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November 9, 2018

Washington Update

This Week in Congress

- **House** – The House is in recess until November 13.
- **Senate** – The Senate is in recess until November 13.

Next Week in Congress

- **House** – The House is in recess until November 13.
- **Senate** – The Senate is expected to consider S. 140, vehicle for Coast Guard Reauthorization and the nomination of Michelle Bowman to be a Member of the Federal Reserve Board.

TAX

Department of Treasury and Internal Revenue Service Release Priority Guidance Plan; OMB Receives BEAT and Foreign Tax Credit Allocation Regulations

Key Points:

- *The Treasury Department and the IRS released a priority guidance plan that identifies potential projects for the upcoming year.*
- *The plan contains 239 guidance projects to be completed by June 30, 2019, including 45 items that have already been released.*
- *The White House's Office of Management and Budget said it has received for review Treasury's proposed regulations outlining how a new tax on multinationals will work.*

On Thursday, the Treasury Department and the Internal Revenue Service (IRS) released their updated priority guidance plan that identifies upcoming projects for the next year, including the passthrough treatment of the state and local tax (SALT) deduction cap to the taxation of fringe benefits. Overall, the plan contains 239 guidance projects to be completed by June 30, 2019. However, as of October, 45 items in the plan had been released. Those already released projects include proposed regulations on section 199A, the bonus depreciation expansion under section 168(k), global intangible low-taxed income (GILTI), and the implementation of the Opportunity Zone program.

In regard to section 199A, the priority guidance plan no longer includes two consolidated return regulatory projects from the previous plan but does include a consolidated return project on the application of Rev. Rul. 99-6, 1999-1 C.B. 432, which touches on the intercompany sale of partnership interests. For

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SALT, the PGP shows that the IRS and Treasury Department plan to issue additional guidance on the SALT cap as it relates to passthrough entities.

Also this week, the Office of Management and Budget (OMB) said it has received for review Treasury's proposed regulations outlining how the new BEAT regimes for multinationals will work. The base erosion and anti-abuse tax (BEAT) is one of two new minimum taxes included in the Tax Cuts and Jobs Act (TCJA) that potentially applies a tax on related-party payments from the U.S. to foreign related parties. Due to a new review agreement with OMB and Treasury, OMB reviews any new proposed regulations related to TCJA before they are finalized. The BEAT regulations could be turned around in several weeks, since it appears their review is longer than the expedited 10-day period.

In a related matter, Treasury sent the proposed rules under Section 904 and foreign tax credit allocations to OMB for review yesterday. Those regulations are the second set of rules related to the new GILTI regime, and many companies hope they will provide some relief from GILTI inclusions (tax) that result for allocation of domestic expenses under the foreign tax credit and allocation rules. Those allocations can have the effect of imposing a GILTI tax even when the tax rate on that income exceeds the 13.125% rate that was advertised in legislative history as being the cap above which GILTI would not apply.

Post-Election Impact on Tax Writing Committee

Key Points:

- *Democrats taking control of the House means will have to decide how the ratio of the House and Ways Committee will look like following the midterm elections, most likely it will track the current 24-16 ratio.*
- *Overall, 10 Republican members of the Ways and Means Committee will not be returning to Congress, in addition to two Democratic members.*
- *On the Senate side, one Republican retired, one and possibly two Senate Finance Democrats lost their reelection bids, and one Republican lost as well.*

Following the midterm elections, in which the Democrats took control of the House and the Republicans expanded control of the Senate, there will be a number of changes within the tax-writing committees for the 116th Congress.

The elections significantly affected the House Ways and Means Committee, as four Republicans lost reelection—Representatives Carlos Curbelo (FL), Mike Bishop (MI), Peter Roskam (IL), and Erik Paulsen (MN)—in addition to six members who announced before the election that they would not return to Congress. Democrats were also affected as Representative Joe Crowley (D-NY) lost in a June primary and Representative Sandy Levin (D-MI) decided to retire. As such, the House Democrats could add as many as ten new Members to Ways and Means, and the Republicans could add two – assuming the ratio and numbers remain the same. It is always possible the House chooses to shrink the Committee, as has been attempted in the past, because now no one would lose their seat. However, given the plum nature of the seats, it is hard to forego the ability to give a few more Members a good committee assignment.

On the Senate side, Senate Finance Chair hatch (R-UT) is retiring, while Senators Claire McCaskill (D-MO) and Dean Heller (R-NV) both lost their reelection bids. Finally, Senator Bill Nelson (D-FL) trails in his election count to Florida Governor Rick Scott (R-FL). That

race remains close, with Scott ahead, and may go to a recount. Ultimately, there will be three or four open seats on the Senate Finance Committee. It is possible the committee is reduced in size, or that the seats are filled. Moreover, the ratio on the committee could be adjusted if the remaining Senate races all go to the Republicans, but ratios in the Senate are carefully negotiated and harder to predict.
Currently there are 24 Republican and 16 Democratic taxwriters on the House Ways and Means Committee, but the ratio for the upcoming Congress will be negotiated after each party decides its new leadership. On the Senate side, Republicans Todd Young (IN), Steve Daines (MT) and Thom Tillis (NC) have all expressed interest in joining the Finance Committee.

Lame Duck Tax Agenda

Key Points:

- *Congress may consider acting on the Retirement Enhancement or the Savings Act, the Family Savings Act of 2018.*
- *Other items that could be addressed are tax extenders, which expired at the beginning of 2018of TCJA technical corrections*

Lawmakers have several tax issues they may want to consider in the lame duck session of Congress, though none that are mandatory – so much will depend on discussions between the relevant parties and Members in the coming weeks.

Congress could be interested in taking action on retirement, acting on the Retirement Enhancement and Savings Act (RESA), S. 2526, or the Family Savings Act of 2018 (H.R. 6757). Other tax legislative agenda items include tax extenders, which expired at the beginning of 2018 so would need a one or two year extension. Congressional Republicans also want to pursue select TCJA technical corrections during the lame-duck session. Finally, an IRS reform measure could be included with tax legislation, if such legislation emerges, though IRS reform won't likely be enacted this year unless added to something else.

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

Democrats Take Control of House; Waters to Serve as Financial Services Committee Chair

Key Points:

- *With Democrats winning control of the House Maxine Waters will become Chairman of the Financial Services Committee.*
- *The Republicans retained control of the Senate. Several Senate Banking Committee members lost their re-election efforts, and the Chairman of the Senate Banking Committee has yet to be determined.*

With the Democrats taking control of the House next year Representative Maxine Waters (D-CA), the current Ranking Member, will become Chairman of the House Financial Services Committee. Waters is expected to shift the Committee's legislative focus to significant oversight of the regulators and the Administration, consumer finance protection, affordable rental housing, public housing and homelessness, and economic equality, among other issues. Representative Patrick McHenry (R-NC) has announced that he intends to run for the Committee's Ranking Member on the Republican side, becoming the front runner for that spot.

A number of House Financial Services Committee Members retired or ran for another office, including Chairman Jeb Hensarling (R-TX) and Representatives Ed Royce (R-CA), Kyrsten Sinema (D-AZ), Dennis Ross (R-FL), Dave Trott (R-MI), Ruben Kihuen (D-NV), Luke Messer (R-IN), Stevan Pearce (R-NM), John Delaney (D-MD), and Keith Ellison (D-MN). Representative Michael Capuano (D-MA) lost his primary election earlier this year. In addition, at least two Republicans on the committee lost reelection and some races still have not been called. While it is too early to know the new membership of the Committee for next year, some current Members of the Committee could relinquish their spot in order to serve on another committee, such as Ways and Means. Most Republican members who were reelected are likely to retain their committee seats due to retirements and reelection losses.

House Financial Services Committee members who lost re-election:
Representative Randy Hultgren (R-IL)
Representative Keith Rothfus (R-PA)
House Financial Services Committee members in races that have not yet been called:
Representative Mia Love (R-UT)
Representative Bruce Poliquin (R-ME)
Representative Tom MacArthur (R-NJ)
Representative Claudia Tenney (R-NY)

While Republicans will maintain control of the Senate, there is some uncertainty as to who will be chairman of the Senate Banking Committee, as it may hinge on whether Senator Grassley (R-IA) decides to take the top spot on the Senate Finance Committee. If he does, then Senator Mike Crapo (R-ID) would likely remain as the Banking Committee chairman. However, if Grassley keeps his Judiciary Committee gavel, Senator Crapo could accept the top position at Finance, which would result in him needing to give up his Banking Committee chairmanship. In that scenario, Senator Pat Toomey (R-PA) is next in seniority to assume the chairmanship of the Banking Committee. Under either scenario, Senator Sherrod Brown (D-OH) will remain as the Ranking Member.

The makeup of the Committee will change somewhat as Senator Bob Corker (R-TN) is retiring and there is the potential for other Senators to move to other committees. In addition, other changes in the makeup of the Committee will occur as a result the following Senators losing their reelection bids:

- Senator Joe Donnelly (D-IN)
- Senator Heidi Heitkamp (D-ND)
- Senator Dean Heller (R-NV)

Federal Reserve Proposes Tailoring Prudential Standards

Key Points:

- *The Federal Reserve Board approved two proposals: prudential standards for large bank holding companies, savings and loan holding companies and state member banks as well as proposed changes to applicability thresholds for regulatory capital and liquidity requirements.*
- *The proposals would establish four categories of prudential standards that reflect the different risks of each group.*
- *Governor Lael Brainard voted against the proposals suggesting that she sees "little benefit to the institutions or the system from the proposed reduction in core resilience that could justify the increased risk to financial stability and the taxpayer."*

At an October 31, open meeting the Federal Reserve Board voted 3 to 1 to approve two proposals: Prudential Standards for Large Bank Holding Companies, Savings and Loan Holding Companies, and State Member Banks and Proposed Changes to Applicability Thresholds for Regulatory Capital and Liquidity Requirements. The two draft proposed rulemakings were discussed and voted on together. Governor Lael Brainard voted against the proposals. Chair Jerome Powell, in a statement, explained the proposals would more closely tailor prudential standards to match the overall risk profiles of the institutions that the Federal Reserve regulates. He noted these proposals apply the discretion granted to the Federal Reserve by the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCP). He explained the proposals would prescribe materially less stringent requirements on firms with less risk, while maintaining the most stringent requirements for firms that pose the greatest risks to the financial system and the economy.

One proposal, considered alone by the Federal Reserve, would "tailor the application of prudential standards to U.S. bank holding companies as well as apply enhanced standards to certain savings and loan holding companies." The second proposed rulemaking, proposed jointly with the Office of the Comptroller of the Currency (OCC) and the FDIC, would "tailor the application of the agencies' capital and liquidity rules to large U.S. banking organizations." The proposals would establish four risk-based categories of standards:

- "Category IV: Most firms with $100 billion to $250 billion in total assets would be subject to significantly reduced requirements. In particular, these firms would no longer be subject to standardized liquidity requirements or a requirement to conduct and publicly disclose the results of company-run capital stress tests."
- "Category III: Firms with $250 billion or more in assets, or firms with at least $100 billion in assets that exceed certain risk thresholds, would be subject to enhanced standards that are tailored to the risk profile of these firms."
- "Category II: Firms of global scale—those with very significant size ($700 billion or more in total assets) or cross-jurisdictional activity ($75 billion or more)—would be subject to more stringent prudential standards (based on global standards developed by the Basel Committee on Banking Supervision (BCBS)) and other prudential standards appropriate to very large or internationally active banking organizations."
- "Category I: U.S. global systemically important bank holding companies (GSIBs) would remain subject to the most stringent standards."

The proposals would not apply to foreign banking organizations as staff intends to present a different proposal to the Board in the near future on the applicable prudential standards for foreign banking organizations. In addition, Federal Reserve staff intends to present, along with the FDIC, a separate proposal to the Board in the near future that would further differentiate resolution planning requirements for large firms.

Governor Lael Brainard, in a statement, explained she has consulted closely with her colleagues in the hope that she could support a proposal. She explained unfortunately, the proposals under consideration go beyond the provisions of the EGRRCPA (S.2155) by relaxing regulatory requirements for domestic banking institutions that have assets in the $250 to $700 billion range and weaken the buffers that are core to the resilience of the system. Brainard suggested this raises the risk that American taxpayers again will be "on the hook." She suggested the proposed reduction in core resiliency comes at a time when large banks have comfortably achieved the required buffers and are providing ample credit to the economy and enjoying robust profitability. In short, she sees little benefit to the institutions or the system from the proposed reduction in core resilience that could justify the increased risk to financial stability and the taxpayer.

CFTC Chairman Discusses Quantitative Regulation and Fintech

Key Points:

- *CFTC Chairman J. Christopher Giancarlo suggests the CFTC must remain focused on big data, automated data analysis, and artificial intelligence.*
- *Giancarlo suggests the establishment of a new office of data and analytics as a stand-alone department within the CFTC.*

On November 7, CFTC Chairman J. Christopher Giancarlo gave a Keynote address at FinTech Week at Georgetown University Law School entitled "Quantitative Regulation: Effective Market Regulation in a Digital Era." He focused on big data, automated data analysis, and artificial intelligence (AI). Giancarlo stated the CFTC has been "no bystander to the digitization of modern markets." He suggested the CFTC must focus on keeping pace with big data and the advent of machine learning and intelligence. He noted how automation can help reduce costs and bring efficiencies to trade matching, processing, and clearing and settlement.

Giancarlo stated that the development and deployment of AI in financial services and amongst regulators is said to be accelerating. He explained the CFTC has been exploring the application of machine learning techniques through the Division of Enforcement and in conjunction with the Whistleblower Program. He suggested that all market participants and the CFTC will have to keep pace with the development of AI in order to succeed. Giancarlo suggested that being a quantitative regulator does not mean replacing human judgment and market intelligence it means "reinforcing it." He stated the advent of quantitative regulation means freeing agency staff from repetitive and low value activities to focus on high value activities that require their expert judgment and domain knowledge. He explained that in enforcement, new machine learning based surveillance tools could "sniff out" patterns of illegal trading activity or attempts to manipulate the markets. He suggested these types of tools will become more important with the emergence of blockchain technologies.

Giancarlo noted the organization of LabCFTC to test and facilitate emerging technologies and improve the efficiency and effectiveness of the CFTC. He stated they have found that the CFTC has no choice but to adopt effective and up-to-date, big data analysis capabilities. Giancarlo laid out a road map for modernization. He stated any modernization effort must focus on the body of high quality data that the CFTC receives and needs to process. He stated that their data needs to be processed through an upgraded, state of the art data collection and automated analysis engine with enhanced AI capabilities. He stated they must provide greater prominence within the agency for quantitative data collection and analysis and he suggested they should decouple it from the management of computer and communications hardware and systems. Giancarlo expressed his belief and vision that the CFTC should establish a new office of data and analytics as a stand-alone department ready and capable of serving the needs of the Commission and the operating divisions.

SEC Adopts Order Routing Rules

Key Point:

- *The SEC approved amendments to Rule 606 of Regulation NMS to enhance the* *information broker-dealers are required to provide investors on how they handle orders.*

On November 2, the Securities ad Exchange Commission (SEC) announced that it voted to adopt amendments that require broker-dealers to disclose to investors new and enhanced information about the way they handle investors' orders. The amendments to Rule 606 of Regulation NMS require a broker-dealer upon request of a customer that places a "not held" order to provide the customer with a standardized set of individualized disclosures concerning the firms handling of the customer's order. Information to be provided includes information on average rebates the broker received from and fees paid to trading venues. The amendments also include "two exceptions designed to minimize the implementation costs" of the new disclosure requirements on smaller broker-dealers and include enhancements to the quarterly reports that broker-dealers are already required to publish. The public disclosures must now describe any terms of payment for order flow arrangements and profit-sharing relationships. The amendments will become effective 60 days from the date of publication in the *Federal Register* and the compliance date will be 180 days from the date of publication in the *Federal Register*.

SEC Chairman Jay Clayton noted the many changes that have occurred in the markets since the order handling and routing rules were adopted. He suggested the amendments will make it "easier for investors to evaluate how their brokers handle their orders and ultimately make more informed choices about the brokers with whom they do business."

UPCOMING EVENTS

November 13

Bank Bankruptcy: The Senate Judiciary Committee will hold a hearing entitled "Big Bank Bankruptcy: 10 Years after Lehman Brothers."

November 14

Federal Reserve: The House Financial Services Committee will hold a hearing to receive the semi-annual testimony from Federal Reserve Vice Chairman for Supervision Randal Quarles on the efforts, activities, objectives, and plans of the Federal Reserve with respect to the conduct of supervision and regulation of depository institution holding companies and other financial firms supervised by the Federal Reserve.

November 15

Federal Reserve: The Senate Banking Committee will hold a hearing entitled "The Semiannual Testimony on the Federal Reserve's Supervision and Regulation of the Financial System." Federal Reserve Vice Chairman for Supervision Randal Quarles will testify.

SEC Roundtable on Proxy Process: The Securities and Exchange Commission will hold a staff roundtable on the proxy process. SEC Chairman Jay Clayton and Commissioners will give opening statements, and panel discussions will include the following topics: (1) Proxy Voting Mechanics and Technology; (2) Shareholder Proposals – Exploring Effective Shareholder Engagement; and (3) Proxy Advisory Firms – The Current and Future Landscape.

November 29

Money Laundering: The Senate Banking Committee will hold a hearing entitled "Combating Money Laundering and Other Forms of Illicit Finance: Regulator and Law Enforcement Perspectives on Reform." The witnesses at the hearing will be Kenneth

Blanco, Director, Financial Crimes Enforcement Network (FinCEN), U.S. Department of Treasury; Steven D'Antuono, Section Chief, Financial Crimes Section, Federal Bureau of Investigation (FBI); and Grovetta Gardineer, Senior Deputy Comptroller for Compliance and Community Affairs, Office of the Comptroller of the Currency.

December 5

Federal Reserve: The Joint Economic Committee will hold a hearing to receive testimony from Federal Reserve Board Chairman Jerome Powell.

Fannie Mae and Freddie Mac: The Senate Banking Committee will hold a hearing entitled "Oversight of Pilot Programs at Fannie Mae and Freddie Mac." The witnesses at the hearing will be Sandra Thompson, Deputy Director, Division of Housing Mission and Goals, Federal Housing Finance Agency; Hugh Frater, Interim Chief Executive Officer, Fannie Mae; and Donald Layton, Chief Executive Officer, Freddie Mac.

December 6

Municipal Securities: The SEC will hold an event entitled "The Road Ahead: Municipal Securities Disclosure in an Evolving Market." The event will include panels on: (1) Financial Distress and Municipal Securities Disclosure; (2) Lessons from Municipal Securities Disclosure Enforcement Actions; (3) Recent Developments in Disclosure Technology; and (4) What's Next for Disclosure?.

December 12

SEC Government-Business Forum: The SEC will hold its annual Government-Business Forum on Small Business Capital Formation at the Ohio State University Max M. Fisher College of Business.

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

Post-Election Energy and Environment Policy Outlook

Key Point:

- *While bipartisan work on energy and environment policy may be possible in the new Congress, House Democrats are poised to exercise their oversight authority to target the Trump Administration and its deregulatory agenda.*

With the Republicans maintaining control of the Senate and the Democrats taking over the House of Representatives dramatic shifts in energy and environment policy are unlikely in 2019. However, House Democrats will conduct aggressive oversight of the Trump Administration's deregulatory efforts, and will also introduce and pass legislation that, while not being adopted by the Republican-controlled Senate, could become the basis for policies under a future Democratic presidential administration.

There may be some limited opportunity for consensus energy legislation that packages together modest, bipartisan provisions. Senate Energy and Natural Resources Committee Chair Lisa Murkowski (R-AK) and Ranking Member Maria Cantwell (D-WA) have cosponsored the "Energy and Natural Resources Act of 2017" (S. 1460). The bill compiles bipartisan proposals addressing issues that include energy efficiency, electric grid security, liquefied natural gas exports, and critical minerals. Murkowski and Cantwell based the bill on legislation the Senate passed in 2016 (S. 2012). Looking to a historical precedent, following the Democrats' takeover of the House and Senate in the 2006 elections, Congress and President George W. Bush were able to agree on the "Energy Independence and Security Act of 2007" (P.L. 110-140).

The overall partisan environment of the new Congress, perhaps exacerbated by electoral strategies designed with an eye on the 2020 presidential election will determine whether any bipartisan energy package can advance in the next two years.

With some level of gridlock in Congress, the Trump Administration can be expected to press forward with its deregulatory program (see "Energy and Environment Regulations" below) in order to secure policy achievements in the last half of the presidential term.

New Committee Leadership:

Congressman Frank Pallone (D-NJ) will take over the House Energy and Commerce Committee. The panel's energy and environment agenda will shift from an incremental approach to regulatory reform under the Republicans to more aggressive oversight of the Administration and an emphasis on climate change, perhaps including advocacy of a carbon tax, and policies promoting renewable energy. Modest bipartisan initiatives originating in the Committee could advance through the legislative process. These may include hydropower legislation and proposals to address energy infrastructure cybersecurity issues. A press release outlining the Democrats' priorities for the Committee in the 116th Congress stated that the panel would advance proposals to:

- "Rebuild America by investing in green energy, drinking water and broadband infrastructure;"
- "Address climate change by looking at the impacts on communities and the economy, and holding the Administration accountable for its policies that make it worse;" and
- "Restore environmental protections gutted over the last two years".

Congressman Raul Grijalva (D-AZ) will chair the House Natural Resources Committee. Grijalva has been sharply critical of the Trump Administration and will target oil and gas development on federal lands and offshore.

Energy and Environment Regulations:

The Trump Administration will continue its efforts to rescind or revise targeted regulations issued by the Obama Administration. Congressional Democrats, using their new levers of authority in the House, will push back on these initiatives. Key Administration deregulatory proposals include:

- ***Repeal of the Clean Power Plan:*** On October 16, 2017, the EPA published a Notice of Proposed Rulemaking (NPRM) titled "Repeal of Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Generating Units". The rule would repeal the Obama Administration's Clean Power Plan, which would have limited greenhouse gas (GHG) emissions from the power sector. The Clean Power Plan would have directed states to take actions reducing GHG emissions from existing power plants by 32 percent below 2005 levels by 2030. The Supreme Court issued a stay on enforcement of the rule on February 9, 2016. According to the Fall, 2018, Unified Agenda of Regulatory and Deregulatory Actions, the EPA will publish the final rule repealing the Clean Power Plan in March, 2019.
- ***Replacement of the Clean Power Plan:*** In August of 2018, the EPA published a notice that includes the

proposed "Affordable Clean Energy" rule, which would supplant the Clean Power Plan. The proposal would limit requirements for reducing GHG emissions from existing power plants to "measures that apply at and to, and can be carried out at the level of, individual facilities." The more expansive Clean Power Plan included "beyond the fence" requirements that would have called for substituting zero-emission and lower-emission generation capacity for coal-fired power plants. The Unified Agenda projects publication of the final rule in March, 2019.

- ***Revision of Corporate Average Fuel Economy Standards/GHG Emissions Limits for Vehicles:*** Also in August, the EPA published the "The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks" NPRM. These regulations would modify the Obama Administration's rules limiting GHG emissions from passenger vehicles and light trucks. Incoming House Energy and Commerce Committee Chairman Pallone criticized the proposal in a statement, contending that it "is terrible for consumers, imperils public health, and pushes us further toward unchecked climate change…" Along with the Clean Power Plan repeal and replacement rules, EPA expects to publish the final version of the "SAFE Vehicles Rule" in March.
- ***Waters of the United States:*** Similar to the Administration's efforts to roll back the Clean Power Plan, the EPA and U.S. Army Corps of Engineers (USACE) have proposed two separate rulemakings to repeal and replace the Obama Administration's "Waters of the United States" (WOTUS) rule. The EPA published the WOTUS final rule on June 29, 2015, which was intended to define the "waters of the United States" to establish the scope of federal authority under the Clean Water Act. On July 27, 2017, the EPA and USACE published an NPRM titled "Definition of 'Waters of the United States' – Recodification of Pre-existing Rules". The NPRM would "rescind the definition of 'waters of the United States' now in the Code of Federal Regulations to re-codify the definition…" that was in force prior to the Obama Administration's 2015 rule. The Unified Agenda projects publication of the final rule by March, 2019. The "replacement" proposed rule "would be "a substantive re-evaluation and revision of the definition of 'waters of the United States' in accordance with" President Trump's Executive Order, "Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule" (E.O. 13778).
- ***Oil and Gas Sector Methane Emissions:*** On June 3, 2016 the Obama Administration EPA published the final rule titled "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources". This rule imposed significant new requirements for the oil and gas industry, including producers and natural gas pipeline operators, to identify and limit methane emissions. The rule imposed best system of emissions reduction (BSER) requirements "for certain new, modified, and reconstructed equipment, processes, and activities across the oil and natural gas source category". On October 17, 2018, the EPA published the NPRM titled "Oil and Natural Gas

Sector: Emission Standards for New, Reconstructed, and Modified Sources Reconsideration". The NPRM modifies the following provisions of the 2016 final rule: "(1) fugitive emissions requirements, (2) well site pneumatic pump standards, and (3) the requirements for certification of closed vent systems by a professional engineer". Public comments on the NPRM are due by December 17, 2018. The Unified Agenda anticipates publication of the final rule in April, 2019.

The Democratic House will subject these and numerous other regulatory actions to adversarial oversight, and may target them with "riders" in appropriations legislation. If enacted, a rider would defund and block a rulemaking for the remainder of the fiscal year, which runs from October 1 through September 30. The Senate and President will oppose any such riders, but they could become a part of contentious negotiations to fund the federal government. If Congress does not enact a full year appropriations bill funding the Department of Interior and EPA by the end of the year, the newly-Democratic House and the Trump Administration could square off on these issues early in 2019. The House passed the combined "Interior, Environment, Financial Services, and General Government Appropriations Act, 2019" on July 19, 2018. The Senate passed its version on August 1. However the two chambers have yet to negotiate a compromise to be passed and submitted to the President.

Upcoming Hearings and Events

November 14

Oil and Gas Sector Emission Standards: The Environmental Protection Agency (EPA) will hold a public hearing on the Notice of Proposed Rulemaking (NPRM) titled "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Reconsideration". The EPA published the NPRM on October 17, 2018. The NPRM modifies the following provisions of the 2016 Obama Administration final rule titled "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources": "(1) fugitive emissions requirements, (2) well site pneumatic pump standards, and (3) the requirements for certification of closed vent systems by a professional engineer..." The hearing will begin at 8:00 a.m. at the EPA's Region 8 offices in Denver, Colorado.

November 15

Nominations: The Senate Energy and Natural Resources Committee will hold a hearing on the following nominations: Dr. Rita Baranwal to be an Assistant Secretary of Energy for Nuclear Energy; Bernard McNamee to be a Member of the Federal Energy Regulatory Commission (FERC); and Raymond David Vela to be Director of the National Park Service.

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

FERC Meeting: The Federal Energy Regulatory Commission (FERC) will hold its monthly open meeting.

For more information about energy and environment issues you may email or call Frank Vlossak at 202-659-8201. Alex Barcham contributed to the articles. Updates on energy and environment issues are also available on twitter.

HEALTH

Administration Finalizes Rules on Conscience Protections

Key Points:

- *The Administration released finalized rules providing conscience protections for religious or moral objections to health insurance coverage of contraception.*
- *The Administration had previously released interim final rules in October 2017.*

On November 7, the Administration released two final rules related to conscience protections for those with religious or moral objections to health insurance coverage of contraception methods. The rules are a joint effort of the Departments of Health and Human Services, Treasury, and Labor following an Executive Order in May 2017 directing the agencies to consider amending the regulations. Interim final rules had previously been released in October 2017.

In 2011, the agencies promulgated regulations and guidance requiring all non-grandfathered group health plan and health insurance issuers to cover all Food and Drug Administration (FDA)-approved contraceptive methods, sterilization procedures, and education and counseling. It also included an exemption for churches, religious orders, and integrated auxiliaries. The October 2017 interim final rules sought public comment and the agencies received over 100,000 public submissions. The final rules will take effect 60 days after publication.

The first of the two final rules provides an exemption from the contraceptive coverage mandate for entities or individuals that object due to sincerely held religious belief meaning these entities would no longer be required to provide contraceptive coverage. The rule includes an accommodation under which the entity's insurer or a third party administrator is responsible for providing contraceptive coverage to plan participants. The entity can elect to take advantage of the accommodation.

The second rule provides a similar exemption to the one available to religious groups for nonprofits, small businesses, and individuals with non-religious moral convictions opposing contraception services. It will only apply to nonprofits organizations, closely held businesses, institutions, health insurance issuers serving exempt entities, and individuals. The same voluntary accommodation will be available. The exemption is not extended to publicly traded businesses or government entities.

Read the religious exemption rule here and the moral exemption here.

Upcoming Hearings and Meetings

November 13

Opioids: The National Academies of Sciences will hold a meeting of the Committee on Evidence-based Clinical Practice Guidelines for Prescribing Opioids for Acute Pain.

Cancer: Washington Post Live will hold a discussion entitled "Chasing Cancer."

Vaccines: The Center for Strategic and International Studies will hold a forum on "Innovations to Improve Vaccine Equity."

Opioids: The National Institutes of Health will host a lecture on "Opioids: Epidemic of our time and impact on infectious disease."

November 14

Health Plans: The Alliance of Community Health Plans will hold a discussion on a new report, "Accelerating the Adoption of Evidence Based Care: Payer-Provider Partnerships."

Market Trends: The Brookings Institution and the JKTG Foundation for Health and Policy will hold the "Wall Street Comes to Washington Health Care Roundtable," focusing on market trends and implications for the overall economy.

EHR: The House Veterans' Affairs Committee will hold a hearing on "180-Day Review of the Electronic Health Record Modernization Program."

Patient Care: Roll Call will hold a discussion on "Election Impact: Improving Patient Care Under a New Congress."

November 15

Obesity: The Bipartisan Policy Center will hold a webinar on "My Healthy Weight: A Solution for Payers to Address Obesity."

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 and President Xi Jinping to Meet On Trade

Key Point:

- U.S. President Trump and Chinese President Xi Jinping are expected to meet during the G20 summit next month to discuss trade issues.

Chinese President Xi Jinping has "tentatively" agreed to participate in a "meeting plus dinner" during the G20 summit in Buenos Aires next month. The leaders were originally scheduled to meet the day before the G20 summit but rescheduled to December 1 at President Trump's request. There remains an ongoing internal debate in the Trump Administration on China and trade. *Bloomberg* reported that President Trump last week directed Cabinet secretaries to have their staff develop a trade deal with China. On the other hand, USTR Robert Lighthizer is reportedly opposed to discussing a trade deal at the G20 summit.

Any reduction of existing U.S.-imposed tariffs appear an unlikely result of these talks given little advance discussions have taken place; a more likely best-case scenario would involve suspending the threatened fourth tranche of Section 301 tariffs and/or the planned tariff rate increase from 10% to 25% for the third tranche of Section 301 tariffs.

US-Mexico-Canada Agreement Outlook More Complicated After Election

Key Point:

- The passage of the US-Mexico-Canada Agreement (USMCA) is likely to be complicated by Democrats taking control of the House.

Under TPA, the earliest President Trump can sign the USMCA is November 29, 2018. The U.S. International Trade Commission (ITC) must issue its report on the agreement no more than 105 days after it is signed (the ITC has already begun its investigation). These TPA timelines make it very unlikely that Congress will take action on the USMCA in the lame duck session. Senate Majority Leader Mitch McConnell (R-KY) explained in October that the USMCA will "be a next year issue."

It remains to be seen whether House Democrats will support the USMCA in its current form. Trade analysts believe Democrats could use side letters to alter the agreement, and may look for other areas (non-trade) where they could achieve some policy goals and tie those to USMCA.

U.S., Mexico to Meet Regarding Steel and Aluminum Tariffs

Key Point:

- The U.S. and Mexico may be close to a deal to replace Section 232 steel and aluminum tariffs with a quota system.

U.S. and Mexican officials are reportedly planning to engage this month in formal negotiations to replace Section 232 steel and aluminum tariffs with quotas. The U.S. and Mexico appear closer to a deal than the U.S. and Canada due to Canada's strong opposition to quotas. If the 232 tariffs rea addressed, the retaliatory tariffs Mexico has placed on a number of U.S. goods, including agricultural imports, would presumably end as well.

Commerce Issues Affirmative Finding on Chinese Aluminum Sheet Dumping

Key Points:

- On Wednesday the Commerce Department announced that it found China has been dumping common alloy aluminum sheet into the U.S.
- Commerce will instruct U.S. Customs and Border Protection (CBP) to collect antidumping (AD) cash deposits equal to the applicable final weighted average dumping rates.

Commerce concluded its first self-initiated investigation in 30 years with an affirmative finding Wednesday. It found that Chinese exporters dump aluminum sheet at between 48.95 and 59.72 percent below market value. It also determined China has provided countervailable subsidies of between 46.48 and 116.49 percent to certain aluminum exporters. According to its fact sheet, "Commerce will instruct CBP to collect AD cash deposits equal to the applicable final weighted average dumping rates. Further, as a result of the affirmative final CVD determination, if the U.S. International Trade Commission (ITC) makes an affirmative injury determination, Commerce will instruct CBP to collect CVD cash deposits equal to the applicable subsidy rates."

Chinese production of aluminum is very significant in the world market, and arguably was one force that drove the 232 aluminum tariffs though those tariffs did not target one specific country. This step could be a more direct measure targeting just China, though it may not prevent world oversupply arguably caused by China. Addressing world supply issues would likely take a multilateral effort which heretofore has not succeeded.

UPCOMING EVENTS

November 14

Commerce/BIS - Transport/Related Equipment Export Controls: Commerce Department; Bureau of Industry and Security (F.R. Page 54083) holds a meeting of the Transportation and Related Equipment Technical Advisory Committee on technical questions that affect the level of export controls applicable to transportation and related equipment or technology.

November 15

USITC - U.S.-Mexico-Canada Agreement Assessment: U.S. International Trade Commission (USITC) (F.R. Page 52232) holds a meeting to "assess the likely impact of the United States-Mexico-Canada Agreement (USMCA) on the U.S. economy as a whole, on selected industry sectors, and on U.S. consumer interests," November 15-16.

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

AGRICULTURE

Farm Bill Negotiations Continue

Key Points:

- *The four principles and staff continue to negotiate major titles.*
- *The nutrition title and the Supplemental Nutrition Assistance Program (SNAP) work requirements continue to be an issue between Republicans and Democrats.*

Senate Agriculture Committee Chairman Pat Roberts (R-KS), Ranking Member Debbie Stabenow (D-MI), House Agriculture Committee Chairman Mike Conaway (R-TX) and Ranking Member Collin Peterson (D-MN), the four principles of the agriculture debate, are continuing negotiations on a Farm Bill conference report. It is believed that they have come to an agreement on several of the 12 titles included in the bill and continue to state they want to finish the bill prior to the end of the year. Of the remaining titles, the biggest problems remain with the tightening of work requirements in the nutrition title as well as disagreements in the commodity title where there are perceived regional disparities between the House and Senate bills.

After Democrats secured control of the House in the 116th Congress, it is likely that House Republicans will make significant concessions in an effort to move towards the Senate's version of the Farm Bill in order to avoid re-litigating the same issues as the minority party next Congress. It is believed that such a strategy would likely bring along Democratic votes in the House to ensure passage, which would be a significant change from the floor vote that occurred in June where no Democrats voted for the original version of the Farm Bill. In addition, it is also expected that U.S. Department of Agriculture Secretary Sonny Perdue might ramp up his public rhetoric about what the Trump Administration may do on SNAP absent a new Farm Bill in an effort to force some, albeit small, concessions from the Senate on food stamp reforms. Members in the 116th Congress should be eager to avoid having to undertake the lift of drafting a new five-year bill leading up to the 2020 election as the likely narrow split in seats will make it extremely difficult for either party to pull off a decisive victory on any legislative front.

For more information on agriculture and farm issues you may email Scott Graves. Matthew Valesko and Michaela Boudreaux contributed to this section.

This Week in Congress was written by Ryan Schnepp.