

June 22, 2018

Washington Update

This Week in Congress

- **House** – The House passed the “**Securing Opioids and Unused Narcotics with Deliberate Disposal and Packaging Act of 2018**” (H.R. 5687); the “**Stop Excessive Narcotics in our Retirement Communities Protection Act of 2018**” (H.R. 5676); the “**Individuals in Medicaid Deserve Care that is Appropriate and Responsible in its Execution Act**” (H.R. 5797); the “**Overdose Prevention and Patient Safety Act**” (H.R. 6082); the “**Agriculture and Nutrition Act of 2018 (Farm Bill)**” (H.R. 2); and “**SUPPORT for Patients and Communities Act**” (H.R. 6).
- **Senate** – The Senate passed the “**National Defense Authorization Act of 2018**” (H.R. 5515); the “**Global Food Security Reauthorization**” (S.2269); the “**American Innovation \$1 Coin Act**” (H.R. 770); and confirmed **Jean Carol Hovland** to be Commissioner of the Administration for Native Americans, Department of Health and Human Services.

Next Week in Congress

- **House** – The House may consider the “**Department of Defense Appropriations Act, 2019**” (H.R. 6187); the “**Endangered Salmon and Fisheries Predation Prevention Act**” (H.R. 2083); and the “**Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act**” (H.R. 200).
- **Senate** – The Senate will resume consideration of the “**Energy and Water, Legislative Branch, and Military Construction and Veterans Affairs Appropriations Act 2019 (the minibus)**” (H.R. 5895); and may consider the “**Agriculture and Nutrition Act of 2018 (Farm Bill)**” (H.R. 2).

TAX

Supreme Court Rules States Can Collect Sales Tax on Online Purchases

Key Points:

- *The Supreme Court issued a 5-4 opinion in **South Dakota v. Wayfair** that overruled that its previous decision in **Quill Corp. v. North Dakota** requiring a physical presence before*

- *states can force out of state sellers to collect sales taxes on purchases. The court concluded*

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that the physical presence rule of Quill was unsound and incorrect.

- *The decision opens the door to allowing states to force e-commerce tax companies to collect sales tax based on sufficient economic and virtual contacts.*
- *Lawmakers remain divided on whether to impose any additional legislation*

On Wednesday, the U.S. Supreme Court handed down their 5-4 ruling in South Dakota v. Wayfair overturning their previous ruling in the 1992 case of Quill Corp v. North Dakota requiring that companies have a physical presence before a state can require an out-of-state seller to collect state sales taxes. The Wayfair ruling closed what some have described as a loophole that favored internet companies over brick and mortar retailers within the state. In its ruling the majority concluded that the physical presence rule of Quill is “unsound and incorrect.” The court held that the South Dakota law did not place an impermissible burden on interstate commerce because the law included a threshold safe harbor to protect companies with only limited business in South Dakota and provides sellers access to sales tax administration software paid for by the state.

The ruling likely means that e-commerce companies and sellers using platforms must now comply with South Dakota’s law, which requires vendors without a physical presence to collect and remit sales and use taxes if they meet the law’s thresholds. It is expected that all other states that administer a sales tax will at least copy South Dakota’s model, and those laws likely also would pass constitutional muster under the reasoning of the Wayfair decision. However, the court’s opinion did not address whether any of the other 17 state economic nexus models are constitutionally valid, focusing instead on rejecting Quill as “flawed on its own terms.”

The decision could compel legislation setting uniform standards and protections on when states can impose sales taxes modeled on either Rep. Kristi Noem’s (R-SD) Remote Transactions Parity Act of 2017 (H.R. 2193) (RTPA) or the Marketplace Fairness Act of 2017 (S.976) (MFA).

House Ways and Means Approves Two Tax-Related Bills

Key Points:

- *The IRS Workforce Act of 2017 would prohibit the IRS from rehiring employees who were fired for misconduct or poor performance*
- *The Water and Agriculture Tax Reform Act of 2017 would allow mutual ditch and irrigation companies to retain their nonprofit status even if they receive more than 15 percent of their revenue from nonmember sources*

The House Ways and Means Committee on Thursday passed two bills that addressed the Internal Revenue Service (IRS) hiring practices and irrigation cooperatives. The IRS Workforce Act of 2017 (H.R. 3500), introduced by Representative Kristi Noem (R-SD) prohibits the IRS from rehiring employees removed for misconduct or performance issues. Last Congress, similar legislation passed the committee unanimously and passed the House, but was left pending in the Senate.

The Water and Agriculture Tax Reform Act of 2017 (H.R. 519), introduced by Representative David Schweikert (R-AZ), would allow mutual ditch and irrigation companies to retain their not-for-profit status even if they receive more than 15 percent of their revenue from nonmember sources. According to Schweikert, under current law, small irrigation cooperatives could face a substantial tax liability if they sell some of their excess resources to nonmembers. The Ways and Means

Committee passed both measures by voice vote.

New IRS Form 1040 to be Released Next Week

Key Point:

- *According to Treasury Secretary Steven Mnuchin, a new “postcard sized” Form 1040 will officially be released next week.*

According to Treasury Secretary Steven Mnuchin, the new IRS Form 1040 will be released next week. At an event celebrating the six-month anniversary of the Tax Cuts and Jobs Act (TCJA), Mnuchin explained that the new form will be a postcard and stated that “hardworking taxpayers won’t have to spend nearly as much time filling out their taxes.”

Republicans touted the simplicity that the TCJA would provide throughout the legislative process and consistently promised that filing individual taxes would be able to be completed on a “postcard” sized sheet. The existing form is two pages long, with additional schedules and computations often required. The IRS already offers a one-page Form 1040EZ for taxpayers with simple financial situations and a Form 20140A that is less complex than the regular form but longer than the 1040EZ.

House Financial Services Committee and House Energy and Commerce Committee Hold Hearings on Tax Law Benefits

Key Points:

- *The House Energy and Commerce Committee’s Energy Subcommittee held a hearing on the benefits of TCJA on the Energy sector*
- *The House Financial Services Committee held a similar hearing on the pro-growth benefits that have generated from TCJA*

On June 20, the House Energy and Commerce Committee’s Energy Subcommittee held a hearing entitled: “The Benefits of Tax Reform on the Energy Sector and Consumers.” Witnesses at the hearing included Mr. Tom Ferguson, CEO of AZZ Incorporated; Mr. Seth Hanlon, Senior Fellow from the Center for American Progress; Mr. Sam McCammon, President of Anamet Electrical; and Ms. Holly Wade, Director of Research and Policy Analysis from the National Federation of Independent Business. Committee Chairman Greg Walden (R-OR) stated: “I was a small business owner for 20 years with my wife and when you sign the front of a pay roll check it makes a difference and you understand the importance of the changes we made in the tax code to grow the economy.”

Also on June 20, the House Financial Services Committee held a hearing entitled: “Empowering a Pro-Growth Economy by Cutting Taxes and Regulatory Red Tape.” Witnesses included Ms. Karen Kerrigan, President of the Small Business and Entrepreneurship Council; Ms. Lori Miles-Olund, President of Miles Fiberglass and Composites; Mr. Ford Sasser III, President of Rio Bank; Mr. Damon Silvers, Policy Director for the American Federation of Labor and Congress of Industrial Organizations; and Mr. Paul Schott Stevens, President of the Investment Company Institute. According to Committee Chairman Jeb Hensarling (R-TX) argued the following: “Not only do we have tax relief, but we have a new regulatory agenda under this Administration to right size regulation, and to help market participants actually comply, and to ensure that the burden of this regulatory infrastructure is minimized so that we can have economic growth – and indeed we do.”

Tax Hearings

Senate Finance Committee Chairman Orrin Hatch (R-UT) announced that the Committee will hold a hearing to consider the nomination of Charles Rettig to be Commissioner of the IRS. The hearing will take place on June 28 at 10 a.m. in 215 Dirksen Senate Office Building.

For more information about tax issues you may [email](#) or call Christopher Hatcher at 202-659-8201. Nick Karellas, Henry Homans contributed to this section.

FINANCIAL SERVICES

Senate, House Panels Hold Hearings on Illicit Finance, Virtual Currencies

Key Point:

- *A Senate Banking Subcommittee held a hearing on combatting money laundering, while a House Financial Services Subcommittee held a hearing on the illicit use of virtual currency.*

On June 20, the Senate Banking, Housing, and Urban Affairs' National Security and International Trade and Finance Subcommittee held a [hearing](#) entitled, "Combatting Money Laundering and Other Forms of Illicit Finance: How Criminal Organizations Launder Money and Innovative Techniques for Fighting Them." Chairman Ben Sasse (R-NE) said there needs to be a new way to conduct anti-money laundering (AML) compliance, and that the hearing is intended to focus on how to improve cooperation and coordination with law enforcement officials as well as how to encourage financial institutions to adopt innovative AML techniques, including leveraging artificial intelligence (AI). He added that criminal organizations are constantly coming up with new ways to launder money, so the AML regimes must be constantly innovating. He argued that the current AML system falls short in many regards. He stated

that there needs to be a better way to evaluate financial institutions by focusing more on tangible outcomes rather than just process matters. He said that Suspicious Activity Reports (SARs) will always play an essential role in the financial industry but producing them is not the main goal. He explained that there needs to be more flexibility for organizations to create their own AML techniques.

Ranking Member Joe Donnelly (D-IN) said the Bank Secrecy Act (BSA) was enacted nearly 50 years ago and has become the cornerstone of U.S. AML policy. He stated that the U.S. is committed to fighting illicit financing but argued that there are many gaps in the system. He explained that criminal networks can move money through the U.S. in an easy manner. He said financial institutions need more clarity in what exactly they are looking for, thus encouraging cooperation between regulators and the banks.

On June 20, the House Financial Services Committee's Subcommittee on Terrorism and Illicit Finance held a [hearing](#) entitled, "Illicit Use of Virtual Currency and the Law Enforcement Response." Chairman Stevan Pearce (R-NM) stated the hearing is to examine the exploitation of virtual currencies and what law enforcement is doing to disrupt this use. He explained virtual currency is the preferred means to purchase drugs and conduct illicit activities, so he stated law enforcement must be aware of the risks. He explained virtual currency is used to buy and sell illicit services and the public needs to be educated about the risks. He noted last week the FIND Trafficking Act ([H.R. 6069](#)) was discussed and he explained it is a first step in finding solutions. He noted the Financial Technology Protection Act ([H.R. 5036](#)) was introduced earlier this year as well.

The Democratic members of the Subcommittee focused their questions on immigration and the Administration's family separation policy.

House Financial Services Committee Passes Three Bills Related to Emerging Growth Companies

Key Point:

- *The Committee passed bills to expand upon the EGC provisions created by the JOBS Act.*

On June 21, the House Financial Services Committee held a [markup](#) and approved three financial services bills:

- The Modernizing Disclosures for Investors Act ([H.R. 5970](#)), introduced by Representative Ann Wagner (R-MO), would require the Securities and Exchange Commission (SEC) to report to Congress within 120 days on SEC Form 10-Q, including optionality for the form for emerging growth companies (EGCs). The Committee favorably reported H.R. 5970, as amended, by a vote of 56-0.
- The Helping Startups Continue to Grow Act ([H.R. 6130](#)), introduced by Representative Keith Rothfus (R-PA), would expand the “on-ramp” for EGCs by providing EGCs an additional five years of exemptions from certain disclosure requirements. The expansion is limited to EGCs that, after five years as an EGC, would continue to qualify as such but for the five-year restriction on EGC status. The Committee favorably reported the bill by a vote of 32-24.
- The Improving Investment Research for Small and Emerging Issuers Act ([H.R. 6139](#)), introduced by Representative Bill Huizenga (R-MI)

and Ranking Member Maxine Waters (D-CA), would require the SEC to report to Congress within 180 days on issues that affect the provision of and reliance upon investment research into small issuers, including EGCs and pre-IPO companies. Among the issues the SEC must consider are factors related to the demand for such research by institutional and retail investors, cost considerations for such research, and the impact on the availability of research coverage for small issuers due to a variety of market and regulatory conditions. The Committee favorably reported H.R. 6139 by a vote of 58-0.

The Committee may hold another markup of financial services bills next week in advance of their efforts to craft a package of securities bills.

Senate Appropriations Committee Approves FY2019 Financial Services Funding Bill

Key Point:

- *The bill would provide a total of \$23.688 billion in funding for 27 independent agencies.*

On June 21, the Senate Appropriations Committee held a [markup](#) of the Fiscal Year (FY) 2019 Financial Services and General Government Appropriations Act. The bill, as amended, was favorably reported by unanimous consent.

Chairman Richard Shelby (R-AL) said the Committee is set to have reported ten of the twelve FY2019 appropriations bills by the end of the markup. He stated he plans to hold a markup for the remaining two bills next Thursday. He observed there has been bipartisan support for the appropriations bills in the Committee. He stated the FY2019

Financial Services and General Government Appropriations Act funds several agencies that are critical to maintaining the integrity of financial markets and to promoting economic growth.

FSGG Subcommittee Chairman James Lankford (R-OK) said he and Ranking Member Chris Coons (D-DE) worked to make responsible decisions in allocating resources while also being responsive to requests from members of both parties. He stated the bill totals \$23.688 billion and includes funding for a diverse group of 27 independent agencies. He said the bill provides targeted funding increases for the Department of Treasury (USDOT) to combat terrorism financing. He argued the bill makes critical investments in financial markets by providing targeted increases for the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC). He observed the bill funds the IRS above the President's budget request and suggested the funding will improve customer service and reduce the tax gap. He explained the tax gap is the amount owed but not paid and said the IRS estimates it is around \$400 billion each year. He argued addressing the tax gap is critical to reducing the deficit and restoring fiscal health.

Senator Christopher Coons (D-DE) stated the bill fairly allocates funding among many competing priorities and does not contain any controversial riders. He expressed support for the bill providing \$250 million for the Community Development Financial Institutions (CDFI) Fund and recalled the Administration's budget requested the funding be cut to \$14 million. He expressed support for the increased funding of the CFTC.

House Financial Services Conducts Oversight of the SEC

Key Points:

- *Committee Chairman Jeb Hensarling (R-TX) noted the Senate will be considering a package of capital formation bills.*
- *SEC Chairman Jay Clayton stated the Access Fee pilot is out for comment and should be out sometime this fall.*

On June 21, the House Financial Services Committee held a [hearing](#) on Securities and Exchange Commission (SEC) oversight, with SEC Chairman Jay Clayton testifying. Chairman Jeb Hensarling (R-TX) explained the SEC has a well-established three-part mission but he suggested the latter portion of the mission, capital formation, has recently received short shrift. He stated the Senate will vote on a package of capital formation bills at some point and he stressed the need to work in a bipartisan manner. Ranking Member Maxine Waters (D-CA) noted that the Volcker Rule was put into place to prevent banks from gambling with people's money, suggesting the recently proposed joint rulemaking will give banks a "pass" and allow them to continue what Congress wanted them to stop.

Numerous issues were raised by Committee Members, and several noted the need for strong capital markets. SEC Chairman Jay Clayton suggested that not having more attractive markets is impeding capital formation. He stated the suite of opportunities for retail investors is shrinking and the "one-size-fits-all" does not work for public companies. He stated the threshold for being able to go public is too high and they are considering reforming the accredited investor definition. He noted the Division of Corporation Finance will release proposals soon that will "clean up a lot." When concerns were raised about the SEC's proposed Best Interest Standard, Chairman Clayton explained that the purpose is to align expectations with the requirements for broker-dealers. He noted

the client relationship summary (Form CRS) will explain to the customer what the adviser is doing, what obligations exist and how they are getting paid. Representative Carolyn Maloney (D-NY) asked when the transaction fee pilot program proposal will be finalized. Clayton stated the proposal is on the near term agenda, he suggested it should be finalized sometime this fall.

The decline in the number of IPOs was raised by several Members during the hearing. Clayton stated the JOBS Act and the EGC concept of scaled disclosures is a good idea but he explained he would like to see the on-ramp modernized. He suggested the private capital markets are currently strong and he does not want to take action to jeopardize that. However, he expressed concerns that the public capital markets are not more attractive. Representative Ed Royce (R-CA) noted earlier this year the Committee passed legislation reversing an SEC rule requiring certain money market funds to float the NAV. He noted his opposition to the bill passed by the Committee, and said that price should reflect risk. Chairman Clayton noted that his views on this issue have not changed.

UPCOMING EVENTS

June 26

Public Housing: The House Financial Services Committee's Subcommittee on Housing and Insurance will hold a hearing entitled "Oversight of the Federal Government's Approach to Lead-Based Paint and Mold Remediation in Public and Subsidized Housing."

De-Risking: The House Financial Services Committee's Subcommittee on Financial Institutions and Consumer Credit will hold a hearing entitled "International and Domestic Implications of De-Risking." Witnesses will

include: Michael Clements, Director, Financial Markets and Community Investment, Government Accountability Office (GAO); The Honorable Sue Eckert, Adjunct Senior Fellow, Center for a New American Security; Gabrielle Haddad, Chief Operating Officer, Sigma Ratings Inc.; John Lewis, Senior Vice President, Corporate Affairs and General Counsel, United Nations Federal Credit Union on behalf of the National Association of Federally-Insured Credit Unions; Sally Yearwood, Executive Director, Caribbean-Central American Action.

Capital Formation Legislation: The Senate Banking Committee will hold a hearing to discuss "Legislative Proposals to Increase Access to Capital." Witnesses will include: Raymond Keating, Chief Economist, Small Business & Entrepreneurship Council; Professor Mercer Bullard, Professor of Law, the University of Mississippi School of Law; and Chris Daniel, Chief Investment Officer of the City of Albuquerque, NM, on behalf of the Government Finance Officers Association (GFOA).

June 27

HUD Oversight: The House Financial Services Committee will hold a hearing on oversight of the Department of Housing and Urban Development (HUD). HUD Secretary Ben Carson will testify at the hearing.

Possible Markup: The House Financial Services Committee may markup financial services legislation.

June 28

SEC Open Meeting: The Securities and Exchange Commission (SEC) will hold an open meeting to consider six items: (1) whether to adopt **amendments to the Smaller Reporting Company Definition**; (2) **whether to adopt amendments to rules and**

forms to require the use of Inline XBRL Filing of Tagged Data; (3) whether to propose Rule 6c-11 under the Investment Company Act of 1940 that would permit certain Exchange-Traded Funds to operate without first obtaining an exemptive order from the SEC; (4) whether to adopt amendments to disclosures of liquidity risk management for open end investment companies; (5) whether to propose amendments to the Commission's Whistleblower Program Rules; and (6) whether to enter into a revised Memorandum of Understanding with the Commodity Futures Trading Commission (CFTC) regarding regulatory coordination.

Corporate Governance: The Senate Banking Committee will hold a hearing to discuss "Legislative Proposals to Examine Corporate Governance." Witnesses will include: Thomas Quaadman, Executive Vice President, U.S. Chamber, Center for Capital Markets Competitiveness; Darla Stuckey, President and CEO, Society for Corporate Governance; Professor John Coates, IV, Professor of Law and Economics, Harvard Law School; Damon Silvers, Policy Director and Special Counsel, American Federation of Labor and Congress of Industrial Organizations (AFL-CIO).

July 16

FIMSAC: The SEC will hold a meeting of its Fixed Income Market Structure Advisory Committee (FIMSAC). The meeting agenda includes updates and presentations from the subcommittees.

For more information about financial services issues you may [email](#) or call Joel Oswald at 202-659-8201. Alex Barcham and Rebecca Konst contributed to the articles.

ENERGY AND ENVIRONMENT

Committee Approves One Onshore Drilling Bill; Defers Action on Three Others

Key Points:

- *On Wednesday, the House Natural Resources Committee approved the "Common Sense Permitting Act", which would streamline the permitting process for onshore oil and gas development.*
- *The Committee also began, but did not complete, consideration of the "Streamlining Permitting Efficiency in Energy Development Act".*
- *The Committee did not act on the two other bills on the markup agenda: the "Removing Barriers to Energy Independence Act"; and the "Ending Duplicative Permitting Act".*

On June 20, the House Natural Resources Committee held a [markup](#) and approved one bill related to energy permitting, the "Common Sense Permitting Act" ([H.R. 6106](#)). The bill was introduced by Representative Steve Pearce (R-NM) and would "amend the Energy Policy Act of 2005 to clarify the authorized categorical exclusions and authorize additional categorical exclusions to streamline the oil and gas permitting process..." The Committee favorably reported H.R. 6106, as amended, by a vote of 22-18.

The Committee began, but did not complete, consideration of the "Streamlining Permitting Efficiency in Energy Development (SPEED) Act" ([H.R. 6088](#)). The bill was introduced by Representative John Curtis (R-UT) and would "amend the Mineral Leasing Act to authorize notifications of permit to drill..."

The Committee did not take up two bills which had been previously announced for the markup:

- The “Removing Barriers to Energy Independence Act” ([H.R. 6087](#)), introduced by Representative Liz Cheney (R-WY), which would “authorize the Secretary of the Interior to recover the cost of processing administrative protests for oil and gas lease sales, applications for permits to drill, and right of way applications.”
- The “Ending Duplicative Permitting Act” ([H.R. 6107](#)), introduced by Representative Pearce, which would “clarify that [the] Bureau of Land Management (BLM) shall not require permits for oil and gas activities conducted on non-Federal surface estate to access subsurface mineral estate that is less than 50 percent Federally owned.”

Subcommittee Hearing Focuses on Status of Pipeline Safety Regulations

Key Points:

- *On Thursday, the Railroads, Pipelines, and Hazardous Materials Subcommittee held a hearing on pipeline safety and the Pipeline and Hazardous Materials Safety Administration’s (PHMSA) implementation of congressionally mandated regulations.*
- *Subcommittee Republicans and Democrats pressed the PHMSA Administrator to complete action on outstanding pipeline safety mandates.*
- *Congress is expected to act on pipeline safety reauthorization legislation next year.*

On June 21, the House Transportation and Infrastructure Committee’s Subcommittee on Railroads, Pipelines, and Hazardous Materials held a [hearing](#) titled “PIPES Act of 2016 Implementation: Oversight of Pipeline Safety Programs”. Congress passed the “Protecting our Infrastructure of Pipelines and Enhancing Safety (PIPES) Act of 2016” ([P.L. 114-183](#)),

which the President signed into law on June 22, 2016.

Witnesses testifying were:

- Howard “Skip” Elliott, Administrator, Pipelines and Hazardous Materials Safety Administration (PHMSA) ([Written Testimony](#)).
- Andrew Black, President and CEO, Association of Oil Pipe Lines (AOPL) ([Written Testimony](#)).
- Robin Rorick, Group Director, Midstream and Industry Operations, American Petroleum Institute (API) ([Written Testimony](#)).
- Chad Zamarin, Senior Vice President, Corporate Strategic Development, The Williams Companies, on behalf of the Interstate Natural Gas Association of America (INGAA) ([Written Testimony](#)).
- Carl Weimer, Executive Director, Pipeline Safety Trust ([Written Testimony](#)).

Members focused their questions to Elliott on the status of overdue regulatory mandates directed in the 2016 reauthorization legislation, as well as the “Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011” ([P.L. 112-90](#)). Subcommittee Chairman Jeff Denham (R-CA) declared in his opening statement that “implementation of some requirements included in the PIPES Act and the 2011 reauthorization continue to be stalled.” Ranking Member Michael Capuano (D-MA) complained that the rules directed in the reauthorization bills are “many, many years late and they’re not small regulations.” During his questioning of Elliott, Capuano emphasized his unhappiness with PHMSA’s progress on the rulemakings, and warned of consequences if the major mandates remain open when Congress takes up the next reauthorization bill. Elliott explained that he has directed PHMSA

to prioritize the rulemaking process to meet the mandates as quickly as possible. He emphasized that “I do understand the Committee’s concerns about these rules.”

Industry witnesses described efforts and progress in improving pipeline safety. They also discussed the importance of technology in enhancing safety, along with the need for PHMSA regulations to stay current with technological advances. Carl Weimer, Executive Director of the Pipeline Safety Trust, asserted that “significant incidents have been increasing over the last decade.” He urged Congress to eliminate the statutory requirement for cost-benefit analysis of pipeline safety rulemakings. Weimer also called for “broad participation” in the development of industry standards that are incorporated by reference in pipeline safety regulations.

FERC Chairman McIntyre Discusses Grid Resilience, and Review of the Natural Gas Pipeline Approval Process

Key Points:

- *On Tuesday, Federal Energy Regulatory Commission Chairman Kevin McIntyre discussed energy policy matters at the Natural Gas Roundtable.*
- *McIntyre’s remarks addressed: the approval process for natural gas pipelines; grid resilience; permitting of LNG export facilities; and the regulated rate implications of tax reform.*

On June 19, the Natural Gas Roundtable hosted a speech by Federal Energy Regulatory Commission (FERC) Chairman Kevin McIntyre. McIntyre opened his remarks by emphasizing his belief in the rule of law as a “touchstone principle.” He also remarked that government agencies “should never rest on their laurels”, adding that he is looking for opportunities to review existing policy, including through the Commission’s

examination of its 1999 [Statement of Policy](#) on “Certification of New Interstate Natural Gas Pipeline Facilities”. Regarding FERC’s April, 2018 [Notice of Inquiry](#) (NOI) on “Certification of New Interstate Natural Gas Facilities”, McIntyre asked industry representatives to “help us by giving us your thoughtful and cogent suggestions” through the public comment process.

Grid Resilience: McIntyre recalled that the Department of Energy’s Grid Resilience Notice of Proposed Rulemaking (NOPR) “made for a very interesting” initiation as Chairman. He noted that the original deadline for FERC to respond to the NOPR was two business days after he was sworn-in. McIntyre said that on January 8, 2018, FERC issued an [order](#) determining that it could not accept the NOPR “in the form it had been given to us.” McIntyre added that FERC asked industry to respond to questions about the grid resilience issue, including how the Commission should define resilience.

Infrastructure: McIntyre remarked that energy infrastructure approvals were “FERC’s original mission”. He said that the NOI on natural gas pipeline certification focuses on key issues, including:

- He noted that contracts for a pipeline’s capacity have been the historical standard for determining need for granting a certificate of public convenience and necessity. McIntyre asked, “Is that a good enough showing?” He observed that some have suggested going beyond “raw contracts” to examine “what infrastructure is there today.”
- Protection of landowners and the use of eminent domain.
- Environmental standards.

He also discussed the [memorandum of understanding](#), signed by FERC and other agencies, to implement [Executive Order 13807](#). McIntyre explained that the MOU “creates a single process” for “approval or non-approval of energy projects, and other projects as well.” He noted the role of FERC as the “lead agency” and said that he “want[s] to do a faithful job of the herding of cats.” McIntyre also said that the “overarching goal” of the MOU is to set a two-year deadline for federal decisions on covered infrastructure projects. He added, however that there is “wiggle room” with the two-year deadline. He stated that FERC would “announce soon...concrete steps and procedures” to carry out the MOU.

Liquefied Natural Gas: McIntyre declared that LNG exports are “a big American success story” and are “a good thing for industry [and] our economy...” He added that LNG exports “present[] challenges as well.” He noted that nine years ago there were four LNG project applications pending at FERC, and that today there are 14 pending applications. McIntyre emphasized that the “workload of the Office of Energy Projects...[is] tremendous.”

Taxes: He explained FERC’s role in adjusting regulated rates following enactment of the “tremendous reduction in the corporate tax rate.” McIntyre noted that FERC “issued a suite of orders at our March [open meeting](#)” to address the enacted tax reform legislation. He said that FERC’s actions included: a NOPR on determining which natural gas pipelines “may be collecting...unjust and unreasonable rates” in the wake of tax reform; and an NOI on cumulative deferred income and bonus depreciation. He also expressed his view that FERC “did the right thing” in issuing its [order](#) disallowing master limited partnerships from recovering an income tax allowance.

Regulatory Developments

Energy and environment regulatory actions this week included:

- On Tuesday, the State Department published a “[Notice of Issuance of a Presidential Permit to Borrego Crossing Pipeline](#)”. The “Secretary of State issued a Presidential permit to Borrego Crossing Pipeline, LLC...on May 25, 2018, authorizing Borrego to construct, connect, operate, and maintain pipeline facilities...at the U.S.-Mexico border near Laredo, Texas, for the export of refined petroleum products, including gasoline, premium gasoline, ultra-low-sulfur diesel...and jet fuels.”
- On Thursday, the Department of Energy published a “[Policy Statement Regarding Long-Term Authorizations To Export Natural Gas to Non-Free Trade Agreement Countries](#)” The policy statement is intended to address concerns that the Department could rescind authorizations to export natural gas that it had previously issued. The notice states that the Department “wishes to allay concerns about the security of existing (or future) non-[Free Trade Agreement] FTA export authorizations.” It further “affirms its commitment to all export authorizations issued under the [Natural Gas Act], including long-term authorizations approving the export of LNG to non-FTA countries.” The policy statement also described the “unusual scenario” that led to the Department vacating the authorization granted to Louisiana LNG Energy, “where all evidence indicated that the company was no longer pursuing its proposed LNG export project and had, in fact, ceased to exist as a commercial operation.” The policy statement was applicable as of June 21, 2018.

Upcoming Hearings and Events

June 26

Offshore Energy Legislation: The House Natural Resources Committee’s Subcommittee on Energy and Mineral Resources will hold a hearing on the following bills: The “Offshore Renewable Energy for Territories Act”; ([Discussion Draft H.R. ____](#)); the “Offshore Wind Jobs and Opportunity Act” ([H.R. 5291](#)); and the “National OCS Renewable Energy Leasing Program Act” ([Discussion Draft H.R. ____](#)).

Energy Geopolitics: The House Energy and Commerce Committee’s Energy Subcommittee will hold a [hearing](#) entitled “The Shifting Geopolitics of Oil and Gas.”

Nominations: The Senate Energy and Natural Resources Committee will hold a hearing on the nominations of: Teri Donaldson to be Inspector General of the Energy Department; Christopher Fall to be Director of the Energy Department’s Office of Science; Karen Evans to be Assistant Secretary of Energy for Cybersecurity, Energy Security and Emergency Response; and Daniel Simmons to be Assistant Secretary of Energy for Energy Efficiency and Renewable Energy.

June 27

Pending Legislation: The House Natural Resources Committee will hold a markup of pending legislation.

September 11

Pipeline Safety Research and Development: The Pipeline and Hazardous Materials Safety Administration (PHMSA) will hold a “[Pipeline Safety Research and Development Forum](#)”.

For more information about energy and environment issues you may [email](#) or call Frank Vlossak at 202-

659-8201. Alex Barcham, Marissa Schwartz, and Patrick Devine contributed to the articles. Updates on energy and environment issues are also available on [twitter](#).

HEALTH

Administration Publishes Final Rule on Association Health Plans

Key Points:

- The Department of Labor published its final rule to expand the use of association health plans.
- These changes are effective August 20, 2018.

On June 21, the Department of Labor (DOL) published its final rule on association health plans (AHP). In a press release, DOL Secretary Alex Acosta asserted “President Donald J. Trump is expanding affordable health coverage options for America’s small businesses and their employees.” The rule will become effective August 20, 2018.

DOL chose to adopt the proposed rule with some minor changes in response to public comments. The rule changes the definition of commonality of interest requirements to allow employers to more easily join together in an AHP. Employers will be able to band together to offer health coverage if they are either (1) in the same trade, industry, line of business, or profession; or (2) have a principal place of business within a region that does not exceed the boundaries of the same state or metropolitan area even if it includes more than one state. Under the final rule, the association must have some other business purpose unrelated to offering and providing health coverage or other employee benefits even if that is the primary purpose of the business or association. DOL notes the “other business purpose” could include thing like offering other services to members such as conference

planning or engage in public relations activities such as advertising, education, and publishing on business issue of interest to association members.

The group or association sponsoring the AHP cannot be a health insurance issuer or owned or controlled by a health insurance issuer. DOL also chose to implement the nondiscrimination provisions from the proposed rule with the addition of more examples. These nondiscrimination provisions are consistent with the Health Insurance Portability and Accountability Act (HIPAA). The group or association is not permitted to restrict membership in the association itself based on any health factor. The plan may also not discriminate by treating different employers as different groups based on a health factor of an individual or individuals within the employer member. The final rule adds four additional examples illustrating the nondiscrimination rules. It also makes clear that state regulation dictates discrimination on non-health factors.

The final rule can be read [here](#).

CMS Issues RFI on Stark Law Changes

Key Points:

- *The Centers for Medicare and Medicaid Services issues a request for information seeking public comment on how to address any undue impact and burden of the Stark Law.*
- *Comments are due August 24, 2018.*

On June 20, the Centers for Medicare and Medicaid Services (CMS) announced a request for information (RFI) to solicit comments on compliance with the Stark Law. CMS had previously solicited comments about areas of high regulatory burden, and the Stark Law was identified as one of the top areas of burden. CMS Administrator Seema Verma stressed the agency is “looking for information and bold

ideas on how to change the existing regulations to reduce provide burden and put patients in the driver’s seat.”

The Stark Law was enacted to help protect Medicare and its beneficiaries from unnecessary costs and other harms that may occur when physicians benefit from referring patients to health care entities with which they have a financial relationship. Under the current law and regulations, a physician cannot refer a patient to any service or provide in which he or she has a financial interest. Entities are also prohibited from filing claims with Medicare for services resulting from a prohibited referral. There are concerns these Stark Law prohibitions may inhibit new payment models and more collaborative care.

The RFI seeks comments on a range of issues including:

- Information on existing or potential arrangements involving Department of Health and Human Services entities and referring physicians that participate in alternative payment models (APM) or other novel financial arrangements;
- Exceptions to the Stark Law necessary to protect financial arrangements in APMs and that involve integrating and coordinating care outside the APM;
- Utility of current exceptions for risk-sharing arrangements and the special rule for compensation under a physician incentive plan;
- Definitions for critical terminology in the context of health care delivery, payment reform, and the Stark Law; and
- The role of transparency in the context of the Stark Law.

Read the full request [here](#).

Upcoming Hearings and Meetings

June 25

Chronic Disease: The American College of Rheumatology and the National Psoriasis Foundation will hold a briefing on “Medicare Access Challenges in the Chronic Disease Community: The Patient Perspective.”

June 26

Drug Prices: The Senate Finance Committee will hold a hearing on “Prescription Drug Affordability and Innovation: Addressing Challenges in Today's Market.”

Appropriations: The House Appropriations Committee will hold a markup of the FY2019 Labor, Health and Human Services, Education, and Related Agencies Appropriations bill.

Appropriations: The Senate Appropriations Committee will hold a subcommittee markup of the FY2019 Labor, HHS, Education Appropriations bill.

June 27

Health Care Costs: The Senate Health, Education, Labor and Pensions Committee will hold a hearing on “How to Reduce Health Care Costs: Understanding the Cost of Health Care in America.”

Medicaid: The Senate Homeland Security and Governmental Affairs Committee will hold a hearing on “Medicaid Fraud and Overpayments: Problems and Solutions.”

June 28

Appropriations: The Senate Appropriations Committee will hold a markup of the FY2019 Labor, HHS, Education Appropriations bill.

Schizophrenia: The Schizophrenia and Related Disorders Alliance of America (SARDAA) will hold a Psychosis Scientific Legislative briefing on current neurological evidence of schizophrenia and anosognosia.

For more information about healthcare issues you may [email](#) or call Nicole Ruzinski Bertsch or George Olsen at 202-659-8201. Michaela Boudreaux contributed to this section.

TRADE

President Trump Directs USTR to Recommend Tariffs on \$200 Billion of Chinese Goods

Key Points:

- President Trump directed the U.S. Trade Representative (USTR) to generate a tariff list of \$200 billion of Chinese goods.
- This directive was made in response to China’s proclamation that it would impose tariffs on \$50 billion of U.S. goods.

On Monday night, President Trump escalated trade tensions with China by directing the U.S. Trade Representative (USTR) to generate an additional list of \$200 billion of Chinese goods that could be hit with a 10 percent tariff. This action was taken in response to China’s announcement that it would be imposing retaliatory tariffs on \$50 billion of U.S. goods. President Trump stated China “apparently has no intention of changing its unfair practices related to the acquisition of American intellectual property and technology. Rather than altering those practices, it is now threatening United States companies, workers, and farmers who have done nothing wrong... Further action must be taken to encourage China to change its unfair practices, open its

market to United States goods, and accept a more balanced trade relationship with the United States.”

White House Trade Adviser Peter Navarro argued President Trump’s directive is “purely defensive in nature.” Trade experts have suggested the July 6 imposition of tariffs on \$34 billion worth of Chinese goods is the informal deadline for the two countries to reach an agreement that would avert tariffs.

Commerce Secretary Ross Testifies Before Senate Finance Committee on 232 Investigations

Key Points:

- Bipartisan group of Senators tell Commerce Secretary Ross that the process for companies to obtain product exclusions from tariffs is too complex and needs to be fixed. Secretary Ross tells Committee that significant improvements are being made to the product exclusion process.
- Secretary Ross said that recent section 232 investigation into autos was requested by President Trump and because the investigation is just starting could not provide answers regarding potential impact on national security.
- Commerce is investigating whether “profiteering” has had a significant impact on steel and aluminum prices.

Secretary Ross faced significant criticism from both Republicans and Democrats when he appeared before the Senate Finance Committee on Wednesday. Chairman Orrin Hatch (R-UT) questioned the Administration’s decision to implement steel and aluminum tariffs, which he suggested harm allies more than China. He also said he was “shocked” to see that Commerce had begun another Section 232 investigation into automobiles and auto parts. Secretary Ross

defended the steel and aluminum tariffs and noted Commerce has begun an investigation into alleged “profiteering” that has increased steel and aluminum prices more than is warranted. Secretary Ross was vague about the 232 automobile investigation but explained that President Trump specifically requested the action.

Senator Pat Toomey (R-PA) urged his colleagues to support his and Senator Bob Corker’s (R-TN) legislation that would require the President to obtain congressional approval before imposing Section 232 tariffs. The path for this legislation remains unclear after an attempt to add it as an amendment to the National Defense Authorization Act was blocked. He also questioned the Administration’s North American Free Trade Agreement (NAFTA) negotiating strategy. Secretary Ross defended the strategy and said USTR Robert Lighthizer is confident that negotiations will “pick up steam” after Mexico’s presidential election.

EU Retaliatory Tariffs Go into Effect; India to Impose Tariffs

Key Points:

- Tariffs were imposed on \$3.2 billion worth of U.S. goods, including bourbon, motorcycles, and orange juice.
- President Trump responded in a tweet: “we will be placing a 20% Tariff on all of their cars coming into the U.S. Build them here!”
- India has also announced its intent to impose tariffs on U.S. agricultural goods and steel products in August.

The European Union’s (EU) retaliatory tariffs were officially implemented on Friday after negotiations to have Section 232 tariffs on steel and aluminum removed failed. American

products such as tobacco, motorcycles, whiskey, orange juice, cranberries, jeans, and peanut butter will now face a 25 percent tariff when entering the EU. EU officials have acknowledged that the products facing tariffs were specifically chosen to have a significant political effect. Following this action, President Trump threatened to impose a 20 percent tariff on automobile imports from the EU: “Based on the Tariffs and Trade Barriers long placed on the U.S. and its great companies and workers by the European Union, if these Tariffs and Barriers are not soon broken down and removed, we will be placing a 20% Tariff on all of their cars coming into the U.S. Build them here!” For their part, the largest German automakers have advocated for removing the EU’s 10 percent tariff on U.S. auto imports.

India joined the growing list of countries to retaliate against the U.S. by announcing it would impose tariffs on a variety of agricultural goods and metal products. The \$241 million measure is intended to match the amount of steel and aluminum duties collected on Indian exports to the U.S. About a third of this figure will come from almonds, as India is the world’s largest importer of U.S. almonds. These tariffs are set to go into effect on August 4, though U.S. trade representatives are set to meet with their Indian counterparts in New Delhi next week.

For more information on trade issues you may [email](#) or call Christopher Hatcher at 202-659-8201. Riyad Carey contributed to this section.

This Week in Congress was written by Ryan Schnepf.