



ABC's Weekly Federal Legislative Update January 13, 2020

Introduction

Official Washington returned from the Christmas Holidays last week starting the second half of the 116th Congress. The following is news from Washington, D.C.

Administration

[Environment: Administration to Rewrite NEPA Rules](#)

The following story discusses a White House announcement last week regarding the revamping of the National Environmental Policy Act.

Kelsey Brugger of [Greenwire](#) reported on January 9, "President Trump announced plans today for overhauling rules surrounding the nation's bedrock environmental law, and administration officials refuted claims they were downplaying greenhouse gas emissions.

"The president, during remarks at the White House with supporters and Cabinet officials, said he wanted to fix the nation's "regulatory nightmare" through new guidelines for implementing the National Environmental Policy Act.

"America is a nation of builders," he said. But it takes too long to get a permit, and that's "big government at its absolute worst."

"The president said, "We're maintaining America's world-class standards of environmental protection." He added, "We're going to have very strong regulation, but it's going to go very quickly."

"NEPA says the federal government must consider alternatives to major projects like oil pipelines, highways and bridges that could inflict environmental harm. The law also gives communities input.

"The Council on Environmental Quality has not updated the implementing rules in decades, and both energy companies and environmentalists want them reworked. But they patently disagree on how to change the rules.

"A central fight surrounds whether the government considers climate change concerns when analyzing a project.

"Environmentalists want agencies to look more at "cumulative" or "indirect" impacts of projects. The Trump plan shuts the door on that.

"Analysis of cumulative effects is not required," the plan states, adding that CEQ "proposes to make amendments to simplify the definition of effects by consolidating the definition into a single paragraph."

"CEQ Chairwoman Mary Neumayr told reporters during a conference call that definitions in the current rules were the "subject of confusion."

"The proposed changes, she said, do in fact eliminate the terms "cumulative" and "indirect," in favor of more simplified language.

"Effects must be "reasonably foreseeable" and require a "reasonably close causal relationship" to the proposed action, she added. "It does not exclude considerations of greenhouse gas emissions," she said.

"Last summer, CEQ issued proposed guidance on greenhouse gas reviews in project permitting. The nonbinding document gave agencies broad authority when considering emissions.

"Environmentalists scoffed and said the proposed guidance failed to incorporate the latest climate science and look at how projects could be more resilient in the face of severe weather and sea-level rise.

"The proposed NEPA rules released today include provisions to codify the proposed guidance, which has also been years in the making.

Other provisions

"Senior administration officials sought to downplay the effect of the proposed NEPA rules by noting the underlying statute will remain the same.

"If it required NEPA yesterday, it will require NEPA under the new proposal," an official said when asked how the changes might apply to pipelines like Keystone XL.

"And yet the proposed changes could alter the "threshold consideration" that triggers NEPA review. The proposal would exclude projects with minimal federal funding or "participation."

"The Trump plan also proposes restricting an environmental impact statement to two years and an environmental assessment to one.

“Neumayr said the average EIS takes 4 ½ years and in some cases longer. Democrats have disputed those timelines. Further, just 1% of all federal actions require an EIS, they argue.

“The proposal would also require one agency to take the lead on permitting and require agency officials to “timely resolve disputes that may result in delays.”

“In general, the plan calls for environmental documents to be “concise” and “serve their purpose of informing decision makers.”

“Both Interior Secretary David Bernhardt and EPA Administrator Andrew Wheeler were at the White House for the announcement.

Reaction

“An onslaught of critics have said changes to NEPA rules could be the administration's most far-reaching environmental rollback.

“The League of Conservation Voters declared the administration was again trying to “sell out the health and well-being of our children and families to corporate polluters.”

“On Capitol Hill, House Speaker Nancy Pelosi (D-Calif.) said during a news conference the administration would “no longer enforce NEPA.”

“This means more polluters will be right there, next to the water supply of our children,” she said. “That's a public health issue. Their denial of climate, they are going to not use the climate issue as anything to do with environmental decisionmaking.”

“Senator Sheldon Whitehouse (D-RI) echoed the sentiment, saying he didn't need any more proof that the fossil fuel industry had hardwired the Trump administration “but we got it anyway.”

“Energy companies, including firms focused on renewable energy development, are welcoming the “clarity” of the proposed NEPA rules.

“The lack of clarity in the existing NEPA regulations has led courts to fill the gaps, spurring costly litigation, and has led to unclear expectations, which has caused significant and unnecessary delays for infrastructure projects across the country,” the Interstate Natural Gas Association of America said in a statement.

“Last night, the American Wind Energy Association said NEPA rules have caused “unreasonable and unnecessary costs and long project delays” for land-based and offshore wind energy and transmission development.

“Trump has famously attacked the wind energy industry for decades, dating back to his opposition to a Scottish wind turbine near his golf course.

“The president today said he won't stop until "gleaming new infrastructure has made America the envy of the world again."

“When asked whether he thought climate change was a "hoax," as he once tweeted, he said no. "Nothing's a hoax about that," he said.

“The president said there's a book about climate he's planning to read. He said, "It's a very serious subject."

Reporters Lesley Clark and Nick Sobczyk contributed.

Environment: [EPA Region 5 Chief Stepping Down](#)

Last week the chief of EPA's Region 5 resigned. The following story provides further detail.

On January 7, Kevin Bogardus of [Greenwire](#) wrote, “EPA Region 5 Administrator Cathy Stepp is leaving the agency.

“Stepp told EPA employees in an internal email obtained by E&E News that she is heading to Missouri to be with her family.

"I have been presented with a professional opportunity that will get me back to Missouri so I can once again be home with my husband and son. While I love my position here in Region 5, I'm looking forward to a more stable and predictable work schedule that isn't 9 hours from my family!" Stepp said in the email sent yesterday.

“Her last day with EPA will be Jan. 17, she said. Stepp thanked agency staff for their support.

"You have made me a better person, not just professionally, but personally as well. What an honor it has been to sing your songs of success from podiums across the region and in D.C.," she said.

"While this region has had and will continue to face challenges on the ground, I know with certainty we have the best staff in the country to work through them," she added.

“Stepp also noted in her email that EPA Administrator Andrew Wheeler has "expressed his understanding of the importance of stability and a seamless transition" and "there will be an exciting announcement regarding my successor shortly."

"In a statement, Wheeler said Stepp is "a dedicated public servant who was instrumental in furthering the progress of EPA's Great Lakes National Program."

"I greatly appreciated her leadership and the unbridled enthusiasm she brought to EPA Region 5 as Regional Administrator, as well as her work as Principal Deputy Regional Administrator for EPA Region 7. I thank Cathy for her years of service to EPA and wish her all the best as she begins the next chapter of her career," Wheeler said.

"Stepp was named Region 5 administrator in December 2017. She had joined the agency earlier in August that year as principal deputy regional administrator in Region 7.

"Before coming to EPA, she was secretary of the Wisconsin Department of Natural Resources from 2011 to 2017, appointed to the position by then-Wisconsin Gov. Scott Walker (R). She also served as a Wisconsin state senator from 2003 to 2007.

"Region 5, with its main office in Chicago, oversees EPA operations in six states — Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin — as well as 35 tribes. It is one of the agency's larger regional branches and also houses the Great Lakes National Program Office.

"Region 5 came under scrutiny during Stepp's tenure at the Chicago office.

"EPA's inspector general is investigating the branch's handling of concerns over permitting a Minnesota copper-nickel mining project by PolyMet Mining Corp.

"And Illinois lawmakers have been pushing EPA to take greater action on pollution in their state. They pushed Region 5, in particular, to focus on ethylene oxide emissions.

Congress

[House Energy and Commerce Democrats Release The Clean Future Act](#)

The follow story details a recent release from the House Energy and Commerce Democrats designed to reduce greenhouse gas emissions.

E&E News PM reporter Nick Sobczyk published on January 8, "House Energy and Commerce Committee Democrats today unveiled a sweeping draft bill that would aim to slash greenhouse gas emissions across the economy.

"Text of the measure won't be publicly released until later this month, but the 15-page outline circulated this afternoon is among the most detailed looks yet at what House Democrats would do to tackle climate change if they sweep the 2020 elections.

“However, the "CLEAN Future Act" would not explicitly price carbon, a policy that in recent years has been considered the backbone of any large-scale climate legislation.

“One reason, said Energy and Commerce Chairman Frank Pallone (D-NJ), is that taxes aren't in his panel's jurisdiction.

“But more than that, lawmakers said the kind of crosscutting set of policies laid out in their legislation would be a more effective approach.

"We believe we can do it without carbon pricing," Pallone told reporters at a news conference this afternoon.

“Rather, for the power sector, the bill would implement a clean energy standard based on two separate pieces of legislation introduced last year by Representatives Diana DeGette (D-CO) and Ben Ray Lujan (D-NM).

“It would set a federal goal to achieve net-zero emissions in the power sector by 2050, with incremental goals beginning in 2022.

“The legislation would set up a trading system for power suppliers, while some of the planning for how exactly to achieve net-zero elsewhere in the economy would be delegated to states.

“If regulated energy suppliers do not have a sufficient number of "clean energy credits" each year, they would pay a compliance fee.

“The clean energy standard would also appear to leave the door open to nearly any energy technology — including fossil fuels — so long as it has a carbon intensity lower than 0.82 metric tons of carbon dioxide equivalent per megawatt-hour.

“That's not likely to sit well with progressives, but the proposal quickly earned praise from more centrist organizations, such as the Environmental Defense Fund and Third Way.

“Elsewhere in the economy, the legislation would incorporate various pieces of existing energy efficiency legislation. For transportation, it would set goals to transition federal fleets to zero-carbon vehicles and provide money for electric vehicle infrastructure.

“It would also set up a climate bank, based on legislation introduced by Rep. Debbie Dingell (D-MI), and require that federally purchased cement and steel meet certain emissions targets.

“Lawmakers argued that would make a significant dent, because large amounts of materials used for infrastructure around the country are purchased with federal money.

“Lawmakers stressed that the bill won't be a finished product, even when the draft text is released later this month.

“Democrats acknowledged that they still need to draw up provisions to address climate resilience, economic transitions for fossil fuel communities and agriculture, among other things.

“Pallone said it could be a complement to progressive ambitions laid out in the Green New Deal, but unlike that nonbinding resolution, the chairman said his draft legislation could be taken up by the House this year.

"I don't want you to see this as a message bill. This is not a message bill," Pallone said. "We are going to try to move this bill or certainly pieces of this bill when we can."

Tax credit bill

“Separately, Rep. Tom Reed (R-NY) is eyeing a push for a new tax credit to spur clean energy deployment.

“Reed, a member of the tax-writing Ways and Means Committee, introduced the "Energy Sector Innovation Credit Act," H.R. 5523, late last year. The bill would create a technology-neutral credit for innovative energy technologies, which would phase down as they become a larger part of the energy mix.

“It also would include a 30% credit for nascent technology and energy storage, viewed by many as crucial to unlocking more widespread deployment of intermittent renewables.

“At a news conference this morning, Reed and other co-sponsors sold it as a practical and politically palatable way to address climate change, and it's supported by a variety of industry and conservative groups, including the U.S. Energy Association, ClearPath and Citizens for Responsible Energy Solutions.

“While it would not replace existing renewable credits, technologies that claim the investment tax credit or production tax credit would not be eligible.

“The other co-sponsors of the measure are Representatives Jimmy Panetta (D-CA), Darin LaHood (R-IL), David Schweikert (R-AZ) and Josh Gottheimer (D-NJ).

“Tax extenders talks in December ended in disappointment for supporters of storage and electric vehicles, and separate proposals for those technologies are likely to dominate the conversation about energy incentives over the next year.

“But Reed told reporters yesterday there could be room for his bill, too. He added that he has "planted the seeds" for a Senate companion to H.R. 5523 in the future.

"I think there's an appetite for this tech-neutral approach, the power of innovation in and of itself drawing people together, as opposed to getting into those parochial wars that we often see on the energy sector of one industry versus another," Reed said."

Tax Policy

At the end of 2019, Congress passed an extenders package that was helpful to the biogas industry but was limited in scope. The following story discusses that package and what could be on the tax policy horizon.

Timothy Cama of [E&E Daily](#) reported on January 9, "Lobbyists for clean energy industries are confident, despite some recent setbacks, that 2020 is the year Congress will pass tax incentive policies.

"After spending most of the year lobbying the Senate and House to create a new tax credit for energy storage and extend credits for solar power, wind power and electric vehicles, industry representatives say they hope to continue the momentum from last year and try again.

"We've got all the pieces in place; now it's time to just take it over the finish line," said Kelly Speakes-Backman, CEO of the Energy Storage Association.

"I don't think we've ever gotten closer to having this ITC [investment tax credit] for storage done," she said. "I think we're on the right track with our strategy," which focused on building coalitions with groups representing other industries, such as electric utilities and environmental groups. They also kept bipartisan sponsors of the legislation front and center.

"ESA and its allies want Congress to create an ITC for energy storage projects, similar to the existing one for solar energy.

"We'll continue to look for opportunities in various bills," said Abigail Ross Hopper, president of the Solar Energy Industries Association.

"Advocates were hopeful Congress would include the storage, the wind energy production tax credit, and extensions of the solar credit and the electric vehicle purchase tax credit as part of an end-of-the-year spending and tax deal that lawmakers and President Trump reached in December.

"But the plan fell through, something Democrats blamed on the White House. The resulting legislation provided a one-year extension of the wind energy credit, to align its downward glide path with one of the solar credits, and granted a five-year extension to the tax credit for biodiesel.

"Numerous companies and associations in the renewable energy, storage and electric vehicle industries significantly boosted their lobbying expenditures last year

as they pushed Congress to extend their benefits. Thus far, advocates are not rethinking their previous strategies, which they see as durable going into the next fight.

"We were able to put a pretty broad coalition of Republican and Democratic lawmakers, as well as some unconventional partners. So that work and that support will be helpful in whatever next steps we take," said Hopper.

"We have to continue to talk about the economics of this, and how much has been created as a result of the investment tax credit is the most compelling narrative," she added. "We will continue to tell this story."

"Greg Wetstone, president of the American Council on Renewable Energy, agreed.

"We're going to pick up where we left off," he said. "We've got a broad coalition for a number of clean energy incentives that ended up on the cutting-room floor, and we're going to be looking for opportunities in 2020."

"The main unknown for the clean energy credits is which legislation lobbyists can convince lawmakers to attach them to.

"Industry representatives said tax bills are the most likely vehicles, and there will be at least two opportunities this year: a package of health-related policies that expires and will need to be renewed in May, and a group of other tax provisions that will run out at the end of 2020.

"But other must-pass legislation could serve as the launch pad, as well, such as surface transportation legislation that lawmakers are due to pass this year.

"Before the year end, there's certainly going to [be a] discussion about things like surface transportation reauthorization, and there's going to be a sense that if there's any movement on legislation that includes a tax title, there's going to be even more of a priority on getting something included in that," said a representative of a clean energy company.

"You'll see quite a bit of activity through the year to push these all forward," the representative said.

"Lawmakers in both parties said last month they, too, want to revive a push for the energy-related tax incentives that did not get into the major agreement.

"But while the industries keep up their push, a coalition of conservative groups plans to keep opposing them, arguing that the tax credits — particularly the one for electric vehicles — are wasteful.

“Tom Pyle, president of the American Energy Alliance, said his group sees the momentum as going in its direction, and it wants to keep pushing, even to repeal the credits.

"We're going to continue to make the case for why we should stop the expansion of these credits, but also go on the offense and hopefully start winding some of these down, which is clearly going to be harder to do," said Pyle, who added that allies feel the same way.

“Pyle's group and others, such as Americans for Tax Reform and Citizens Against Government Waste, have worked both publicly and privately to push Republicans to stand firm against the tax break proposals. The electric vehicle credit was central to their strategy, a recognition of Trump's outspoken opposition to the credit and their calculation that it is the easiest to oppose.

“Pyle thinks the clean energy industries are weakened, pointing in part to Senate Finance Chairman Chuck Grassley (R-IA), who was an advocate for the incentive package but won a credit extension for biodiesel, a key issue for his Iowa constituency.

"There's no motivation for Grassley to be a champion," Pyle said.

"It's a critical year for us to keep them at bay, and maybe we can go on the offense to get these things taken down and work toward a level playing field."

[Environment: Democrats Promise Action Against NEPA Overhaul](#)

On January 10, Nick Sobczyk of [E&E Daily](#) wrote, “Congressional Democrats are eyeing a legislative response to the Trump administration's proposed National Environmental Policy Act overhaul, a sign of the fight to come over one of the president's marquee deregulatory moves.

“Several lawmakers said yesterday that a Congressional Review Act resolution would eventually be on the table after the Council on Environmental Quality proposed to update its NEPA regulations for the first time in decades.

“For Representative Debbie Dingell (D-MI), the proposal is personal. Her late husband, the legendary Democratic Rep. John Dingell, was one of the original architects of NEPA.

“Debbie Dingell said she's planning to introduce a resolution to reverse the Trump administration's proposed changes. "I'm not going to let them take NEPA back," she said.

“The plan, unveiled at a White House event yesterday, marks a potentially seismic shift in the permitting process across the federal government.

“NEPA rules lay out the process for environmental reviews and public input at every federal agency. The new proposed guidance from CEQ was one of the top directives from President Trump's 2018 infrastructure plan. It features ideas congressional Republicans have been talking about for years.

“But it has set off a frenzy among environmental groups and Democrats, who fear the changes will effectively eliminate consideration of greenhouse gas emissions and climate impacts in environmental reviews.

"This means more polluters will be right there, next to the water supply of our children," said House Speaker Nancy Pelosi (D-CA). "That's a public health issue. ... They are going to not use the climate issue as anything to do with environmental decisionmaking."

“As with any federal rulemaking, lawmakers have relatively little recourse, aside from weighing in like anyone else during the coming public comment process.

“That's likely the first step, said Senator Ben Cardin (D-MD). "We're very much concerned about the trend of this," Cardin said.

“But Democrats could also turn to the CRA, which gives Congress 60 legislative days to overturn federal rulemakings with a simple majority vote.

“Cardin led a similar effort to flip the Trump administration's Clean Power Plan replacement last year, though it failed in the GOP Senate.

“Dingell said she didn't know yet whether her legislative response would be under the CRA or via another channel.

“Natural Resources Chairman Raúl Grijalva (D-AZ), who is in talks with her about a legislative response, said a CRA vote would effectively be the only way to "make it permanent so they can't keep messing with it."

“Still, that would likely have to wait until CEQ issues its final rulemaking, expected later this year. And although Democrats might be able to overturn the proposal if they sweep the 2020 elections, Trump and the GOP Senate will be fighting them on it as long as they're in office.

"We're far away from that review period," Cardin said. "Obviously, our first line of attack is for them to change [the proposal], or a legal challenge, and then it would be the CRA if we have to."

Industry, GOP praise

“Some of the biggest proposed changes are exactly what Trump laid out in his 2018 infrastructure plan that was hyped as a legislative blueprint for the GOP, which controlled both chambers of Congress at the time.

"It has congressional Republicans excited, especially because they didn't have to lift a legislative finger.

"CEQ's proposal would limit page counts for the most intensive environmental reviews and mandate that they take under two years in most circumstances.

"It would also require a single record of decision for reviews that involve multiple agencies, an idea Trump first suggested in a 2017 executive order.

"President Trump has set a goal of completing environmental reviews for construction projects within two years," Senate Environment and Public Works Chairman John Barrasso (R-WY) said in a statement.

"This proposal establishes that standard," he said. "These updates will reduce red tape so important infrastructure projects get done better, faster, cheaper, and smarter."

"Barrasso noted he included similar ideas in "America's Transportation Infrastructure Act," S. 2302, the bipartisan surface transportation bill his panel unanimously cleared last year.

"Energy companies and trade organizations are, not unexpectedly, happy with changes that could help them build out infrastructure more quickly. But permitting changes don't always cut directly across party lines.

"Labor groups, generally a key Democratic demographic, have come out in support of the NEPA rewrite, diverging from progressives and congressional Democrats.

"Some advocates at the Bipartisan Policy Center also argued yesterday that the changes could actually aid efforts to fight climate change — because they would speed permitting for the massive amount of new clean energy infrastructure needed to decarbonize the economy.

"To that end, Amy Farrell, senior vice president of government and public affairs for the American Wind Energy Association, said her organization is eager to work with the Trump administration to "advance infrastructure permitting reform."

"Infrastructure projects, including land-based and offshore wind energy and transmission development, have encountered unreasonable and unnecessary costs and long project delays," she said in a statement. "It is time to update and modernize the permitting process, which would both strengthen our economy and enhance environmental stewardship."

'Quite remarkable'

"At issue for most Democrats and environmentalists, however, is CEQ's proposal to nix consideration of "cumulative" or "indirect" impacts.

“CEQ Chairwoman Mary Neumayr said yesterday that the language would not prevent consideration of greenhouse gas emissions. But many on the left said they weren't buying it at a time when the destruction wrought by climate change is increasingly evident in the economy.

“The NEPA proposal came one day after NOAA released a report that noted there were 14 extreme weather events in 2019 that each caused more than \$1 billion in damage.

“NOAA's analysis is the latest detailing the mounting costs of extreme weather events during the past decade, including a 2019 Government Accountability Office review requested by Cardin that found taxpayers are increasingly on the hook because of the federal government's lack of a resilience strategy.

"It's quite remarkable," Cardin told E&E News yesterday. "In fact, we see again how the administration is defying not just what's good for our environment, but what's good for our economy."

Reporters Geof Koss, Kellie Lunney and Kelsey Brugger contributed.

[Agriculture: New Senator Kelly Loeffler \(R-GA\) Joins the Agriculture Committee](#)

The Senate Agriculture Committee gained a new member last week, Freshman Senator Kelly Loeffler (R-GA) joined the committee.

E&E Daily reporter, Manuel Quinones, published on January 7, “Vice President Mike Pence swore in Georgia Republican businesswoman Kelly Loeffler yesterday to replace Johnny Isakson, who retired at the end of last year.

“Loeffler will join the Senate Agriculture, Nutrition and Forestry Committee, where she'll replace Sen. David Perdue (R-GA), who is moving over to take Isakson's spot on the Foreign Relations Committee.

“She will also sit on the Health, Education, Labor and Pensions Committee and the Veterans' Affairs Committee, both of which Isakson was a member of until retiring.

“Additionally, Loeffler will sit on the Joint Economic Committee, a bicameral panel whose chairmanship alternates between the House and Senate each Congress.

Senator Ben Sasse (R-NE) will take Isakson's prized seat on the Finance Committee, according to a resolution introduced and passed yesterday that details the GOP changes to committees for the remainder of the 116th Congress.

“Georgia Gov. Brian Kemp (R) appointed Loeffler to the seat last year. In doing so, he essentially ignored President Trump's wish for Rep. Doug Collins (R-Ga.)s to fill out Isakson's term.

“Before her appointment, Loeffler served as the CEO of financial services firm Bakkt. She also co-owns the Atlanta Dream, a team within the Women's National Basketball Association.

“She was raised in an Illinois farming community before going on to earn her Master of Business Administration from DePaul University.

“Loeffler is running in a special election to serve out Isakson's term. Collins has not decided yet if he will challenge her in the Republican primary later this year. It will be one of two Senate races in the Peach State because Perdue is up for reelection.

“The businesswoman-turned-politician plans to spend \$20 million of her own money on her race, according to *Politico*. According to *The Atlanta Journal-Constitution*, she and her husband have a combined worth of more than \$500 million.

“Her bank account was part of her appeal to Kemp, who is worried about the growing tide of blue voters in Atlanta's suburbs. He said he hopes she can appeal to female and independent voters who have been turned off by Trump.”

Reporter Mary M. Shaffrey contributed.

Other