



ABC's Weekly Federal Legislative Update May 26, 2020

Introduction

The Senate is out of session for two weeks. The House is in proforma session and is attempting its first week of working remotely. The following are stories from Washington, D.C.

Administration

Renewable Fuel Standard

Below is an update on the 2021 Proposed RVOs. The proposal is currently at OMB for review and remains on track to be issued later this year.

Marc Heller of Greenwire wrote on May 18, "EPA's proposed biofuel volumes for next year are now in the hands of the White House, as the industry grapples with sinking production tied to the coronavirus pandemic.

"The environmental agency last week submitted the annual proposal to the Office of Management and Budget, beginning a monthslong process that usually generates a final rule late in the year. Once OMB signs off on the plan, EPA publishes it and opens a period of public comment.

"Industry groups on both sides say they're watching for overall volumes and how the agency addresses biofuel-blending exemptions for small petroleum refineries, which can petition for them based on economic hardship.

"EPA has handed out the exemptions in much greater numbers since the Trump administration took over, but a legal battle over them has handed the agency some losses. Officials may be forced to scale back the exemptions dramatically.

"When granted in big enough numbers, exemptions can affect overall biofuel volumes and influence the price of renewable fuel credits that refineries buy to show compliance with the renewable fuel standard. Biofuel and petroleum industry groups have been arguing over how big those impacts are, and EPA is drawn into the fight.

“EPA says it tries to project the volume of biofuel tied to the refinery exemptions in setting the annual numbers. A wrong guess on exemptions can have consequences on the actual required volume of renewable fuel, the agency said in the rule for this year.

“This year, EPA faces the outcome of a ruling in the 10th U.S. Circuit Court of Appeals, which said the agency only can extend exemptions that were in place from the program's early days in the mid-2000s, not grant new ones.

“EPA has said it won't change its approach on exemptions, however, until the legal fight over them is settled. Refining companies have said they'll ask the U.S. Supreme Court to take up the issue, but the CEO of the Renewable Fuels Association, Geoff Cooper, told reporters last week he considers that highly unlikely.

“The industry, like the oil industry, is suffering from the drop in transportation and fuel consumption amid the pandemic. Cooper said the biofuel industry lost as much as 50% of production due to plant closures and slowdowns, although the drawback has slowly started to reverse.”

[EPA to Update Nutrient Guidelines](#)

The EPA announced last week that it is seeking comment on ambient water quality criteria recommendations for nutrients in waterways.

On May 22, Hannah Northey of [Greenwire](#) reported, “EPA yesterday issued its first update in almost 20 years to the nation's ambient water quality criteria recommendations for nutrients in lakes and reservoirs.

“The draft recommendations provide models of total nitrogen and phosphorus concentrations in lakes and reservoirs to protect aquatic life, recreation and drinking water.

“Excess loads of nitrogen and phosphorus in water deplete oxygen levels in water, harming aquatic life. In extreme cases, the depletion of dissolved oxygen causes fish kills. Nutrient pollution can also stimulate the excess growth of nuisance algae, such as cyanobacteria that are toxic to animals and humans.

“Michael Murray, a staff scientist with the National Wildlife Federation's Great Lakes office, said he thought the EPA's approach made sense given the challenges tied to setting a single numerical limit for nitrogen and phosphorus.

“States, he added, will need to conduct additional modeling for specific lakes or rivers, but can use what the EPA put forth in its draft.

“The general approach is reasonable,” he said.

“EPA said that the recommendations, last updated in 2000 and 2001, are based on data collected from about 1,800 lakes, and that states, territories and authorized tribes may consider adopting the criteria into their water quality standards.

"Under the Trump administration, we are working with states, tribes and farmers from across the country to develop a wide range of tools that will reduce excess nutrients in America's water bodies," EPA Assistant Administrator for the Office of Water David Ross said in a statement.

"These draft criteria are the first update to EPA's recommended nutrient criteria in almost 20 years. This flexible approach is based on the latest scientific information and will help States and Tribes protect lakes and reservoirs from harmful algal blooms."

“EPA is taking public comment on the recommendations for the next 60 days.”

[EPA Begins to Head Back to the Office](#)

The following story contains updates on EPA's plan to return to offices from telework.

Greenwire reporter Kevin Bogardus published on May 22, “EPA has begun the slow process of reopening offices despite its employees' worries about potential exposure to COVID-19, the disease caused by the novel coronavirus.

“EPA Administrator Andrew Wheeler told staff yesterday in an internal email obtained by E&E News that the agency has decided to reopen its Region 4 office in Atlanta; Region 7 in Lenexa, Kan.; and Region 10 in Seattle.

“EPA closed its Region 4 office Wednesday and Region 7 and 10 yesterday. Those offices will remain closed for seven days so the coronavirus is rendered inactive, Wheeler said. The next step will be for those locations to begin "Phase 1," a limited reopening that would bring staff back in phases to the workplace with social distancing restrictions, after an additional review of the data on the virus's spread.

“Wheeler stressed that the staff's health and safety was paramount and EPA's reopening would be done in alignment with the White House's reopening guidelines in response to the virus.

"Our plan for an eventual phased return to EPA offices will take a measured and deliberate approach that ensures your health and safety," Wheeler said in the email, noting the agency's plan "provides for a 'rolling reopening,' so each facility will enter Phase 1 according to local data and conditions."

“Still, most employees in Regions 4, 7 and 10 are expecting to be teleworking during the coming weeks as EPA implements the three-phased plan.

"It is important to note that the agency will continue to provide maximum telework flexibilities to all employees through Phase 2, along with maximum work schedule flexibilities (e.g., maxiflex scheduling, altered core hours, etc.) to all employees through Phase 1," Wheeler said, adding employees at high risk or who have household members that are should also telework through Phase 2.

"Be good to yourselves and please take the time you need to protect and promote YOUR health," Wheeler emphasized. "Stay safe, well, and strong. We need you — our employees are EPA's most important asset."

"Union officials at EPA were angered by the plans to reopen, saying it was too soon, given COVID-19 is still prevalent throughout the country.

"Zakiya Davis, president of National Association of Government Employees Local R5-55, which represents EPA Region 4 employees, noted Georgia has not seen a 14-day decline in COVID-19 cases.

"My employees are scared and terrified because the agency doesn't have a plan, is not being transparent about their plan and don't seem to care about their employees' health and safety," Davis said.

"She added, "One terrifying thing for my clerical staff is that they have open cubicles.

"How are we going to protect them with no masks, just asking people to stay 6 feet apart?" Davis said, who added her union has pushed for protections like glass partitions in the workplace.

"Others at the agency expressed anxiety, too.

"Lisa Hanlon, president of National Treasury Employees Union Chapter 294, which represents EPA Region 7 employees, said staff in her office knew the cafeteria would be closed and conference rooms restricted as the workplace reopened.

"There is some concern as we slowly enter the workplace with the safety measures," Hanlon said, adding, "We are going to be slowly reopening. They are doing this in a measured and responsible way."

"One EPA Region 10 employee, however, said they weren't worried about reopening.

"We have been told they are in a seven-day closure period where they will deep clean all the spaces. No one knows exactly what that entails, however," said the employee.

"An EPA spokeswoman told E&E News that as facilities reopen, it will be done in three phases, with employees being encouraged to telework during the first two phases. Under the White House reopening guidelines, "Phase 3" for employers is when "unrestricted staffing" is expected to resume at the workplace.

"EPA will begin the process of reoccupying its facilities in a deliberative manner that ensures the health and safety of our employees. Senior leadership will review the data we gather from [the Centers for Disease Control and Prevention], and we will consider state and local guidance before making any decisions," said the agency spokeswoman.

"Wheeler, too, has touted the EPA staff's ability to function outside of the office. "Through the amazing work of our IT office, we more than doubled our capacity to telework within one week," said the EPA administrator during testimony before the Senate Environment and Public Works Committee earlier this week.

"Like the rest of the country, EPA has been affected by the pandemic. The EPA spokeswoman said today the agency has been notified of 40 coronavirus cases among its employees nationwide. One EPA Region 3 employee has died from the virus, too.

"Other agencies have begun a phased reopening as well. The Department of Energy has released a plan that will limit interaction among employees, who will be encouraged to wear masks.

"Union officials at EPA lamented that they haven't seen a similar plan from their management.

"We do not have a plan on paper in place," Davis said. "We have nothing."

"They have not shared a plan with us. That has caused a concern for us," Hanlon said. "I have not seen it. Nobody has seen it."

"The EPA spokeswoman said the agency's reopening plan will soon be released.

"We do have a reopening plan that has been reviewed by leadership at headquarters and by regional leadership that will be released early next week," she said.

"Unions have pushed for strong precautions as EPA reopens.

"In a letter to Wheeler earlier this month, NTEU President Tony Reardon said his union wanted to discuss offering COVID-19 testing to employees and practicing screening measures, like taking temperatures at the office. Nevertheless, EPA staff will likely be on their own.

"From what we understand, no one is providing anyone with [personal protective equipment] or tests," Hanlon said, noting NTEU will be providing members with reusable masks.

"The EPA Region 10 employee also said, "We have not been provided with a reopening plan or any details, including whether we get PPE."

Reporter Kelsey Brugger contributed.

Congress

Senators Lobby for Pandemic Related Tax Change

Last week, lawmakers called on the Treasury to expand the safe harbor for renewable energy projects.

Jeremy Dillion of [E&E Daily](#) wrote on May 22, "A trio of Republican senators called on the Treasury Department yesterday to tweak the qualifications for renewable energy tax credits to help the industry better utilize the incentives amid delays caused by the coronavirus pandemic.

"The request from Energy and Natural Resources Chairwoman Lisa Murkowski (R-Alaska), along with Senators Susan Collins (R-ME) and Thom Tillis (R-NC), comes as the renewable energy industry has shed some 600,000 jobs over the past two months because of disruptions related to the pandemic.

"The three senators argued in a letter that implementation changes to the production and investment tax credits could help the industry overcome global supply problems that have threatened the viability of some projects and enable future work to occur unencumbered once virus restrictions are lifted.

"At a time when the renewable energy industry is facing significant challenges, these steps will help protect American jobs and provide investor certainty as we work to rebuild our economy," the three senators wrote.

"Their proposal calls for changes to how the IRS defines so-called safe harbor requirements, which cover what counts as the start of construction.

"To claim the credits, a developer must begin significant construction by a certain date or spend no less than 5% of the project's costs before the end date.

"Should developers use the 5% safe harbor provision, any equipment purchased under that would need to be delivered within 105 days.

"The solar industry saw a series of projects trying to meet that 5% threshold at the end of 2019 so they could qualify for the 30% investment tax credit before it reduced in 2020. Many of the equipment deliveries, however, have been caught in supply chain disruptions.

"The senators called on the IRS to extend the time frame that equipment could be delivered under those safe harbor provisions to enable an additional year for coronavirus-affected projects.

“In addition, the senators also lobbied for changes to the "continuous construction" requirements that ensure a project trying to qualify for the credits maintain work activities.

“In its place, the lawmakers suggested guidance calling for "continuous efforts" to reflect challenges that may arise from the pandemic.

"This modest adjustment to the PTC and ITC guidance would help preserve tens of thousands of jobs and billions of dollars in investments and provide some certainty in these challenging times," the three said.

“Treasury Secretary Steven Mnuchin has already expressed a willingness to tweak the renewable tax credits' safe harbor provisions.

“In response to a letter led by Finance Chairman Chuck Grassley (R-IA), the Treasury Department said it was willing to extend by a year the time frame for demonstrating "continuous construction" from four years for projects starting in 2016 or 2017 to five years.

Such a change has prompted backers of carbon capture tax credits to call for the same parity for their technologies.

Other