



ABC's Weekly Federal Legislative Update June 22, 2020

Introduction

Both the House and Senate are advancing measures to address policing this week. The House will also begin to mark-up portions of the National Defense Authorization Act while the Senate will continue voting in judicial nominees. The following is news from Washington, D.C.

Administration

[Renewable Fuel Standard: Uptick in Applications for Waivers](#)

Marc Heller of [E&E News PM](#) wrote on June 18, "Oil companies have filed 52 requests with EPA to retroactively waive biofuel blending requirements since 2011, the agency revealed on its website today, drawing protests from the biofuel industry.

"In a table the agency updates regularly to show how many petitions it's received for small refinery exemptions, EPA showed a flurry of new applications for compliance between 2011 and 2018.

"EPA grants the exemptions to small refineries that demonstrate financial hardship from meeting the requirement, which many meet by buying renewable fuel credits rather than blending actual biofuel.

"Officials have previously confirmed they received requests but hadn't stated the number. The RFS law, part of the Clean Air Act, says refineries can ask for hardship exemptions at any time.

"The petitions came on the heels of a federal court ruling earlier this year that said EPA can only extend exemptions that existed in the renewable fuel program's earlier years, not grant new ones. If granted, the exemptions might enable the refiners to extend them in future years as well.

"The biofuels group Growth Energy accused the companies of trying to "rewrite history" and skirt the renewable fuel standard. Although provided for in the law, exemptions

undercut demand for ethanol and have been granted too generously by the Trump administration, biofuel groups say.

"This absurd maneuver is a blatant attempt to dodge the law at the expense of rural communities," said Growth Energy CEO Emily Skor in a news release."

Congress

[House Infrastructure Bill – Energy and Climate Priorities](#)

The following story contains an update on the House Infrastructure package and the likely inclusion of clean energy provisions.

On June 18, Maxine Joselow, Jeremy Dillion and Geof Koss of [E&E News PM](#) submitted, "House Democrats today detailed plans for passing a \$1.5 trillion infrastructure package that would provide significant new funding for roads, bridges, highways, transit, clean energy, drinking water and more.

"Speaker Nancy Pelosi (D-CA) and relevant committee leaders touted their plans at a news conference this afternoon, while the Transportation and Infrastructure Committee entered the 18th hour of marking up a highway bill that will form the central component of the package.

"The legislation, dubbed the "Moving Forward Act," H.R. 2, would invest more than \$300 billion in roads and bridges, \$100 billion in transit, \$75 billion in clean energy, \$40 billion in wastewater, and \$25 billion in drinking water, according to a fact sheet provided by Pelosi's office.

"House Majority Leader Steny Hoyer (D-MD) has scheduled three days of floor debate on the measure — from June 30 to July 2 — after the chamber considers policing reform legislation and before members leave for the July Fourth break.

"Pelosi expressed optimism at the news conference that both chambers of Congress could work together to send the measure to President Trump, who remains keen on infrastructure action.

"The president, we understand, he really wants an infrastructure bill," she said. "He talks about it quite a bit. And so now let's get down to what that means for the 21st century."

"House Energy and Commerce Chairman Frank Pallone (D-NJ) stressed at the press event that the clean energy provisions in the measure would help the renewables sector recover from a crush of job losses during the coronavirus pandemic.

Marathon markup

“The T&I Committee reconvened today to continue marking up the highway bill, after members spent yesterday slogging through dozens of amendments and multiple technical glitches in a test of virtual proceedings.

“The "Investing in a New Vision for the Environment and Surface Transportation (INVEST) in America Act" would authorize \$494 billion over five years for surface transportation programs, including \$319 billion for the federal highway program, \$105 billion for mass transit and \$60 billion for rail.

“T&I Democrats spent much of the day beating back Republican amendments related to electric vehicles and the permitting process for large infrastructure projects.

“Some of the most heated debate was inspired by proposals from Republican Representative Pete Stauber of Minnesota. Democrats successfully quashed one Stauber amendment on voice vote that would have prevented environmental groups and other project opponents from filing injunctions to halt projects under the National Environmental Policy Act.

“Another Stauber amendment would have required that rare earth and other minerals used in EV batteries are mined on American soil.

“While making an impassioned plea for his proposal, Stauber held up a poster showing two children in Congo whom he said are forced to mine cobalt for EV batteries in unsafe working conditions.

“Representative Scott Perry (R-PA) also voiced support for the proposal, saying, "We don't have to rely on child labor from Africa, often owned by China."

“Referring to the Communist Party of China, Perry added: "We're relying on our enemy to provide the minerals to power the electric vehicles that this committee is trying to force most Americans to buy because they're so opposed to fossil fuels."

“T&I Chairman Peter DeFazio (D-OR) responded that while he obviously opposed child labor, he could not support the amendment because it would inhibit production of electric cars, a key weapon in the fight against climate change.

“The panel eventually took a roll call vote on the amendment this afternoon. It failed with 31 members voting no, 31 voting yes and one voting "present."

“The committee also adopted 19 noncontroversial amendments en bloc, including 14 from Republicans and five from Democrats.

Clean energy and water

“The infrastructure package contains robust provisions aimed at updating the electric grid to accommodate more clean energy, as well as updating drinking water infrastructure.

“Both provisions have worked their way through the Energy and Commerce Committee, where Pallone has pushed his "Leading Infrastructure for Tomorrow's America Act," H.R. 2741, to bolster spending in both categories as well as better prepare infrastructure for the effects of climate change.

"I really want to stress that this is a green bill, a clean energy bill," Pallone said at the news conference, appearing via video feed.

“The package would set aside \$70 billion "to transform our electric grid to accommodate more renewable energy, expand renewable energy, strengthen existing infrastructure, help develop an electric vehicle charging network, and support energy efficiency, weatherization, and Smart Communities infrastructure," according to the fact sheet.

“That's more than double the \$34.3 billion that House Democrats devoted to clean energy when they released an infrastructure framework in January.

“Pallone drew a direct line from the bill to an E&C hearing this week on how the coronavirus outbreak has affected the clean energy sector, which has shed some 600,000 workers. Jobs in the sector have been "wiped out by the pandemic," he said.

“The bill would also invest more than \$25 billion for clean drinking water improvements via the Drinking Water State Revolving Fund, Pallone said. Some of that money is likely set aside for communities to address contamination from per- and polyfluoroalkyl substances. The bill would dole out another \$40 billion to new wastewater infrastructure improvements.

“Separately, DeFazio's committee plans to release its water projects legislation in the coming weeks. The Senate Environment and Public Works panel already approved highway, drinking water and water projects legislation.

'Extraordinary' tax provisions

“House Ways and Means Chairman Richard Neal (D-MA) agreed that the package will contain significant support for renewable energy, although he declined to offer much detail.

"It's extraordinary what we've done," Neal said at the news conference. "This is the largest tax investment in combating climate change that Congress has ever made on the renewable front."

“The fact sheet does not specify what those investments are, although it says the forthcoming legislation “reinvigorates our commitment to renewable energy and combating the climate crisis by building on current successful tax incentives that promote the deployment of green energy technologies while providing new incentives for activities that reduce carbon pollution.”

“Aides and lobbyists, however, said the renewable provisions are expected to closely mirror the broad clean energy package known as the “GREEN Act” from the Ways and Means Committee, with some possible modifications.

“That bill, floated last fall, would revisit the terms of the 2015 law that extended and phased down the renewables production tax credit and investment tax credit (ITC). “Additionally, it would expand the ITC to include energy storage projects — a top priority for the clean energy sector and its congressional allies — according to a summary.

“The measure would revive and overhaul lapsed energy efficiency credits, while also expanding the electric vehicle tax credit by raising the per-manufacturer cap.

It would create a new credit for purchasing used EVs as well as a new incentive for “heavy zero emission vehicles.”

“The discussion draft unveiled in November would extend for one year the so-called 45Q credit for carbon capture and sequestration facilities that begin construction before the end of 2024, while also extending master limited partnership tax treatment from fossil fuels to renewables — a long-sought bipartisan goal of House and Senate lawmakers that has failed to advance.”

[RFS – Efforts to Prompt the EPA to Move on Backlogged Registrations](#)

Last week, Senators Thune and Shaheen introduced a bill that would require the EPA to act on backlogged registrations for already approved pathways. This measure would also affect the backlogged biogas to electricity pathway.

E&E News PM reporter Mark Heller published on June 18, “Senator John Thune introduced legislation to speed EPA’s approval of certain feedstocks for biofuel, addressing a long-simmering complaint from the renewable fuel industry.

“Thune (R-SD) proposed deadlines for the environmental agency to decide on so-called pathway applications that have already been waiting at least 180 days. Companies make the applications to introduce new raw materials into the renewable fuel standard.

“The bill, S. 3986, introduced yesterday would require EPA to act within 90 days on registration applications that have been waiting at least 180 days and within 180 days on any completed pathways petitions that have already been waiting that long.

“Thune's legislation, which he introduced with Senator Jeanne Shaheen (D-NH), addresses two steps in the process for cellulosic biofuels: making the feedstock part of the RFS, then considering a company's application to register it for use.

“Both parts of the process have struggled with bureaucratic delays at EPA, which has blamed the number and complexity of applications.

“In a news release, Thune's office cited corn kernel fibers, which EPA approved for a pathway in 2014 but for which companies are still waiting to hear on registration applications.

"Finally advancing proven fuels like ethanol derived from corn fiber technology will permit ethanol producers to produce a higher-value fuel with even lower lifecycle greenhouse gas emissions, as well as enable them to utilize at scale the technology and facility investments they have already made," Thune said in a news release.

“Biofuel groups praised the bill. The pro-ethanol group Growth Energy said in a statement that it would "help clear the deck on long-overdue approvals and jumpstart growth at a time when revitalizing rural communities has never been more important."

[RFS – What’s Next After 2022](#)

Last week, Senator Chuck Grassley of Iowa discussed his thoughts on what may happen to the RFS post 2022.

Marc Heller of [E&E Daily](#) wrote on June 17, “If the politics around ethanol seem charged today, just wait two years — that's when Congress may really step into the fray.

“After 2022, the biofuel volume mandates Congress wrote into the renewable fuel standard expire, and EPA decides on its own how much of the crop-based fuels as well as other similar substances should be mixed into the nation's fuel supply.

“At this point, a legislative revamp of the program may just come to life, Senator Chuck Grassley (R-IA) told reporters yesterday.

“Grassley, the leading biofuel advocate in Congress, isn't looking to change the RFS, which is part of the Clean Air Act.

“But with authority over the legally contentious program landing more squarely at EPA, he told agriculture reporters in a conference call, Congress may be forced to consider changes to the law, igniting a new battle.

"It could be by 2022, we have to open it up whether we want to or not," said Grassley, whose state is the nation's leader in biofuel production.

“Petroleum-state lawmakers and industry groups have pushed for years to repeal or revamp the program, removing or reducing the amount of corn-based ethanol required to be blended into gasoline.

“The RFS requires 15 billion gallons a year of conventional ethanol, in addition to volumes of biodiesel and cellulosic ethanol, a level EPA has maintained in regulations but chipped away at in practice through hardship exemptions for small refineries.

No common ground

“Efforts at compromise have gone nowhere in Congress, due to heavy lobbying by both sides. Grassley said senators supporting the oil industry approached him two or three years ago making a case for compromise, which he turned down.

“I've kind of shied away from it,” he told reporters, saying he figured opening up the law would be “very harmful” to ethanol. “I hope in 2022 I don't regret that, because we'll be under more pressure at that particular time,” he added.

“Lawmakers on the other side of the issue have proposed a variety of ideas, none of which has advanced.

“Senators Pat Toomey (R-PA) and Dianne Feinstein (D-CA) introduced S. 2298 last year to repeal the part of the program that requires conventional ethanol, typically made from corn.

“Representative Peter Welch (D-VT), citing ethanol damage to his chain saw, proposed H.R. 5113, which calls for tighter limits on how much may be mandated. And Representatives John Shimkus (R-IL) and Bill Flores (R-TX) introduced H.R. 4690 last year. It aims to gradually phase out the mandate and replace it with a national octane standard that would encourage production of ethanol as an octane booster. That effort hasn't gained any additional co-sponsors.

“Some petroleum industry groups want Congress to step in sooner rather than later.

“The RFS program is unsustainable and desperately needs to be reformed by Congress,” Geoff Moody, vice president of government relations at the American Fuel and Petrochemical Manufacturers, said in a statement.

“That will become clear, he said, as EPA's takeover of the program looms and industry realities diverge from the expectations of lawmakers who last updated the RFS in 2007.

“Congress should step in now and begin a much needed reform and phaseout of the program,” Moody said.

“Other industry sources told E&E News that legislative efforts have fizzled for several reasons, including the unwillingness of Grassley and other biofuel advocates to compromise.

“Any ethanol-related bill would also pull Republican senators into a fight against one another, because the issue inflames regional conflicts.

“President Trump, the Republicans' standard bearer, has sided with the biofuel industry in public comments, but the administration's actions have sent mixed signals — promoting higher-ethanol fuels but allowing small refineries a way out of the requirements through hardship exemptions.

“Senate Environment and Public Works Chairman John Barrasso (R-WY) is one of the RFS's consistent critics, and the Toomey-Feinstein bill was referred to his committee. But he may not be looking for a legislative solution.

“Chairman Barrasso believes the RFS is broken and that EPA should use its authority — now and in the future — to protect American workers, consumers, and the environment from the punishing effects of the program,” a spokeswoman said in a statement.

‘No way anything legislative can happen’

“Regulatory fights are closer at hand.

“Grassley told reporters he's worried about EPA's consideration of some refiners' requests for retroactive waivers going back further in the program, which would provide a way around a federal circuit court's ruling in January that the agency can't grant new exemptions.

“Forecasting the legislative landscape is nearly impossible for economic and political reasons, said a lobbyist for a major petroleum refiner who sees fuel-use trends undercutting the RFS's initial goals over time.

“Among other changes, he said, renewable diesel appears to be growing while domestic ethanol is being supplanted by imports, in part to meet the RFS required volumes.

“Fluctuations in the price of renewable fuel credits that companies exchange to make the program work — called renewable identification numbers — also shape the debate at any time, and those prices have been relatively high in recent months, pinching refiners.

“The RFS has done all it can for ethanol,” the lobbyist said, adding that market conditions and politics between now and then will determine whether Congress gives the law a fresh look. “I think in the near term, there's no way anything legislative can happen.”

Appropriations – House Sets Mark Up Schedule

The following story contains an update on FY 2021 Appropriations. The ABC is pushing for funding for EPA in the Interior and Environment Appropriations Bill.

On June 19, George Cahlink of [Greenwire](#) reported, “House appropriators have set an ambitious schedule for unveiling and marking up the fiscal 2021 energy and environment spending bills during the first full week of July.

“The House Appropriations subcommittees on Energy-Water and Interior-EPA will both mark up their versions of the fiscal 2021 spending bills on July 7, ahead of a full committee markup of both on July 10, according to a "dear colleague" letter sent out this morning by Appropriations Chairwoman Nita Lowey (D-N.Y.).

“House appropriators previously announced plans for marking up all 12 spending bills over the first two weeks of July with a goal of having most of them pass the full House before the August recess. The letter gives the dates of markups and the order they'll move through committee.

“The subcommittee schedule for the other 10 bills calls for:

- The State-Foreign Operations, Military Construction-Veterans Affairs and Agriculture bills to be marked up on July 6.
- The Energy-Water, Interior-EPA, Homeland Security, Labor-Health and Human Services-Education, and Legislative Branch bills to be marked up on July 7.
- The Commerce-Justice-Science, Defense, Transportation-Housing and Urban Development, and Financial Services-General Government bills to be marked up on July 8.

“Full committee action would begin on July 9 with State-Foreign Operations, Military Construction-Veterans Affairs and Agriculture bills set to advance.

“The panel is also expected to approve the 302(b) allocations, the topline spending for each of the 12 bills, at that session too.

“Bills not headed for a full committee markup the first full week of July are due to be taken up the following week, although Lowey did not specify dates, saying only the full panel would work on the bills from July 13-16.

“Lowey said all committee members would be required to wear masks at the markups, and lawmakers who are unable to attend the sessions in person would be able to participate and vote remotely.

“The full committee is expected to utilize one of the largest committee rooms on Capitol Hill — the Ways and Means hearing room in the Longworth House Office Building — to promote social distance.

“After spending much of the spring away from Washington because of the pandemic, the House is eager to move ahead on the bills, which originally it had hoped to have finished by July 4.

“Senate appropriators, meanwhile, have delayed plans for markups next week amid a partisan dispute over what amendments may be offered.”

Other