This Week In Congress


**Senate** – The Senate passed H.R. 4378, a continuing resolution to fund the federal government through November 21. The Senate approved S.J. Res. 54, and S. Res. 325, a resolution expressing the sense of the Senate that the whistleblower complaint of August 12, 2019 should be transmitted to the House and Senate Intelligence Committees. The Senate confirmed the nomination of Eugene Scalia to be Secretary of Labor and passed S. 1340, “The Ebola Eradication Act.”

Next Week In Congress

**House** – The House will be in recess.

**Senate** – The Senate will be in recess.

**TAX**

Possible Thawing on Senate Action on SECURE Act Coming, or Possibly Not

**Key Points:**
- Senator Pat Toomey (R-PA) requested Senate Majority Leader Mitch McConnell (R-KY) to “hotline” the SECURE ACT, suggesting there could be more efforts in October on the moving bill.

On Wednesday evening, Senator Toomey (R-PA) requested Senate Majority Leader McConnell (R-KY) “hotline” the “Setting Every Community Up for Retirement Enhancement Act of 2019” (SECURE Act).

The SECURE Act (H.R. 1994), which passed in the House back in May, modifies the requirements for employer-provided retirement plans regarding multiple employer plans, required minimum distributions, minimum funding standards, lifetime income options, minimum funding standards for community newspaper plans, and the eligibility rules for certain long-term, part-time employees.
Leader McConnell entered a unanimous consent request for a limited time agreement and a limited list of amendments related to H.R. 1994. The amendments include Senator Pat Toomey’s (R-PA) qualified improvement property (QIP) amendment and Senator Mike Lee’s (R-UT) newspaper pension amendment.

By all appearances, Senator Toomey looks to be attempting to jumpstart the stalled legislative process for the SECURE Act in the Senate, potentially allowing other relevant and less controversial amendments like a technical correction for QIP to be included.

Whether he will be successful remains to be seen. The Senate could return to the issue in late October after they return for the two-week recess.

Senator (and Presidential Candidate) Bernie Sanders Proposes an “Extreme Wealth Tax”

Key Points:
- Senator Sanders (I-VT) proposed a 1 percent tax for households with assets above $32 million, rising to 8 percent for households with assets above $10 billion.
- Revenues from the tax are expected to raise $4.35 trillion over the next decade, according to the campaign estimates.
- A 40 percent expatriation or exit levy (for citizens leaving the U.S.) would be applied on the net value of assets of less than $1 billion and a 60 percent exit levy on assets above $1 billion.

On Tuesday, Democratic Presidential Candidate and Senator Bernie Sanders (I-VT) released his Extreme Wealth Tax proposal aimed at the top 0.1 percent of U.S. households. His proposal would apply a 1 percent levy tax to households with a net worth that exceeds $32 million. The tax percentage would increase to 2 percent for households worth $50 million to $250 million, 3 percent from $250 million to $500 million, 4 percent on $500 million to $1 billion, and would cap at 8 percent on wealth above $10 billion. For Americans looking to leave the U.S. the tax proposes 40 percent exit levy would be added on the net value of assets of less than $1 billion and a 60 percent exit levy on assets above $1 billion. To ensure there is no tax evasion, the plan also calls for the creation of a “national wealth registry” and a “significant additional third-party reporting requirement.”

Senator Sanders expects the tax revenue would fund his proposed Medicare for All, universal child-care, and housing programs and believes the tax would reduce the wealthiest Americans fortunes in half over fifteen years.

For more information about tax issues you may email or call Christopher Hatcher at 202-659-8201. Victoria Shoots contributed to this section.

FINANCIAL SERVICES


Key Points:
- The SEC approved a final rule creating a new regulatory regime for bringing ETFs to the market.
- The Commission also adopted a final rule to extend the testing-the-waters provision to all issuers.
- The SEC proposed amendments to Rule 15c2-11 relating to requirements on broker-dealers before they can publish quotations for securities in the over-the-counter market.

On September 26, the Securities and Exchange Commission (SEC) approved a final rule and
**exemptive order** regarding exchange-traded funds (ETF). As described in an SEC press release, the final rule “will permit ETFs that satisfy certain conditions to operate within the scope of the Investment Company Act of 1940 (the “Act”), and come directly to market without the cost and delay of obtaining an exemptive order.” The SEC’s actions are intended to replace individualized exemptive orders with a single rule.

In the press release, SEC Chairman Jay Clayton stated:

> Since ETFs were first developed over 27 years ago, they have provided investors with a number of benefits, including access to a wide array of investment strategies, in many cases at a low cost. As the ETF industry continues to grow in size and importance, particularly to Main Street investors, it is important to have a consistent, transparent, and efficient regulatory framework that eliminates regulatory hurdles while maintaining appropriate investor protections.

The final rule will be effective 60 days after publication in the Federal Register.

The SEC also adopted a final rule to extend the “test-the-waters” provision created by the JOBS Act to all issuers. Currently, this tool is only available to emerging growth companies (EGCs). An SEC press release stated that “[u]nder the new rule, all issuers will be allowed to gauge market interest in a possible initial public offering or other registered securities offering through discussions with certain institutional investors prior to, or following, the filing of a registration statement.” The final rule will be effective 60 days after publication in the Federal Register.

Additionally, the SEC issued a proposed rule setting out certain requirements with which a broker-dealer must comply with before it can publish quotations for securities in the over-the-counter (OTC) market. The proposed rule will be subject to a 60 day comment period.

**House Financial Services Holds SEC Oversight Hearing**

**Key Points:**
- The Committee received testimony from all five members of the SEC for the first time since 2007.
- Topics discussed in the hearing included enforcement, Regulation Best Interest, insider trading, digital assets, ESG disclosures, the proxy process, and money market funds.

On September 24, the House Financial Services Committee held a hearing entitled “Oversight of the Securities and Exchange Commission: Wall Street’s Cop on the Beat.” The Committee received testimony from SEC Chairman Jay Clayton and Commissioners Robert Jackson Jr., Hester Peirce, Elad Roisman, and Allison Herren Lee. Chairwoman Maxine Waters (D-CA) stated that this hearing was the first time since 2007 that all five SEC commissioners testified before the Committee. She asserted that the SEC is not fulfilling its mission as Wall Street’s cop, as is exemplified by the rolling back of the Volcker Rule, while rules to implement other important reforms on issues like executive compensation, which Congress enacted in 2010 as part of the Dodd-Frank Act, remain incomplete. She stated that the SEC’s Regulation Best Interest (BI) fails to protect retirement savers from “unscrupulous” financial advisers. She expressed concern that corporate insiders are taking advantage of current loopholes in securities laws. She stated that executives are selling and trading securities of their own companies during the 8-K trading gap, a four day gap after a major corporate event before companies are obligated to report the event to the public. She expressed concern
with Facebook’s plan to create a digital currency system “Libra” and digital wallet “Calibra.” She called for Facebook to halt its plans until Congress and regulators can ensure that it is appropriately regulated.

Ranking Member Patrick McHenry (R-NC) reiterated the three-part mission of the SEC: (1) protect investors; (2) maintain fair, orderly, and efficient markets; and (3) facilitate capital formation. He stated that without capital formation, the first two pillars could not exist. He emphasized the need to focus on policies that strengthen markets, making them more attractive and competitive, instead of overregulating them. For example, he asserted that the impact of requiring mandatory disclosures on companies’ increases compliance costs and influences them to remain private, which then decreases investors’ options in the public market. He expressed support for capital formation reforms, which he stated come at a crucial time, given that there are half as many publicly traded companies today than 20 years ago, which he suggested is troubling for retirement savings, investors, and overall market competitiveness.

Several Committee Members asked questions regarding digital assets, particularly Libra. Waters asked what the SEC is doing to examine and respond to the risks associated with Libra. Clayton said that there is a group at the SEC dedicated to studying digital assets, both to examine the potential benefits to efficiency but also the risks. He said that initial coin offerings (ICOs) and the value lost with these transactions illustrate the dangers of unregulated transactions. He noted that the Division of Corporation Finance and Division of Enforcement worked to ensure that if securities are being sold the rules must followed. He noted that digital assets are also being examined at the Financial Stability Oversight Council (FSOC). McHenry asked whether Clayton believed that Libra is a security. Clayton said that he could not make that determination at this point in time. He noted that the SEC has to see how it would function in order to make a determination. He stated that if one is raising money for projects with the prospect of return, then it seems like it could be a security.

Democrats, including Representatives Gregory Meeks (D-NY), Sean Casten (D-IL), Juan Vargas (D-CA), and Katie Porter (D-CA), urged the SEC to require public companies to offer additional disclosures regarding environmental, social, and governance (ESG) matters, such as climate change and diversity. Porter and Representative Ayanna Pressley (D-MA) discouraged the SEC from raising the thresholds for submitting and resubmitting shareholder proposals. Representatives Andy Barr (R-KY), French Hill (R-AR) and Bill Huizenga (R-MI) expressed opposition to imposing additional mandatory disclosure requirements on public companies, suggesting that they increase costs and discourage companies from going public. Barr said that ancillary goals are predicated on businesses delivering products and value to shareholders. He asked whether the goal of SEC disclosures should be to provide material information to the public. Clayton stated that materiality needs to remain the touchstone of the markets and the definition of materiality may change over time.

Huizenga said in 2017 he sent a letter to the SEC on their regulation of money market funds (MMFs). He said Clayton responded that the MMF reforms were not fully implemented until October 2016 and making major reforms would be disruptive to the short-term funding markets. He asked if major changes would still be needlessly disruptive. Clayton said SEC should examine whether the short-term
funding markets have been impaired and then assess what to do next.

### House Financial Services Panel Holds Hearing on Financial Stability

**Key Point:**
- The Subcommittee examined risks to the financial system including disruptions in the short-term funding markets, the LIBOR/SOFR transition, cybersecurity, leveraged lending, and climate change.

On September 25, the House Financial Services Committee’s Subcommittee on Consumer Protection and Financial Institutions held a hearing entitled “Promoting Financial Stability: Assessing Threats to the U.S. Financial System.” The Committee received testimony from Federal Reserve Board Governor Lael Brainard and Office of Financial Research (OFR) Director Dino Falaschetti. Risks discussed in the hearing included disruptions in the short-term funding markets, the LIBOR/SOFR transition, cybersecurity, leveraged lending, and climate change.

Chairman Gregory Meeks (D-NY) noted the U.S. economy is slowing, global trade is in turmoil, the Chinese economy is stalling, some European economies are slowing, there is unrest in parts of Latin America, and oil markets are “under attack.” He expressed concern that the new regulatory system will soon face its first major test. He questioned whether the Administration, the Financial Stability Oversight Council (FSOC) and OFR are taking potential risks seriously enough, including equity valuations above fundamentals, seizures in short-term funding markets, leveraged lending, income inequality, banking industry consolidation, and cyber risk. Meeks urged FSOC and OFR to put adequate resources into mapping and quantifying emerging risks.

Ranking Member Blaine Luetkemeyer (R-MO) said all signs point to a healthy U.S. financial system. He noted that Federal Reserve Vice Chairman Quarles has said risks are not above normal, due to high levels of capital. He stressed the need to ease overly burdensome regulations in order to free up capital. He said when the largest bank CEOs testified before the Committee many identified cybersecurity as the largest risk to the financial system. He emphasized the need for a comprehensive solution to data security. He criticized the Committee for not holding any data security hearings this year. Luetkemeyer raised concerns with the Financial Accounting Standards Board’s (FASB) Current Expected Credit Loss (CECL) standard. He said there has not been an economic impact study, despite concerns that CECL could exacerbate a downturn. He said Congress should not allow short-sighted policies to prevent banks from lending.

Full Committee Chairwoman Maxine Waters (D-CA) said under the Trump Administration financial regulators have advanced deregulatory efforts, such as the FSOC’s proposal to make it harder to designate non-bank systemically important financial institutions (SIFIs). She pointed to a letter opposing this proposal from several former regulators. She stated that S.2155 enacted last year was a “big win” for the largest banks, suggesting that it provided them with deregulation. She asserted that regulators are doing the bidding of the biggest banks. She urged regulators to halt their deregulatory efforts, stating that they will be opposed by the Committee. She stated that the Committee could consider legislation to block deregulation.
House Passes the SAFE Banking Act

*Key Point:*
- The House passed a bill to allow banking and insurance services to be provided to state-licensed cannabis businesses.

On September 25, the House passed the Secure and Fair Enforcement (SAFE) Banking Act (H.R. 1595), by a vote of 321-103. The SAFE Banking Act would allow banks, credit unions, and insurance companies to provide banking and insurance services to state-licensed cannabis-related businesses (CRB) under a safe harbor.

The bill was favorably reported by the House Financial Services Committee on March 28 by a vote of 45-15.

House Financial Services Committee Chairwoman Maxine Waters (D-CA) issued a press release applauding the passage of H.R. 1595, in which she stated:

> Cannabis-related businesses are locked out of the banking system, and cannot maintain checking accounts, process payroll obligations or pay taxes. The Financial Services Committee heard testimony in February that these cash-only businesses and their employees have become targets for violent criminals.

The SAFE Banking Act addresses this serious problem by providing a safe harbor to financial institutions that choose to serve state-regulated cannabis businesses. The bill would also help others, like plumbers or electricians, who provide services to cannabis businesses, but face similar challenges with access to banking services. With the passage of this bill, all of these businesses will gain access to traditional financial services that most businesses take for granted.

Senate Banking Committee Chairman Mike Crapo (R-ID) has indicated that he intends to take up similar legislation. The White House has not released a statement of administration policy on the bill.

House and Senate Committees Hold Hearings on Faster Payments

*Key Point:*
- The hearings focused on the Federal Reserve’s plans to create a real-time payment system.

This week, House and Senate Committees held hearings on the Federal Reserve’s announcement that it intends to create a 24/7 wholesale real-time payment system called FedNow.

At a September 25, Senate Banking Committee hearing, Chairman Mike Crapo (R-ID) said that the U.S. has lagged behind other countries in the development of faster payment methods. He noted that the Federal Reserve had previously asserted that it would not expand its role in the payment system unless it determined that doing so was absolutely necessary. He said Federal Reserve Vice Chair Quarles dissented from the proposal to create FedNow and indicated the public sector should provide its own capacity only when the private sector is unable to do so and that when it comes to faster payments it is clear that the private sector does possess such a capacity. Crapo stated that some financial institutions have expressed concern over the Federal Reserve’s process and possible conflicts of interest. He stated that other financial institutions encouraged the Federal Reserve to move forward in the interest of fairness and competition. He said that he would like to learn about the consequences of the Federal Reserve having a competing system. Ranking Member Sherrod Brown (D-OH) said that corporations cannot be allowed to take over critical infrastructure,
and delaying of payments can lead to more problems for ordinary Americans. He suggested that Wall Street built its own real time payment system just to make more money from ordinary people. He said that big banks will charge more to smaller banks and credit unions, and the largest banks and tech companies are only interested in profits. He stated that the Federal Reserve is not motivated by profit and is motivated to help working families pay their bills on time.

On September 26, the House Financial Services Committee’s Task Force on Financial Technology held a hearing entitled “The Future of Real-Time Payments.” Chairman Stephen Lynch (D-MA) pointed to the innovation in the payment system, but suggested that it is dependent on old infrastructure which only allows for settlement intermittently. He noted that it can take up to three days for transfers made on a weekend to show up in a user’s account. He stated that real-time payments would reduce the need for consumers to rely on payday loans while they wait for a check to clear. Lynch said real-time payments would allow gig workers to be paid immediately after a job and allow small businesses to avoid relying on short-term borrowing to meet payroll. He suggested that there is also a risk that real-time payments could be abused by scammers and that the data collected could be a target for cyber criminals. Ranking Member French Hill (R-AR) stressed the need to ensure the U.S. remains a global leader on financial technology (FinTech), including in the payments arena. Hill said real-time payments are a gateway for future innovations. He expressed interest in what is being done by the Federal Reserve and The Clearing House. He urged Congress and the federal government to avoid taking any actions which would impede innovation in this area. Full Committee Ranking Member Patrick McHenry (R-NC) said while the U.S. spent the last few years updating from swipe cards to PIN cards, China created an “entire new world of payments.” He said real-time payments are occurring in China on a much larger scale than in the U.S. He stressed the need for the U.S. to build a real-time payment system, before China takes over this space.

Eugene Scalia Confirmed as Secretary of Labor

Key Point:

- The Senate confirmed Eugene Scalia to serve as Secretary of the Department of Labor by a vote of 53-44.

On September 27, the Senate confirmed Eugene Scalia as Secretary of the Department of Labor by a vote of 53-44. Scalia’s nomination was favorably reported by the Senate Health, Education, Labor, and Pensions (HELP) Committee earlier in the week by a vote of 12-11. Scalia is the son of former Supreme Court Justice Antonin Scalia. He currently serves as a partner at Gibson, Dunn & Crutcher.

Upcoming Hearings and Meetings

September 30

Risk-Sharing Mechanisms: The Treasury Department will hold a meeting of its Advisory Committee on Risk-Sharing Mechanisms (ACRSM).

October 2-4

Security Traders Association conference: The Security Traders Association will hold its 86th Annual Market Structure Conference in Washington, D.C. Speakers at the conference include, among others: SEC Commissioner Hester Peirce; Brett Redfearn, SEC Director of the Division of Trading and Markets; Manisha Kimmel, Senior Policy Advisor, SEC; Shelly Bohlin, COO, FINRA CAT LLC; Sarah ten
Siethoff, Associate Director, Division of Investment Management, SEC; and Tom Gira, Executive Vice President, Market Regulation and Transparency Services, FINRA.

**October 3**

**Technology Advisory Committee:** The CFTC will hold a meeting of its Technology Advisory Committee (TAC). The agenda for the meeting includes presentations and recommendations from the TAC subcommittees on Automated and Modern Trading Markets, Distributed Ledger Technology and Market Infrastructure, Virtual Currencies, and Cybersecurity.

**Combatting Elder Fraud:** The SEC will hold a roundtable on combatting elder investor fraud.

For more information about financial services issues you may email Joel Oswald or Alex Barcham.

**ENERGY & ENVIRONMENT**

**Senate Energy Committee Approves 21 Bills**

**Key Point:**
- In a September 25 business meeting, the Senate Energy and Natural Resources Committee voted to advance public lands, water management, and energy legislation.

On Wednesday, the Senate Energy and Natural Resources Committee held a markup of 22 bills and approved:
- The “Clean Water for Rural Communities Act” (S. 334), which would “authorize the construction of the Musselshell-Judith Rural Water System and study of the Dry-Redwater Regional Water Authority System in the States of Montana and North Dakota…”;
- The “Timely Review of Infrastructure Act” (S. 607), which would “amend the Department of Energy Organization Act to address insufficient compensation of employees and other personnel of the Federal Energy Regulatory Commission…”;
- The “Jackson Gulch Rehabilitation Project Modification Act” (S. 860), which would “amend the Omnibus Public Land Management Act of 2009 to modify the terms of the Jackson Gulch rehabilitation project in Colorado…”;
- The “Platte River Recovery Implementation Program Extension Act” (S. 990); which would “authorize the Secretary of the Interior to participate in the implementation of the Platte River Recovery Implementation Program First Increment Extension for threatened and endangered species in the Central and Lower Platte River Basin…”;
- The “Aquifer Recharge Flexibility Act” (S. 1570); which would “provide flexibility to allow greater aquifer recharge…”, as modified by an amendment in the nature of a substitute;
- The “Better Energy Storage Technology (BEST) Act” (S. 1602), which would “amend the United States Energy Storage Competitiveness Act of 2007 to establish a research, development, and demonstration program for grid-scale energy storage systems”, which was modified by a Joint staff amendment to the title, and a Joint staff amendment in the nature of a substitute;
- The “Bureau of Reclamation Pumped Storage Hydropower Development
Act” (S. 1751), which was modified by a “Joint staff amendment”;
- The “Marine Energy Research and Development Act of 2019” (S. 1821), which would “amend the Energy Independence and Security Act of 2007 to provide for research on, and the development and deployment of, marine energy…”, as modified by a Joint staff amendment;
- Legislation to “make available the continued use of Pick-Sloan Missouri Basin Program project use power by the Kinsey Irrigation Company and the Sidney Water Users Irrigation District…” (S. 1882) as modified by an amendment in the nature of a substitute;
- The “Western Area Power Administration Transparency Act” (S. 1931), which would “require the Administrator of the Western Area Power Administration to establish a pilot project to provide increased transparency for customers…”;
- The “Water Supply Infrastructure Rehabilitation and Utilization Act” (S. 2044), which would “amend the Omnibus Public Land Management Act of 2009 to establish an Aging Infrastructure Account, to amend the Reclamation Safety of Dams Act of 1978 to provide additional funds under that Act, to establish a review of flood control rule curves pilot project within the Bureau of Reclamation…” as modified by an amendment in the nature of a substitute and a second degree amendment;
- The “Enhancing State Energy Security Planning and Emergency Preparedness Act” (S. 2094/H.R. 2114), which would “amend the Energy Policy and Conservation Act to provide Federal financial assistance to States to implement State energy security plans” as modified by a Joint staff amendment in the nature of a substitute;
- The “Enhancing Grid Security through Public-Private Partnerships Act” (S. 2095), which would “provide for certain programs and developments in the Department of Energy concerning the cybersecurity and vulnerabilities of, and physical threats to, the electric grid…”;
- The “Energy Savings and Industrial Competitiveness Act” (S. 2137), which would “promote energy savings in residential buildings and industry…”;
- The “Clean Industrial Technology (CIT) Act” (S. 2300), which would “amend the Energy Independence and Security Act of 2007 to establish a program to incentivize innovation and to enhance the industrial competitiveness of the United States by developing technologies to reduce emissions of nonpower industrial sectors…” as amended by a Joint staff amendment in the nature of a substitute;
- The “Grid Modernization Act” (S. 2332);
- The “Energy Cybersecurity Act” (S. 2333), which would “provide for enhanced energy grid security”…;
- The “21" Century Energy Workforce Act” (S. 2334) which would “require the Secretary of Energy to establish the 21st Century Energy Workforce Advisory Board…”;
- The “Smart Building Acceleration Act” (S. 2335) which would “accelerate smart building development…”; and
- The “Energy Efficient Government Technology Act” (H.R. 1420) which would “amend the Energy Independence and Security Act of 2007 to promote energy efficiency via
information and computing technologies…”

House Energy and Commerce Committee Advances Energy and PFAS Legislation

Key Points:
- On September 26, the House Environment and Climate Change Subcommittee voted on 15 bills, which will be subject to future action by the full House Energy and Commerce Committee.
- Most of the bills address PFAS contamination issues. PFAS is a chemical substance that has been used in a variety of applications including coatings for household goods such as cookware, as well as in firefighting foam.
- The Subcommittee also approved the “Nuclear Waste Policy Amendments Act of 2019” (H.R. 2699).

On Thursday, the House Energy and Commerce Committee’s Environment and Climate Change Subcommittee held a markup and voted to favorably report 15 bills to the full committee, including several that address per- and polyfluoroalkyl substances (PFAS):
- The “Alan Reinstein Ban Asbestos Now Act of 2019” (H.R. 1603);
- The “PFAS Action Act of 2019” (H.R. 535);
- The “Protect Drinking Water from PFAS Act of 2019” (H.R. 2377);
- The “Providing Financial Assistance for Safe Drinking Water Act” (H.R. 2533);
- Legislation to “require the Administrator of the Environmental Protection Agency to revise the Safer Choice Standard to provide for a Safer Choice label for pots, pans, and cooking utensils that do not contain PFAS…” (H.R. 2566);
- The “PFAS User Fee Act of 2019” (H.R. 2570);
- The “PFAS Right-To-Know Act” (H.R. 2577);
- The “PFAS Waste Incineration Ban Act of 2019” (H.R. 2591);
- The “Protecting Communities from New PFAS Act” (H.R. 2596);
- The “Toxic PFAS Control Act (H.R. 2600);
- The “Prevent Release of Toxics Emissions, Contamination, and Transfer (PROTECT) Act of 2019” (H.R. 2605);
- The “PFAS Testing Act of 2019” (H.R. 2608);
- The “PFAS Accountability Act of 2019” (H.R. 2626);
- Legislation “to direct the Administrator of the Environment Protection Agency to issue guidance on minimizing the use of firefighting foam containing PFAS…” (H.R. 2638); and

New Pipeline Safety Regulations Set for Publication on October 1

Key Points:
- The Department of Transportation and its Pipeline and Hazardous Materials Safety Administration finalized three rules addressing pipeline safety.
- The rules address gas transmission and hazardous liquid pipeline safety, as well as PHMSA’s use of emergency orders to address pipeline safety threats.
- The rules are slated for publication in the October 1 Federal Register.

On September 24, Secretary of Transportation Elaine Chao and the Pipeline and Hazardous Materials Safety Administration (PHMSA) announced the completion of three pending
final rules. As detailed in a press release, PHMSA will publish the pipeline safety regulations in the Tuesday, October 1, Federal Register. Chao declared that the rules “are significant revisions to federal pipeline safety laws and will improve the safety of our nation’s energy infrastructure”.

The rules should be available on Monday, September 30, on the Federal Register Public Inspection page.

**Safety of Gas Transmission Pipelines:**

As described by the Department’s press release, the Safety of Gas Transmission Pipelines final rule:

- “requires operators of gas transmission pipelines constructed before 1970 to determine the material strength of their lines by reconfirming the Maximum Allowable Operating Pressure (MAOP)”;
- “updates reporting and records retention standards for gas transmission pipelines.”

The Department of Transportation, in its [August 2019 Significant Rulemaking Report](https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/documents/significant regulatory action report gas transmission pipelines.pdf), stated that the rule “would amend the pipeline safety regulations to address the testing and pressure reconfirmation of certain previously untested gas transmission pipelines and certain gas transmission pipelines with inadequate records, require operators incorporate seismicity into their risk analysis and data integration, require the reporting of maximum allowable operating pressure exceedances, allow a 6-month extension of integrity management reassessment intervals with notice, and expand integrity assessments outside of high consequence areas to other populated areas.”


The NPRM covered a broader range of issues than will be included in the final rule that will be published on Tuesday. PHMSA is working on two additional rules that will include the other items incorporated in the NPRM:

- PHMSA anticipates publishing the “Pipeline Safety: Safety of Gas Transmission Pipelines, Repair Criteria, Integrity Management Improvements, Cathodic Protection, Management of Change, and Other Related Amendments” rule in December, 2019. As described in the Department of Transportation’s [August 2019 Significant Rulemaking Report](https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/documents/significant regulatory action report gas transmission pipelines.pdf), this rule “would amend the pipeline safety regulations relevant to gas transmission pipelines by adjusting the repair criteria in high consequence areas and creating new criteria for non-high consequence areas, requiring the inspection of pipelines following extreme events, requiring safety features on in-line inspection tool launchers and receivers, updating and bolstering pipeline corrosion control, codifying a management of change process, clarifying certain integrity management provisions, and strengthening integrity management assessment requirements.”
- The “Safety of Gas Gathering Pipelines” rule “would require all gas gathering pipeline operators to report incidents and annual pipeline data.” The rule would “also extend[] regulatory safety requirements to Type A gathering lines in Class 1 locations and…[would] change certain definitions related to gas gathering operation.” PHMSA is currently expected to publish this final rule in June, 2020.
Safety of Onshore Hazardous Liquid Pipelines:

The Department’s press release states that the Safety of Onshore Hazardous Liquid Pipelines final rule:
- “encourages operators to make better use of all available data to understand pipeline safety threats and extends leak detection requirements to all non-gathering hazardous liquid pipelines”; and
- “requires operators to inspect affected pipelines following an extreme weather event or natural disaster so they may address any resulting damage.”

PHMSA published an ANPRM on October 8, 2010 and published the NPRM on October 13, 2015.

Emergency Order Authority:

On October 14, 2016, PHMSA published an Interim Final Rule establishing “Enhanced Emergency Order Procedures” for pipelines. PHMSA issued the rule to implement Section 16 of the “Protecting our Infrastructure of Pipelines and Enhancing Safety (PIPES) Act of 2016” (P.L. 114-183). Section 16 of the PIPES Act authorizes the Secretary of Transportation to issue emergency orders related to pipeline safety if “an unsafe condition or practice, or a combination of unsafe conditions and practices, constitutes, or is causing an imminent hazard…” The Interim Final Rule closely tracked the language included in Section 16 of the PIPES Act in establishing the criteria, contents and appeals process for pipeline safety emergency orders.

Upcoming Hearings and Events

October 21

FERC Forum on Energy Issues: The Federal Energy Regulatory Commission (FERC) and the University of Kentucky will host the “EnVision Forum”. FERC announced the forum in a press release, stating that it “will feature panels on topics ranging from workforce impacts to the intersection of telecom and energy policies, to climate, criminal justice and water-related issues.” The forum will include representatives of “the natural gas, electric, coal, nuclear, oil and renewable energy industries as well as from the telecommunications and water industries, international and scientific communities, environmental and consumer organizations, state regulatory agencies and labor unions, investment firms, think tanks and academia.”

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

House Energy and Commerce, Education and Labor Committees Hold Hearings on Drug Pricing Plan

Key Points:
- The House Energy and Commerce Committee and House Education and Labor Committee convened hearings to discuss legislation on empowering Medicare to directly negotiate drug prices.
- The bill of particular focus was the Lower Drug Costs Now Act of 2019 (H.R. 3).
- Energy and Commerce’s Health Subcommittee Chairwoman Anna Eshoo (D-CA) committed to holding a Subcommittee markup of the legislation.

On September 25, the House Energy and Commerce Committee’s Health Subcommittee held a hearing entitled “Making Prescription Drugs More Affordable: Legislation to Negotiate a Better Deal for Americans.” On September 26, the House Committee on Education and the Workforce’s Subcommittee on Health, Employment, Labor, and Pensions held a hearing entitled “Making Health Care More Affordable: Lowering Drug Prices and Increasing Transparency.” Common topics in the hearings included: (1) Innovation; (2) International Drug Prices; (3) Patient Access; (4) Out-of-Pocket Cap; (5) Part D Redesign; and (6) Insulin.

Democrats in both committees were enthusiastic about removing the non-interference clause and allowing Medicare to directly negotiate drug prices. Energy and Commerce Chairman Frank Pallone (D-NJ) claimed that using 120 percent of Average International Market (AIM) prices as a reference for negotiations would allow U.S. consumers to pay prices more comparable to those in other countries. Democrats responded to criticisms about H.R. 3’s potential impact on innovation by arguing that a reduction in private research and development (R&D) could be offset by increasing funding for the National Institutes of Health. Education and Labor Democrats also highlighted President Donald Trump’s previous statements of support for direct negotiation as an indication of bipartisan interest in the legislation.

Republicans consistently expressed opposition to the bill, arguing it would have a deleterious impact on future innovation. Energy and Commerce Ranking Member Greg Walden (R-OR) asserted that negotiations would undermine market-driven cost controls in the Medicare Part D program and restrict consumer access to future cures. He expressed particular concern about empowering the Secretary of Health and Human Services to consider the cost-effectiveness of a drug, contending that similar considerations result in formulary restrictions in other countries. Education and Labor Ranking Member Virginia Foxx (R-VA) also cautioned against replicating the formulary management tools used by other countries to control prices, arguing that higher prices are “a small price to pay for the access our citizens have to the drugs that are developed.” Despite strong opposition to negotiation, however, many Republicans did voice support provisions in H.R. 3 that would institute an out-of-pocket cap and redesign the Part D benefit.

Witnesses at the hearings were also divided on the impact of H.R. 3, with some praising negotiation as a necessary step to constrain drug prices and others cautioning about the potential impact on pharmaceutical innovation. Supporters pointed to escalating list prices for existing brand name drugs as a market failure that negotiation is needed to solve. Opponents expressed concern that the stiff fines and potential confiscation of products would serve
as a disincentive for manufacturers to engage in R&D, particularly for sole source drugs to treat rare diseases.

In response to Republican criticisms of the process by which H.R. 3 was drafted, Subcommittee Chairwoman Anna Eshoo (D-CA) committed to maintaining regular order and holding a Subcommittee markup of the bill. There was no equivalent commitment made in the Education and Labor hearing.

Senate Finance Chairman Chuck Grassley (R-IA) continues to push for Senate consideration of his drug pricing proposal by the full Senate. In statements this week, he suggested passing legislation to control drug prices will be necessary for Republicans to maintain control of the chamber. He said, “there is a great deal of disgust with the rapidly increasing prices of drugs and every Republican up for reelection is going to have a place to land and this is the place to land.” Grassley noted he is talking with House Democrats on a possible compromise. The text of the Senate Finance Committee bill was released this week and can be viewed here.

Upcoming Hearings and Meetings

October 3-4

Medicare: The Medicare Payment Advisory Commission will hold a public meeting.

For more information about healthcare issues you may email or call Nicole Ruzinski Bertsch or George Olsen at 202-659-8201. Thomas McGrath contributed to this section.

TRADE

U.S. and Japan Sign First Stage of Trade Deal

Key Points:
- A first-stage trade agreement on market access and an executive agreement on digital trade were signed on Wednesday.
- Auto tariffs were not mentioned during the signing ceremony or in the fact sheet released by USTR, but both sides pledged to honor the spirit of the agreement.

On Wednesday in New York City, President Trump and Japanese Prime Minister Shinzo Abe signed a first-stage trade agreement on market access and an executive agreement on digital trade. At the signing, President Trump called the deal “[the] first stage of our phenomenal new trade agreement” with Tokyo. Japan, he said, will “open new markets to approximately $7 billion in American agriculture products.” Japanese tariffs will be “significantly lower or eliminated entirely” for U.S. beef, pork, wheat, cheese, corn, wine “and so much more,” he added.

According to a fact sheet on the agreement released by the Office of the U.S. Trade Representative (USTR), once implemented:
- over 90 percent of U.S. food and agricultural products imported into Japan will either be duty free or receive preferential tariff access;
- the U.S. will provide tariff elimination or reduction on 42 tariff lines for agricultural imports from Japan valued at $40 million in 2018;
- that includes agricultural products such as certain perennial plants and cut flowers, persimmons, green tea, chewing gum, and soy sauce; and
- the U.S. agreed to eliminate or reduce duties on some industrial goods from
Japan, such as certain machine tools, fasteners, steam turbines, bicycles, bicycle parts, and musical instruments.

In terms of digital trade, according to USTR, the countries agreed to provisions addressing “priority areas of digital trade.” The deal will: (1) prohibit the imposition of customs duties on digital products transmitted electronically; (2) ensure “non-discriminatory treatment of digital products, including coverage of tax measures”; and (3) allow for “barrier-free cross-border data transfers in all sectors.” President Trump has announced that both negotiating teams would continue negotiations on other areas of interest with a goal of reaching a final comprehensive agreement.

Auto tariffs were not mentioned during the signing ceremony or in the fact sheets released by USTR despite being an important issue for Japan. However, USTR Robert Lighthizer told reporters after the signing, “cars are not ... part of this agreement.” Asked whether the threat of Section 232 auto tariffs was being taken off the table, USTR Lighthizer said “at this point, it is certainly not our intention, the President’s intention, to do anything on autos, on 232s, on Japan.”

After President Trump’s speech Chinese Foreign Minister Wang Yi pushed back on some of his statements. He said, “[w]hile China opens wider to the U.S. and the rest of the world, we expect the U.S. to do the same to China and remove all unreasonable restrictions. All in all, China’s efforts of reform and opening-up during the past few decades and what it has accomplished along the way should be recognized by others, rather than be disparaged or denied.”

China Trade Developments

**Key Points:**
- Despite President Trump making remarks critical of China at the U.N., signs suggest preparations for October trade negotiations continue to make progress.
- Key talks are still scheduled for early October between senior trade officials in Washington D.C., possibly next week or October 10-11.

On Tuesday, in a speech to the United Nations (UN) General Assembly President Trump made some critical remarks about China despite being engaged in delicate trade talks. He argued that the World Trade Organization has allowed China to cheat and abuse trade rules. He said, “[n]ot only has China declined to adopt promised reforms, it has embraced an economic model dependent on massive market barriers, heavy state subsidies, currency manipulation, product dumping, forced technology transfers, and the theft of intellectual property and also trade secrets on a grand scale.” He added that, “The second largest economy in the world should not be permitted to declare itself as a developing country in order to game the system at others’ expense. For years, these abuses were tolerated, ignored or even encouraged. Globalism exerted a religious pull over past leaders causing them to ignore their own national interests. But as far as America is concerned, those days are over.”

Meanwhile, deputy-level negotiations between the U.S. and China took place in Washington, DC, last week, with both sides calling the talks constructive. Chinese Vice Premier Liu He and his team are expected to travel to Washington, D.C., as soon as next week (or October 10-11 according to some rumors) to meet with their U.S. counterparts. Despite President Trump’s rhetoric on Tuesday, on Wednesday he said the U.S. and China could strike a deal on trade sooner than anticipated. He said, “[w]e’ve picked up trillions of dollars and they’ve lost trillions of dollars and they want to make a deal
very badly. It could happen. It could happen sooner than you think.”

WTO U.S.-EU Boeing Decision to Be Public Soon

Key Points:

- The WTO reportedly authorized U.S. retaliation against the EU in the Airbus subsidies case, and will announce publicly the decision and the amount of retaliation allowed soon.

The WTO reportedly authorized retaliation in the trade case the U.S. brought against the EU over subsidies to Airbus. The USTR had issued two lists with up to $24 billion in retaliation against EU goods imported into the U.S.; however, it is rumored that the WTO will authorize only about $10 billion worth of retaliation. Moreover, the EU has suggested it may retaliate in kind.

The exact amount of authorized retaliation and the release of the WTO decision could come soon, within the week. The USTR would quickly move after that to impose tariffs from its proposed $24 billion list, possibly at a 100% tariff level, although obviously would be able to remove more than half of the list.

For more information about tax issues you may email or call Christopher Hatcher at 202-659-8201. Cullen Neely contributed to this section.

This Week in Congress was written by Alex Bareham.