

## **State Association Weekly Washington Report 11.22.17**

### **Congress Returns Next Week, Senate to Tackle Tax Return**

Congress returns next week from its Thanksgiving recess with an agenda all about money and spending. The House will focus on the FY2018 budget and appropriations process, while the Senate tackles floor action on its version of federal tax reform/cuts.

Hallway talk about the Senate bill indicates GOP leadership is willing to do just about whatever it takes to get the bill approved in order to get both House and Senate versions into conference committee so the Republican goal of getting a bill to President Trump before Christmas can be met. President Trump this week said it's his hope enactment of a tax reform package will be a "Christmas present for the middle class."

The Senate bill differs in significant ways from that approved by the full House last week and will be further tweaked before it hits the floor. Because it is progressing under procedural rules governing the Senate-passed FY2018 budget resolution and its reconciliation process, the bill will need just 51 votes for approval, meaning the Senate GOP can afford only two defections. At least three Republican Senators have said publicly they can't support the bill as approved in committee, and so far, no Democrats have come out in favor of the Senate Finance Committee's package. When the House voted on its package, it received no Democrat votes and lost 13 Republicans from high-tax states.

One major sticking point in the Senate bill – language to repeal the Affordable Care Act (ACA) individual mandate – may disappear as reports this week indicate both congressional GOP leadership and the White House are willing to let that bit disappear in pursuit a clear win for the overall tax package.

### **NAFTA Round 5 Concludes with a Bit More Optimism; Bipartisan Senate Letter Yanks Up Ross**

Mexican officials say things are moving at "a good pace," and observers of the just-completed fifth round of NAFTA modernization talks say the "tone" of the November 17-21 session was slightly more upbeat than many expected. And while no chapter of the new agreement is finalized, one dairy executive said of the talks, "I'm not jumping over the moon yet, but I'm better than I have been in the past."

U.S. Special Trade Representative (USTR) Robert Lighthizer, who along with his Mexican and Canadian counterparts did not participate directly in the latest round of talks, was less sanguine. "While we have made progress on some of our efforts to modernize NAFTA, I remain concerned about the lack of headway. Thus far we have seen no evidence Canada and Mexico are willing to seriously engage on provisions that will lead to a rebalanced agreement," Lighthizer said in a statement this week.

"The goal here is to make progress so that in January, we can get on a path toward resolving some of these big issues. We've got to be showing major progress by March or all bets are off," National Milk Producers Federation (NMPF) President Jim Mulhern told *Politico* this week.

The next round of talks will be an "intersession" series of discussions beginning December 11 in Washington, DC, without the three nations' chief negotiators. The next formal round begins in Montreal, Canada, January 13-18, 2018.

A new wrinkle in the U.S.-Canada-Mexico struggle to reinvent the 23-year-old trade treaty was an unprecedented release this week by the Office of the U.S. Special Trade Representative (USTR) of an updated “Summary of Objectives” for the U.S. in the tripartite negotiations. While much of the document restates the July 17 iteration of White House NAFTA 2.0 goals, tucked into the report was the first-time inclusion of full Canadian market access for U.S. poultry and eggs, as well as dairy. Such access for U.S. ag products would require Canada to abandon its protectionist supply/price management system, a move its government said it will not make.

Further, the Mexican produce industry again said it will not accept a U.S. proposal to make it easier for produce growers, particularly those in the southeastern U.S., to bring anti-dumping complaints against Mexico. This provision may not survive given western produce growers and others with a stake in the issue do not support the U.S. proposal.

Meanwhile, a bipartisan group of 18 Senators kept political pressure on the Trump White House, sending a letter this week to Commerce Secretary Wilbur Ross demanding any NAFTA changes to agriculture provisions include a U.S. economic analysis of the impact of the changes.

“It is imperative that before any changes are made to NAFTA, or any other free trade agreement, that economic analysis that illustrates the impact on the full supply chain of the industries involved be shared,” the letter said. Agriculture Secretary Sonny Perdue and Lighthizer were copied on the letter.

The Senate letter, signed by Senate Agriculture Committee Chair Pat Roberts (R, KS), along with Sen. Charles Grassley (R, IA), Sen. Joni Ernst (R, IA), Sen. Heidi Heitkamp (D, ND), Sen. Claire McCaskill (D, MO) and Sen. John Thune (R, SD), was because of Ross statements over the last several days in which he called agriculture’s warning about the economic impact of a U.S. withdrawal from NAFTA “an empty threat,” and his admonition to agriculture to cease “screaming and yelling” lest such public statements make treaty negotiations more difficult.

“Given your recent comments regarding agriculture and international trade, we find it essential that Congress’ voice be heard. International markets have taken years to build, and it is imperative that no steps be taken to jeopardize those gains. We must continue to move the global presence of U.S. agricultural products forward, not backward,” the letter said.

### **What Happens if U.S. Pulls out of NAFTA?**

If President Trump were to make good on his not-so-thinly veiled threats to pull the U.S. out of NAFTA, U.S. farmers and ranchers aren’t economically healthy enough to withstand the move given the farm economy is still at record lows.

“Due to the current state of the farm economy, a full withdrawal of the U.S. from NAFTA would devastate the entire agricultural community and our nation,” Texas Farm Bureau President Russell Boening told a Senate Finance Committee field hearing in San Antonio, Texas, last week. “We must make certain this does not happen.”

Meanwhile, the Congressional Research Service (CRS) released a report on the “potential effects of a U.S. NAFTA withdrawal,” which include the following:

- Most favored nation (MFN) tariffs on U.S. ag imports would boost prices to consumers and other end users, including manufacturers of value-added foods;

- MFN tariffs on U.S. ag exports would make those products less price competitive;
- Imported products from Mexico and Canada would be more expensive;
- Reduced market share for U.S. products in Mexico and Canada;
- There would be a drop in ag imports that compete with U.S. products;
- There would likely be a general disruption of integrated supply chains, along with general market disruption and “uncertainty;”
- There would be both positive and negative economic impacts on individual agricultural states, and
- The U.S. would experience a decrease in future negotiating leverage.

### **Pesticide Registration Rework Includes ESA Exemptions**

Draft legislation making its way around Washington, DC, a copy of which was obtained by environmental groups and released this week, would reinvent EPA’s new pesticide registration process and exempt companies from the current Endangered Species Act (ESA) consultation process, a requirement designed to ensure crop chemicals do no harm to ESA-listed species or their habitats.

Opponents of the ESA consultation process, part of the Federal Insecticide, Fungicide & Rodenticide Act (FIFRA), argue it’s unnecessary, and overly complicates the registration process, leading to legal challenges and ultimately, higher farm prices for crop chemicals.

The new language would require EPA to register a pesticide if “it is not likely to jeopardize” an ESA-listed animals or endanger critical habitats. The agency could make that decision without sitting down with Fish & Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS), the agencies in charge of ESA, which evaluate ESA impacts on business and the economy. FWS and NMPS could submit scientific information to EPA, but a consultation would only take place if the pesticide registrant asks for it.

The new language also contemplates removing ESA’s “incidental take” enforcement provision, the authority allowing the federal government to prosecute when a pesticide is used in a way that harms a covered species.

### **RFS Announcement Due Next Week; Northey Nomination Still Held Hostage by Cruz**

EPA Administrator Scott Pruitt is set to announce the final 2018-2019 Renewable Fuel Standard (RFS)/Renewable Volume Obligation (RVO) fuel blending mandate November 30, and while industry is feeling pretty good that the new RFS will call for greater use of biofuels in conventional fuel blends, Sen. Ted Cruz (R, TX) refuses to remove his hold on a full Senate vote on Bill Northey’s nomination to be USDA undersecretary for farm production and conservation until someone sits down and talks with him.

Industry confidence in the RFS announcement is based on Sen. Joni Ernst’s (R, IA) success in getting Pruitt to put in writing his commitment to supporting the RFS law, and as Ernst described it, “to finalizing the RVO rule on time, and at levels equal to or greater than the levels in the proposed rule.”

The July RFS proposal held the overall corn ethanol blend allowance at 15 billion gallons as required by law, and set the biodiesel/renewable diesel blend rate at around 2.1 billion gallons, a level biodiesel makers hope is raised to 2.5 billion gallons in next week’s announcement. Cellulosic ethanol blend levels were proposed at 238 million gallons, 73 million gallons less than the year before, and the industry wants that level hiked to closer to 400 million gallons.

Cruz wants the White House to convene a “summit” to talk about the RFS, a meeting that would include him and eight other oil state Senators, along with the ag state Senators who successfully got the White House and Pruitt to honor public commitments to support the RFS. The White House has ignored Cruz’s request, and the Texas lawmaker has told Iowa Gov. Kim Reynolds he’ll release his hold on the Northey nomination if she agrees to meet to talk middle ground on the RFS issue.

The Cruz hold on the Northey nomination is inspired by his ties to the oil and gas industry of his home state and by the Ernst victory with Pruitt over the RFS, action supported by Sen. Charles Grassley (R, IA) and six other Senators. Grassley and Ernst have tried to negotiate with Cruz – an effort the senior Iowa lawmaker said “hasn’t done much good – and have appealed to Senate Majority Leader Mitch McConnell (R, KY) to intercede with Cruz because getting Northey on the job is important to evolution of the FY2018 Farm Bill. “When it comes to the Farm Bill, we need him in place. From that standpoint, the leader said he would help move it (the nomination) along,” Grassley said.

### **FMCSA Giving Ag 90-Day Waiver on Truck Electronic Logging Device Rule**

The Department of Transportation’s Federal Motor Carrier Safety Administration (FMCSA) announced this week at meeting of agriculture transportation stakeholders that it will grant agriculture a 90-day waiver from the requirements of its electronic logging device (ELD) rule. That rule is set to go into effect December 17.

The agency said it is granting the waiver in order to study requests for exemptions received during the public comment period on the rulemaking, as well as to work to clarify and issue formal guidance on the 150-air-mile radius hours of service exemption for agricultural commodities included in the rule.

Agriculture broadly, particularly livestock interests, have complained about the ELD rule. FMCSA said complaints about the rule “have been raised, they’re not really specific to ELDs, they’re concerns over how they manage their hours of service, and ...those items require us to give a little further consideration.”

Industry feared that come December, all trucks without ELDs would be pulled out of service. FMCSA said that as of the December effective date, if a driver has a paper log, but not an ELD, a citation will be issued, but the citation won’t affect the driver’s safety score. However, as of April 2, 2018, trucks without ELDs will be pulled from service.

On clarifying the 150-air-mile radius hours of service, the American Feed Industry Assn. (AFIA) notified its members this week the new compliance guidance is expected within three weeks, and while animal food is not considered an ag commodity and not covered by the 90-day waiver, feed does meet the definition of farm supply under the hours-of-service rule.

“It is expected the guidance document will clarify that all hours for trips inside the 150-air-mile radius will qualify under the exemption. Drivers delivering livestock feed should only be required to log hours of service if they go beyond the 150-air-mile radius. If you don’t make deliveries outside of the 150-air-mile radius, you would not be required to install ELDs,” AFIA said.

ELD rule details are found at <https://www.fmcsa.dot.gov/hours-service/elds/electronic-logging-devices>.

