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EPA Hands Biofuels Industry Big Win on Final 2017 RFS Rule; Seeks Comments on Higher Blends

EPA released November 23, its final rule setting 2017 Renewable Fuel Standard (RFS) gasoline blending levels for various biofuels, handing the alternative fuel industry a major win as ethanol RFS levels were increased to nearly match the levels set by Congress.

In a related development, EPA late last week announced it's seeking public comments on a proposed rule to allow fuel blends at greater than 15% biofuels. The agency said it plans to reclassify fuels with 16-50% ethanol from "gasoline" fuels, to "ethanol flex-fuels," similar to how E85 is currently treated. Such a move would broaden ethanol use by incentivizing flex-fuel vehicle production and adoption of ethanol blender pumps at fueling stations, the agency said. The proposed action would not approve E16 and higher blends for gasoline-only vehicles produced before 2001. The deadline for public comment is January 17, 2017, and the agency is planning a public meeting December 6, at the Palmer House Hotel in Chicago.

The RFS rule says overall the fuel industry must blend next year 15 billion gallons of "conventional" biofuels – primarily corn ethanol – a slight jump from the 14.8 billion proposed last May, and very close to the level set in the RFS authorizing law enacted in 2007.

Broadly, the 2017 RFS calls for total biofuels blending to hit 19.28 billion gallons. The level for advanced biofuels – biodiesel, renewable diesel and cellulosic ethanol – was set at 4.28 billion gallons, compared with 3.61 billion last year. The 2018 biodiesel RFS mandate was left unchanged at 2.1 billion, roughly equivalent to industry capacity, but 100 million gallons more than the 2017 level set by EPA earlier this year. The cellulosic ethanol RFS was set at 311 million gallons for 2017, up from 230 million a year ago.

Momentum Building for 90-Day CR for FY2017

The election of Donald Trump as the 45th president-elect of the U.S., along with continued control by the GOP of both chambers of Congress, turned the lame duck session agenda on its head, with nearly all attention now on passing a 90-day continuing resolution (CR) to keep the federal government operating through the end of March, 2017.

Conservative members of both chambers praised the CR move as it avoids having to engage in messy negotiations with the White House and forestalls unrelated policy riders. It also allows Trump and the new Congress to put their marks on the final FY2017 spending bill. However, now the question becomes which policy items will be allowed to hitch a ride on the CR, and several groups are publicly warning Congress not to turn the CR into a "year-end Christmas tree bill."

Outgoing chair of the House Energy & Commerce Committee Rep. Fred Upton (R, MI) said this week financial aid to deal with lead contamination issues in Flint, Michigan and elsewhere has a shot at being included in the CR, which he said may run only until the end of February. However, if Flint money is added, a number of lawmakers, particularly those from California, want to see action to allow more water to be pumped in drought areas.

Said Rep. Tom Cole (R, OK), "It will not be a clean CR," referring to a number of "anomalies" – policy and spending adjustments – that will need to be addressed to get the bill across the finish line.

Federal Court Blocks Overtime Rule

A preliminary injunction blocking implementation of the administration's new extension of overtime eligibility was granted this week by a Texas federal judge. The controversial extension of overtime eligibility would have affected nearly 4.2 million workers, cost employers \$300 million, and was set to go into effect December 1.

The judge's decision, while temporary, leads observers to believe the court will eventually block the rule permanently, action sought in cases brought by 21 state attorneys general, as well as business groups.

The injunction also sets up Congress to act early in the next session to rescind the rule under provisions of the Congressional Review Act (CRA), which allows Congress to override administrative rulemakings. While farmworkers are not covered by the rule, input businesses and other rural enterprises would have taken a major hit from the new rules, experts aid.

The new rule effectively doubles the salary base to \$47,476 at which workers qualify for time and a half once they've worked 40 hours in a week. The injunction was praised by the U.S. Chamber of Commerce. "We are very pleased that the court agreed with our arguments. The rule would have caused many disruptions in how work gets done," the Chamber said, adding it would "reduce workplace flexibility, remote electronic access to work and opportunities for career advancement."

Groups supporting the overtime rule extension called the ruling "an extreme and unsupportable decision and clear overreach by the court. Opponents argued the rule, not modified since the 1980s, forced employees to work long hours with no additional compensation.

Pushes for Early Farm Bill Action Increasing with North Dakota Call

Add members of the North Dakota congressional delegation to the growing list of lawmakers who want to see the 2014 Farm Bill reworked sooner rather than later.

"The earlier we start, the more creative we can be," said Rep. Kevin Cramer (R, ND) at a state soil conservation districts meeting last week reported by the *Bismarck Tribune*. He acknowledged reopening the controversial law can be risky because it's easy to be overwhelmed by the sheer number of issues brought to the table.

Sen. John Hoeven (R, ND) agreed with Cramer's desire to reduce the number of pending wetland determinations at USDA, acknowledging conservation matters will loom large in the next Farm Bill. He and Cramer agreed the next Farm Bill must be as "farmer-friendly" as possible. Sen. Heidi Heitkamp (D, ND) also laid out her Farm Bill plans for the group.

Hoeven, however, said 2017 would be a year of information gathering, and in 2018, "I expect we'll write a new Farm Bill. We've got to find ways to reduce the regulatory burden." Hoeven said he expects a push to strengthen federal crop insurance programs, while trying to increase the number of Conservation Reserve Program (CRP) acres in the state.

Trump Transition Happenings

Trump says TPP to be Dumped Early in First 100 Days – In a 15-minute video released this week, President-elect Donald Trump says among other things, within days of taking office he will formally withdraw the U.S. from the 12-nation Pacific Rim coalition which negotiated the Trans-Pacific Partnership

(TPP). “On trade I’m going to issue a notification of intent to withdraw from TPP, a potential disaster for our country. Instead, we’ll negotiate fair bilateral trade deals that bring jobs and industry back on to American shores,” he said. Support for TPP is nearly universal among agriculture production and input groups, with several continuing to lobby Congress to vote on TPP ratification during the congressional lame duck session. However, this week U.S. Trade Representative Michael Froman said in one report he doesn’t think there will be a vote, and *Reuters* reports if the U.S. walks away from TPP, trade dominance in the Pacific Rim will go to China.

\In a related development, this week’s meeting of the U.S.-China Joint Commission on Commerce & Trade, both the U.S. and China agreed in separate public statements about the need to reach agreement and harmonize approaches on biotechnology and excess steel capacity, and to increase cooperation on future trade challenges.

Other Actions for the First 100 Days Include... -- As part of his video announcement this week on just what he’ll do during the first 100 days of his administration, President-elect Donald Trump confirmed he’ll knock off the Trans-Pacific Partnership (TPP), but will also move quickly to remove restrictions to end “the war on coal” by allowing shale energy and “clean coal” uses. He also reiterated his goal that if one new regulation is promulgated by an agency, “two old regulations must be eliminated.” Trump also said he’ll work with the Department of Defense (DOD) and his Joint Chiefs of Staff “to develop a comprehensive plan to protect America’s vital infrastructure from cyber-attacks and all other forms of attack.” Visa program investigations will be ordered at the Labor Department, he said, and he reiterated his five-year ban on domestic lobbying for all Trump transition team members and appointees, but added he’ll impose a lifetime ban on lobbying foreign governments. The actions slated for the first 100 days are based on recommendations from his transition team, which he said is “working smoothly, efficiently and effectively.”

Torrey Resigns, Leftwich Named Head of Ag Transition – With Vice President-elect Mike Pence “purging” the Trump transition team of nearly 200 registered federal/state lobbyists, Mike Torrey, principal in the lobbying firm Michael Torrey Associates, resigned last week from the team as the head of the agriculture section where he’d worked for several months. Torrey quit rather than surrender his lobbying registration and sign a pledge not to lobby the federal government for five years. Torrey was replaced this week by fellow Kansan Joel Leftwich, Senate Agriculture Committee staff director and long-time aide to committee chair Sen. Pat Roberts (R, KS). Roberts echoed the worries of many in agriculture when he warned the Trump team that imposing its five-year lobbying ban may make it more difficult to get top quality individuals to take administration jobs. “If someone is facing a five-year ban, they’re not going to sign on,” Roberts told *Agri-Pulse*. “But their advice should be heeded.”

Candidates Abound for EPA Administrator – The list of persons who may have the unenviable task of unraveling EPA rulemakings on everything from clean air to waters of the U.S. (WOTUS), is growing. This week, Vice President-elect Mike Pence renamed Myron Ebell, Competitive Enterprise Institute (CEI), to head the EPA transition team, and Ebell has a good shot at being named administrator of the agency he’s criticized for years. Also on the short list for EPA head is Gary Baise, a Washington, DC, attorney and Illinois farm owner, who sits on Trump’s ag advisory committee. Baise was chief of staff to EPA’s first administrator and served as head of the agency’s Office of Legislation. He also served with the director of the FBI, and as an associate deputy attorney general at the Department of Justice. Leslie

Rutledge, Arkansas attorney general, has met with Trump in New York, reportedly to talk about the EPA slot. Rutledge married a farmer last year.

Iowa Legislators Tell Trump to Dump Want WOTUS Early – A good chunk of the Iowa congressional delegation this week told President-elect Donald Trump they want EPA's controversial waters of the U.S. (WOTUS) rulemaking killed within days of his taking office. The final rule, stayed by a federal court order, is expected to reach the Supreme Court if allowed to wend its way through the federal system. "We also respectfully urge you to direct your EPA to craft a common-sense rule that clarifies the scope of the Clean Water Act (CWA) and does so by taking into consideration the input of all stakeholders," wrote Sens. Charles Grassley (R, IA), Joni Ernst (R, IA), along with Reps. Rod Blum (R, IA), Steve King (R, IA) and David Young (R, IA).

Conaway Tells CFTC 'No Midnight Rulemaking' – Last week, House GOP leaders, along with all committee chairs, wrote to the heads of administration agencies and departments, asking they hold off on all rulemaking activity until Trump administration is in place. President Obama's transition team made a similar request in 2008 just after he was elected to his first term. This week, House Agriculture Committee Chair Mike Conaway (R, TX), focused that "no rules" message specifically at the Commodity Futures Trading Commission (CFTC), asking CFTC Chair Tim Massad to "refrain from pushing through controversial regulations." "While we may not agree on which regulations are overreaching or unnecessary, we should agree that the American people have asked for some else to make that judgment," Conaway said in his letter. Specifically, the chair cited the commission's work on position limits rules, as well as the need to extend the comment period for rules on regulated automated traders (Reg AT). Conaway said rulemaking abstinence should be seen as part of President Obama's pledge to do what he can to make the Trump transition successful.

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