

News from Washington: October 21-24

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Democrats Staying Positive On USMCA

House Democrats are rejecting the idea that they're running out of time to ratify the new North American trade pact this year. After an hourlong meeting with U.S. Trade Representative Robert Lighthizer on Wednesday, Ways and Means Chairman Richard Neal said, "I actually feel pretty good about this." Key Republicans have warned that the window is closing for a vote in 2019 and said they're losing faith in the process.

Neal, who's leading the caucus' nine-member USMCA working group, said negotiators have resolved "a lot" of issues. Staff-level meetings will continue this week, and the working group plans to meet with Lighthizer again early next week.

California Rep. Jimmy Gomez, another working group member, said the negotiations have entered the most difficult phase, and Democrats are working to "try to block out as much noise as possible."

"We're still making progress, but anything can knock these negotiations off track," Gomez said.

Tariffs on EU Farm Goods Take Effect

U.S. duties on a portion of \$7.5 billion in European products kicked in on October 18, a retaliatory move approved by the World Trade Organization over EU nations' subsidies for aerospace company Airbus. The bloc's outgoing trade chief, Cecilia Malmström, [said in a statement](#) that the move "leaves us no alternative but to follow through in due course with our own tariffs" stemming from another ongoing WTO case regarding U.S. support for Boeing.

Certain dairy goods, wines, pork products and spirits made in Europe now face duties. In a letter to Lighthizer, a coalition of international alcohol industry groups called on the U.S. to take down the tariffs, warning that "there are no winners in a trade war."

"Our industries are collateral damage in trade disputes that have nothing to do with the beverage alcohol sector," the groups said in a statement, noting that U.S. whiskey exports to Europe have fallen by about 21 percent since Brussels slapped a 25 percent tariff on the alcohol in June 2018.

France is also pressing the Trump administration to negotiate a settlement. "There is clearly a risk of escalation, and that's exactly what we want to avoid," French Finance and Economy Minister Bruno Le Maire told reporters at the annual World Bank and International Monetary Fund meetings last week in Washington.

Le Maire said the U.S. hasn't yet initiated duties on the full list of \$7.5 billion in products.

Ag Groups Challenge EPA Waivers in Court

A coalition of biofuel producers and farmers filed a legal challenge to the agency's blending waivers for 2018, the latest twist in the power struggle between the agriculture and oil industries over the Renewable Fuel Standard. Ethanol groups claim the Trump administration has abused its ability to exempt oil refiners from blending requirements, and the White House has struggled to reach a compromise between the two industries that are central to President Donald Trump's political base.

The petitioners include the National Farmers Union, Renewable Fuels Association, National Corn Growers Association, National Biodiesel Board, the American Coalition for Ethanol and Growth Energy.

“The explosion of so-called hardship exemptions granted to dozens of refineries, including oil giants like Exxon and Chevron, goes far beyond anything permitted by law,” Growth Energy CEO Emily Skor said in a statement. “We are going to hold the EPA accountable under the law for the damage it has done to rural communities, biofuel producers, and farm families.”

Biofuel producers have struggled to gain traction in court, partly because the EPA doesn't publicize specific waiver decisions — just the aggregate data. But the agency included documents related to the August decision to grant 31 blending waivers in a separate court case, which opened the door for the ag groups' legal action.

The Small Refiners Association called the lawsuit “frivolous” and “old news” in a statement. “Another lawsuit by the ethanol industry is not surprising,” said LeAnn Johnson Koch, a representative for the group. “They want their cake and everyone else's.”

Trump has recently talked up how the EPA is helping oil refiners by handing out waivers, including during an event on Wednesday in Pittsburgh with natural gas producers. He said the agency is “right now working on small refineries, getting them everything they need,” according to Bloomberg.

Grassley Losing Hope for USMCA Passage This Year

Senate Finance Chairman Chuck Grassley said he's “very worried for the first time” that Congress won't sign off on the new NAFTA deal by the end of the year.

The Iowa Republican has long maintained an upbeat view of the negotiations between the Trump administration and House Democrats, who are working on potential changes to the deal. But as the talks stretch into their fourth month — and with just 22 legislative days remaining in 2019 — Grassley said he's losing faith.

He also cautioned U.S. Trade Representative Robert Lighthizer against caving to Democrats, suggesting that changing the trade deal's labor, environmental, enforcement and prescription drug provisions too much could jeopardize Republican support. The trade chief will meet with House Democrats this morning.

Ag Spending Bill Hits the Senate Floor

Senators on Tuesday voted to launch debate on the Agriculture-FDA appropriations bill and three other measures, months after the House passed its own version of the legislation in June. But the likelihood of passing a final version negotiated by both chambers before Nov. 21, when a continuing resolution expires, is highly unlikely.

Top House and Senate appropriators aren't ruling out another stopgap measure that would extend funding into 2020. Negotiators reached a broad budget deal over the summer that set topline defense and domestic spending levels, but they haven't decided how to break up the funding among the 12 annual appropriations bills. “That's really the key,” House Appropriations Chairwoman Nita Lowey (D-N.Y.) said this week. “We've been going back and forth, but no resolution.”

The House-passed Agriculture spending bill includes \$24.3 billion in discretionary funding, while the Senate version totals \$23.1 billion.

WOTUS Repeal, And Lawsuits, Land

The public comment period closed Monday night for the EPA's final WOTUS repeal, teeing up the rule to be published in the Federal Register. Posting the repeal is seen as the starting gun for Democratic-led states and environmental advocates to file a wave of lawsuits against the Trump administration's effort. For example, Food & Water Action, in a fundraising pitch to supporters on Monday, said it's "ready to sue the EPA in court" if the regulatory rollback is finalized.

The repeal overturns the Obama-era WOTUS rule that cemented Clean Water Act protections for streams and wetlands, which drew criticism from ag and other industries that claimed it was an overreach. The Trump administration is also working on a follow-up rule that would replace the regulation with a new, narrower definition of the waterways that warrant federal protection.

EPA Chief Tamps Down the Latest Biofuels Backlash

Wheeler on Monday attempted to reassure furious biofuel groups, who have run out of patience with the EPA, that they'll get their full allotment of ethanol blending next year. Corn growers, ethanol producers and lawmakers have complained that the blending rule released last week was a "bait and switch" rather than a real fix to their demand problems created by the agency's heavy use of blending exemptions for oil refiners.

But Wheeler claims it will all work out. "I think a lot of people who had a knee jerk reaction, [the rule] wasn't exactly what they were expecting," he said on Monday during an interview with Nexstar Media Group. "If they look at it and they read it carefully, they will see it will get us to the 15 billion gallons of ethanol that the president promised and that's in the statute."

President Donald Trump also touted the new proposal during a Cabinet meeting on Monday, claiming it was "fully approved" and that he spoke with Iowa Sens. Chuck Grassley and Joni Ernst about it. (Grassley's office said the senator had not spoken with Trump or Wheeler since the new rule's release last week. Ernst spoke with Wheeler on Thursday, but her office did not respond to a question about whether she'd spoken to Trump.)

During the Cabinet meeting, Perdue suggested that the ag industry was simply confused about the details of the new blending rule. "Once they fully understand what you've done here, they'll be fine as they see it implemented," Perdue said to Trump.

USDA'S Internal Watchdog Launches Climate Probe

House and Senate Democrats angered by USDA's handling of climate-related science are getting their wish: The department's inspector general confirmed on Monday that the office is looking into whether changes in policy have affected climate science and communication at the sprawling agency.

The move comes in response to letters from Senate Agriculture ranking member Debbie Stabenow (D-Mich.), Mazie Hirono (D-Hawaii), and 17 other senators as well as Rep. Chellie Pingree (D-Maine) last summer. Lawmakers had asked the IG to look into "potential instances of suppression and alteration of scientific reports, documents, or communications" produced by USDA. Some Democrats were particularly concerned about a POLITICO investigation in June, which revealed USDA officials had tried to dissuade research partners at an outside university

from disseminating their findings about nutrition losses in rice stemming from elevated CO2 levels.

“Our objective is to determine whether changes in policy and/or processed impacted the publication of scientific reports, documents, and/or communication of USDA research results during Fiscal Years 2017-2019,” Phyllis Fong, USDA’s IG, wrote in a letter to Pingree on Monday. “In addition, we will analyze the impact of any changes in resources, and staff experience levels on the publication of research results during this period.”

Fong also said there are broader concerns that USDA’s relocation of the Economic Research Service and the National Institute of Food and Agriculture were “used as a means to suppress research on controversial topics such as climate change,” a dynamic that POLITICO also reported on last spring. The letter noted that IG staff recently met with congressional staff to discuss “our planned approach to accomplish an inspection regarding these matters.”

Lawmakers late Monday lauded the news. “Across the government, inspectors general are playing a crucial role in holding this administration accountable, and I want to thank Inspector General Fong for initiating this important investigation,” Hirono said in a statement to POLITICO.

Pingree also thanked Fong. “From droughts to floods, farmers are under threat across the country because of increasingly unpredictable weather events,” she said. “The allegations that the Trump Administration has suppressed USDA research which could help us mitigate the impacts of climate change raise very serious concerns.”

FDA Looks to Next Chapter of Food Safety

The agency this week did something it hasn’t done in a while: It called together foodmakers, retailers, consumer advocates and consultants for a high-level, big picture meeting on the future of food safety.

The at-capacity confab held in Rockville, Md., on Monday is part of a broader initiative underway at the FDA called “a New Era of Smarter Food Safety.” The details are still TBD, but agency leaders plan to release a “blueprint” with “critical steps to protect public health and keep pace with the ever-changing global food supply chain” in early 2020.

“At the end of the day, what we want to do is bend the foodborne illness curve because as you know it’s been flat,” Frank Yiannas, the FDA’s deputy commissioner for Food Policy and Response, told POLITICO on the sidelines of the event.

For the better part of the last decade, much of the FDA’s food safety focus has been through the lens of implementing the Food Safety Modernization Act, a sweeping 2011 law that Congress put together after a series of foodborne illness outbreaks, from spinach to peanut butter. The meeting this week was about what’s next.

FDA is now seeking input on four main topics: Tech-enabled traceability and foodborne outbreak response; smarter tools and approaches for prevention; new business models and retail modernization; and food safety culture. There’s a public [docket for comments](#), which is open until Nov. 20.

But what, exactly, is FDA cooking up? There’s plenty of chatter within the food sector about what the agency envisions — especially in a decidedly deregulatory administration. Yiannas

acknowledged that some are “a little nervous” about the agency’s food safety initiative and where it might be headed. “I get asked this question a lot,” he said. “We’re not necessarily looking for a lot of new authorities to do what we have to do.”

Yiannas mentioned the agency is still working on implementing Section 204 of FSMA, a long-delayed piece that calls on the FDA to designate a list of “high-risk” foods and come up with additional traceability requirements for them. After a drawn out lawsuit from the Center for Food Safety, the agency last summer agreed to release a proposed rule by September 2020 and a final rule by November 2022.

“We’re going to meet our legal mandate,” Yiannas said, adding: “But we know that there’s people rumbling that say ‘well maybe there needs to be more comprehensive traceability rule.’”

FDA To Give 6 Months Leeway on Nutrition Facts Update

The agency said this week it’s going to give food manufacturers a bit more time to fully comply with the long-awaited Nutrition Facts update that’s supposed to formally take effect in January (though you can find plenty of updated labels at the grocery store already).

“The FDA has heard from several manufacturers and groups that more time may be needed to meet all of the requirements,” the agency wrote in an [updated Q&A](#) on its website. “Therefore, during the first 6 months following the January 1, 2020, compliance date, FDA plans to work cooperatively with manufacturers to meet the new Nutrition Facts label requirements and will not focus on enforcement actions regarding these requirements during that time.”

The Food & Beverage Issue Alliance, a coalition of food industry trade groups that includes the American Frozen Food Institute, the Corn Refiners Association and the Food Marketing Institute, had recently asked for enforcement discretion. The American Bakers Association, for example, said this week that about 20 to 30 percent of the products its members make would “need additional time for the substantial label changes.”

Robb MacKie, president and CEO of ABA, said Wednesday he’s “pleased our members will be given more flexibility in order to meet the new labeling requirements.”

It’s worth noting that the compliance deadline remains Jan. 1, 2020. The agency will still expect manufacturers to work toward meeting all the requirements and enforcement actions won’t be completely off the table for the first six months.

Trump could nominate Texas cancer researcher Stephen Hahn to be the next FDA commissioner within days, pending a background check. The administration needs to name a nominee by the end of the month.

Spring Rains Stymie Organic Production

Organic corn and soybean production is expected to decline by 12 percent and 14 percent compared with 2018, respectively, [according to a report from market analysis firm Mercaris](#). That’s because of the heavy rain and flooding during the spring that swamped farmlands and caused record planting delays.

“Despite overall industry growth remaining positive this year, the production outlook for many key organic crops is expected to be down for 2019-20 following challenging growing conditions,” Mercaris Economics Director Ryan Koory said in a statement.

The drop in supply means that imports of organic products are likely to increase over the next year, Koory said. With organic livestock production expected to rise by about 1 percent this year, the demand for organic feed is holding up.

The firm estimates that organic wheat production will jump 7 percent from last year because of major growth in western states, despite a 19 percent decline within the corn belt.