money holds out, USDA said.

WHIP+ benefits are available to producers of “certain crops, trees, bushes or vines” in counties with a Presidential Emergency Disaster Declaration or a Secretarial Disaster Designation (primary counties only), USDA said. Losses must be the result of hurricanes, floods, tornadoes, typhoons, volcanic activity, snowstorms or wildfires occurring in 2018 and 2019. Farmers living in non-disaster declared counties can apply for aid, but must provide supporting documentation to prove losses, USDA said. A list of counties qualifying can be found at www.farmers.gov/recover/whip-plus. USDA is also talking with some states about block grants for ag losses not covered by WHIP+, the department confirmed.

The amount of assistance is predicated on crop insurance eligibility and noninsured crop disaster assistance and will range from 75-95% of a producer’s loss, depending on the level of crop insurance or NAP coverage. If a producer didn’t insure a crop in either year, the producer will get 70% of the expected value of the crop. Insured crops will get between 75-95% of the expected value, and if they bought the highest levels of insurance coverage, then 95% of the expected value is the likely payment, the department said.

Producers will have to provide “verifiable and reliable” production records when signing up for WHIP+. If records aren’t available, then USDA will exercise various options for calculating the loss, including the county expected yield and county disaster yield.

“U.S. agriculture has been dealt a hefty blow by extreme weather over the last several years,” said Agriculture Secretary Sonny Perdue in announcing the program sign-ups. “The scope of this year’s prevented planting alone is devastating, and although these disaster program benefits will not make producers whole, we hope the assistance will ease some of the financial strain farmers, ranchers and their families are experiencing.”

2019 ARC, PLC Enrollment Open

Farmers can now enroll in the Agriculture Risk Coverage (ARC) and Price Loss Coverage (PLC) crop "safety net" programs 2019, USDA announced. The deadline for enrollment is March 15, 2020.

The 2018 Farm Bill reworked both programs when reauthorizing them, including allowing ARC support payments to be calculated on historical base acres when actual crop revenue declines below a specified guarantee level, USDA said. PLC participants will get income support payments on historical base acres when the price for a covered commodity falls below its effective reference price.

Updated provisions in the Farm Bill allow producers with an interest in a farm to enroll and elect coverage in crop-by-crop ARC-County or PLC, or ARC-Individual for the entire farm, for program year 2019. The election applies to both the 2019 and 2020 crop years. Other restrictions apply, USDA said.

Covered commodities include barley, canola, large and small chickpeas, corn, crambe, flaxseed, grain sorghum, lentils, mustard seed, oats, peanuts, dry peas, rapeseed, long grain rice, medium grain rice (which includes short grain rice), safflower seed, seed cotton, sesame, soybeans, sunflower seed and wheat.

Details of the programs and the sign-up process can be found at https://www.usda.gov/media/press-releases/2019/09/03/usda-opens-2019-enrollment-agriculture-risk-coverage-and-price-loss.

White House Finally, Formally Kills 2015 WOTUS Rule to Agriculture's Relief and Delight

EPA and the U.S. Army Corps of Engineers have finally, formally repealed the 2015 Obama era final rule on "waters of the U.S. (WOTUS)." Agency Administrator Andrew Wheeler, flanked by executives of the New York Farm Bureau and the Business Council of New York, announced the repeal of the "egregious power grab" and the reinstatement of "the longstanding and familiar regulatory text" in place prior to the 2015 rule, effectively ending the two-year patchwork of WOTUS rules across the country.

Wheeler called the announcement "Step 1 action," referring to President Trump's campaign promise to kill off the "impermissibly expanded definition" of WOTUS under the 2015 rulemaking on EPA/Corps Clean Water Act (CWA) authority.

"This sets the stage for Step 2 – a new WOTUS definition that will provide greater regulatory certainty for farmers, landowners, home builders and developers nationwide," he said. Wheeler told reporters the new Trump era WOTUS rule will be published by the end of the year or early 2020.

Environmental groups are already pledging to sue to stop the repeal, alleging the action jeopardizes drinking water safety for over 115 million citizens. California's Attorney General Xavier Becerra, a former House member, said, “While we don’t go looking for a fight, there’s too much at stake to let this go.”

For the American Farm Bureau Federation (AFBF), which declared WOTUS repeal its number one regulatory priority and led various agriculture/business coalitions opposing the rule, the announcement was a relief. “Farmers and ranchers share the goal of ensuring clean water, but the 2015 WOTUS rule was unreasonable and unworkable,” said AFBF President Zippy Duvall. “It made conservation more difficult and created huge liabilities for farmers. We are relieved to put it behind us. We are now working on a fair and reasonable substitute that protects our water and our ability to work and care for the land.”

The National Cattlemen’s Beef Assn. (NCBA) said it was “glad the nightmare is over,” while the National Pork Producers Council (NPPC) said, “We’re pleased the EPA is moving toward a common sense WOTUS rule that works with – not against – farmers.” “America is now one step closer to smart and balanced regulation that protects our nation’s precious water resources,” said the National Association of Manufacturers (NAM).

Citing the various federal district court rulings that created a two-tiered WOTUS regulatory system – some states were operating under the old Obama rule, others under a provisional situation – EPA said, “With this final repeal, the agencies will implement the pre-2015 regulations, that are currently in place in more than half of the states, informed by applicable agency guidance documents and consistent with Supreme Court decisions and longstanding agency practice. The final rule takes place 60 days after publication in the Federal Register.”

“Repealing the WOTUS rule is a major win for American agriculture,” said Agriculture Secretary Sonny Perdue. “The extreme overreach from the past Administration had government taking the productivity of the land people had worked for years.”

Trump Tweets Federal Revocation of California Auto Emissions Waiver, 13 Other States Affected

In a move sure to have impact on all actions relative to federal vehicle emissions regulations running up to 2025, President Trump this week tweeted his intent to revoke California’s waiver under the Clean Air Act from federal tail pipe emissions standards. The revocation also affects 13 other states which have adopted the California auto emissions clean air standards.

“The Trump Administration is revoking California’s Federal Waiver on emissions in order to produce far less expensive cars for the consumer while at the same time making the cars substantially SAFER,” the president tweeted. He sent out the tweet while in California for fundraising appearances and added the new administration standards yet to be released will have “very little difference between the California Standard and the new U.S. Standard.”

Trump rationalized the move by saying a uniform national standard will be lead to increased car manufacture and more “JOBS, JOBS, JOBS!” “Automakers should seize this opportunity because without this alternative to California, you will be out of business,” he tweeted.

California officials and environmental groups across the country are expected to sue the administration over the action, accusing the White House of “clinging to the past” and asserting “automakers and American families embrace cleaner cars.”

“We embrace federalism and the role of the states, but federalism does not mean that one state can dictate standards for the nation,” said EPA Administrator Andrew Wheeler in a speech to the National Automobile Dealers Assn. this week.

The regulatory action comes in two parts: First, California’s waiver is revoked. Second, the Trump administration will decide at what level to set automobile emissions beginning in 2025, and it’s known EPA is reviewing eight separate options. Trump said earlier this year it’s his plan to freeze emissions and fuel economy standards at 2021 levels, adopted during the Obama administration.

The move is the latest salvo in a long-standing battle between EPA and California – the state received its waiver from Congress in 1970 when the Clean Air Act (CAA) was enacted – over the state’s desire to set far stricter air quality standards than required by the federal government in order to improve air quality.

The state announced last summer that its officials have met with four auto makers to set emissions standards specific to California’s stricter rules. Trump tweeted at the time, “Henry Ford would be very disappointed if he saw his modern-day descendants wanting to build a much more expensive car, that is far less safe and doesn’t work as well because execs don’t want to fight California regulations.”

EPA Partners with PETA on Bird Insecticide Testing Reduction – Really

Much to the collective surprise of animal agriculture and other legitimate animal users, EPA announced last week it has released a “draft science policy” – developed in collaboration with People for the Ethical Treatment of Animals (PETA), the world largest animal rights group – to reduce testing pesticides on birds when registering new products with the agency.

“This draft policy is in line with EPA Administrator Andrew Wheeler’s recent commitment to reduce animal testing at EPA,” the agency said.

“The foundation of this policy is EPA’s collaboration with People for the Ethical Treatment of Animals (PETA). EPA and PETA are working on a retrospective analysis of avian acute oral and subacute dietary studies. This analysis will address whether EPA can confidently assess acute risk for birds using only the single oral dose protocol,” said an agency release.

“Today, EPA is issuing a new proposal to reduce pesticide testing on birds,” said Wheeler. “This is EPA’s first action after my recent directive to aggressively reduce animal testing throughout the agency.”

“The draft policy represents another step toward the agency’s commitment to reduce animal testing while also ensuring that the agency receives enough information to support pesticide registration decisions that are protective of public health and the environment,” EPA said. “Waiving requirements for toxicity studies when they offer little additional scientific information or public health protection is an important component of the draft policy, which emphasizes avoiding unnecessary resource use, data generation costs, and animal testing."

The EPA/PETA collaboration can be found at https://www.epa.gov/sites/production/files/2019-09/documents/draft-waiver-guidance-avian-sub-acute-dietary.pdf. All public comments will be accepted until November 1, and can be emailed to OPPeco@epa.gov.

STB Moves to Modernize Freight Rail Review Process

A new system to modernize the way it reviews freight rail rates has been proposed by the Surface Transportation Board (STB) and the board is looking for public input. The move comes after the agency's Rate Reform Task Force decided the old review process – unchanged for decades – is unworkable and ignored changes within the industry. The new system will include a rate review option for smaller cases and a more efficient market dominance process for rate review efforts.

The 2018 task force conclusions are based on extensive stakeholder outreach, particularly when it comes to what's not working with the current freight rail rate review system and how it can be improved.

STB proposes a new smaller case review process called the Final Offer Rate Review (FORR) that would work within efficiencies to save time and money for complainants and would not act to deter the filing of complaints. The new FORR system would be based on "principle-based, non-prescriptive criteria to allow for innovation" for rate reviews. It would include a hard deadline of 135 days after a filed complaint is received. Relief for FORR cases would be under a two-year limit on rate prescriptions – unless the parties otherwise agree – and the proposed cap would be $4 million.

Under the STB proposed streamlined market dominance system, also designed to reduce cost/process burdens on rate case parties, would allow a complainant to make prima facie showing of market dominance when the complainant has demonstrated the following:

- The movement has a revenue-to-variable cost ratio of 180% or greater;
- The movement would exceed 500 highway miles between origin and destination;
- There is no intramodal competition from other railroads;
- There is no barge competition;
- The complainant has used trucks for 10% or fewer of its movements subject to the rate at issue over a five-year period, and
- The complainant has no practical build-out alternative due to physical, regulatory, financial, or other issues (or combination of issues).

Said the STB, "The board's proposed streamlined market dominance approach would be available to complainants under any of the board's rate review methodologies. Complainants who cannot make the showing under these six factors would need to establish market dominance in a non-streamlined presentation. Under either approach, defendant railroads would continue to have the opportunity to rebut a complainant's evidence."

Ways & Means Dems to Hold “Full-Throttle” Talks on Restoring State, Local Tax Deductions

The 2017 Tax Reform Act was unpopular for eliminating state and local tax (SALT) deductions, replacing it with a $10,000 cap, and House Ways & Means Committee Democrats this week said it’s their plan to hold “full-throttle discussions” about returning to the full SALT write-off plan.

Using a timeline of “soon” and “pretty quick,” committee Chair Richard Neal (D, MA), who held two hearings on the status of SALT rollbacks in June, said the subcommittee on select revenue measures plans to strategize on whether to move legislation rolling back the SALT rewrite by as early as next week.

Lawmakers like Neal who represent high-tax states like New York, New Jersey, Massachusetts and California, says the simple cap on SALT hits their constituents unfairly. However, the cost of repealing the 2017 action is pegged at as much as $700 billion over 10 years. Several bills have been introduced to rework the SALT deduction, and some require increasing the top tax rate to as high as 39.6%, the level prior to the tax code rewrite. Others would increase the cap to $15,000 for individuals and $30,000 for joint filers. Others would increase the corporate rate to 21% to pay for the lost tax income.

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