Happy New Year! Tune in below for some of the latest agriculture, energy, environment and transportation policy issues in Washington, D.C. If you have any questions about any of the stories below, please do not hesitate to reach out to Kristen Hildreth (kristen.hildreth@ncsl.org), or myself.

**House Approves New U.S., Mexico, Canada Trade Deal, Senate Approval Likely but Timing Uncertain**
The House passed USMCA, 385-41, on Dec. 19, and it now moves to the Senate. During a recent floor session, Senate Majority Leader Mitch McConnell (R-Ky.) asserted that the measure would not be considered until later this year, allowing the impeachment inquiry to take precedence. Canadian Prime Minister Justin Trudeau echoed the same message as McConnell, saying the House of Commons is unlikely to introduce the measure in parliament until they reconvene on Jan. 27. For now, the trade deal remains idled and in legislative limbo as lawmakers from the partnering countries are grappling with recess dates.

**FERC Institutes Minimum Prices, Negating State Action on Renewables and Nuclear**
The Federal Energy Regulatory Commission (FERC) directed PJM Interconnection, a regional wholesale electricity market covering 13 states in much of the mid-Atlantic and Ohio River Valley, to implement a Minimum Offer Price Rule (MOPR). The MOPR is designed to increase the price of certain wind, solar and nuclear power generation that receives subsidies from almost every state in PJM’s region, thereby removing the impact of the state’s subsidy. Specifically, three states in PJM’s territory—Ohio, Illinois and New Jersey—have nuclear subsidies, and 11 have renewable energy mandates that would make new clean energy subject to the MOPR. FERC Chairman Neil Chatterjee did note the MOPR will not apply to existing renewable energy plants, energy storage resources, or power generators that are already under ratepayer-funded “self supply” contracts, like those owned by municipal utilities. This is forecast to exempt about 5,000 megawatts, a small percentage of the total power usage in the region. Following the rule’s publication, Maryland Public Service Commission Chairman Jason Stanek, a former FERC staffer, said the initial outline is “worse than expected.” Many states that participate in PJM, the nuclear industry and renewable energy groups are likely to ask for FERC to rehear the subsidy case. If that is rejected, they could appeal to the D.C. Circuit Court. FERC gave PJM 90 days to file implementation plans for the new market rules. It is very unclear how this decision by FERC will affect the future of the PJM market as some states, prior to FERC’s decision, threatened to leave PJM if they enacted such a MOPR.

**USDA Approves State Hemp Plans and Offers New Crop Insurance as EPA Approves Pesticide Use**
The U.S. Department of Agriculture (USDA) approved three state hemp regulation plans, the first set of approvals granted under the 2018 Farm Bill. Specifically, USDA approved plans for Louisiana, New
Jersey, and Ohio, though the agency is still reviewing 17 submitted state hemp plans. The approved plans weren't the first to be submitted—states including Kentucky, Montana and Tennessee submitted their plans well before the USDA released its proposed regulations last year. Thus far, it appears that the USDA rule requiring hemp testing by DEA-registered labs could be a sticking point in states plans. The approved plans all mandate that DEA-registered labs test the hemp. While the USDA has expressed at numerous NCSL events its willingness to work directly with state legislators, it remains to be seen whether the agency will approve hemp plans that deviate significantly from the rules. Additionally, on Dec. 23, USDA announced Actual Production History coverage crop insurance for hemp farmers for 2020 in select counties across 21 states. This coverage is in addition to USDA offering Whole-Farm Revenue Protection coverage. The production coverage program will be available for hemp grown for fiber, grain or CBD oil for the 2020 crop year. To be eligible for the pilot program, a hemp producer must comply with applicable state, federal and tribal regulations, have at least one year of experience growing the crop and have a contract for sale of the insured hemp. In October, USDA released proposed rules for states establishing hemp programs. Read NCSL’s detailed breakdown here.

EPA also approved 10 pesticides that can be used during hemp production—with nine being biopesticides, derived from natural materials. Previously, no pesticides were allowed to be applied to hemp.

**EPA Science Advisory Board Issues Numerous Criticisms of Agency Rulemakings**

EPA’s Scientific Advisory Board (SAB), which includes a majority of appointees made by the current administration, issued a series of reports strongly pushing back against a number of actions the agency is planning. Specifically, the board issued reports regarding EPA’s planned actions on motor vehicle fuel economy, mercury and other air toxic emissions from power plants, “Waters of the United States (WOTUS),” and the agency’s proposal on data transparency. While the SAB has no authority to specifically prevent any of these proposals from being finalized, it is likely that the reports would be used in lawsuits expected to be filed against the agency.

**Federal Government Liable for Some Flooding Caused by Hurricane Harvey**

The federal government is liable for flooding of some homes during Hurricane Harvey, U.S. Court of Federal Claims Senior Judge Charles Lettow ruled. The ruling is specific to damage that occurred to homes upstream of the Addicks and Barker reservoirs in Texas, which are owned and operated by the Army Corps of Engineers and consist of U-shaped embankments meant to prevent downstream flooding in Houston. The judge ruled that "the corps was aware or should have been aware since the initial construction of the dams and at every point onward, that the flood pools in the Addicks and Barker Reservoirs would at some point (and thereafter) exceed the government-owned land, inundating private properties."

**EPA Finalizes RFS Volumes for 2020 and Biomass Based Diesel Volumes for 2021**

The Environmental Protection Agency issued final determinations for 2020 Renewable Fuel Standards (RFS) at 20.09 billion gallons, up from 19.92 billion gallons in 2019. Conventional biofuel requirements, typically filled by corn ethanol, remained at the maximum that Congress set for the RFS of 15 billion gallons. Biodiesel requirements, which are set a year ahead, will remain at 2.43 billion gallons for 2021. EPA increased 2020 blending requirements for advanced biofuels to 5.09 billion
gallons, a number which includes increasing requirements for cellulosic ethanol blending by 9% to 590 million gallons. EPA also stated that it will use Department of Energy recommendations as the baseline for reallocating the ethanol volumes lost because of hardship exemptions it grants to small refiners, which larger refiners will be required to take on.

EPA Proposes New Federal Coal Ash Permitting Program
EPA unveiled its plan for a federal permit program governing coal combustion residuals (CCR), more commonly referred to as coal ash, which would establish a federal framework when a state declines to regulate the program on their own. CCR is produced whenever coal is burned at coal-fired power plants and is one of the largest forms of industrial waste. It can pose significant environmental and health risks if not disposed of properly. In addition to its proposed rule, EPA approved Georgia to regulate coal ash, joining Oklahoma as the only two states that manage their own coal ash programs.

In 2015, the EPA finalized a rule authorizing the agency to regulate coal ash and in 2016 the Water Infrastructure for Improvements to the Nation Act codified the right of a state to develop and operate their own CCR permitting programs that are more stringent than, or as stringent as, federal standards.

DOE Finalizes Standards for Lightbulbs, Rolling Back Efficiency Requirements as Federal Judge Approves California’s Efficiency Requirements
The Department of Energy (DOE) finalized its new energy efficiency standards for lightbulbs, which it first proposed in September when it essentially undid a previous rule that would have raised existing efficiency standards. The new rule would maintain the older lightbulb standards that allow incandescent bulbs to continue to be sold. Colorado, Vermont, Nevada, and Washington have passed laws that maintain the high-efficiency lightbulb standards. Further, attorneys general from New York, California and 14 other states sued the Department in November over the rule.

Only a few days later, U.S. District Judge Kimberly Mueller allowed California’s updated lightbulb efficiency standards to take effect with the new year officially rejecting a petition from the National Electrical Manufacturers Association and the American Lighting Association to temporarily block new minimum efficiency standards for lightbulbs that the California Energy Commission adopted in 2019. The ruling noted that state regulators appear to have acted properly under exemptions that gave special privileges to California and Nevada to adopt tougher regulations more quickly than DOE.

Senate EPW Committee Approves America’s Conservation Enhancement Act
The Senate Environment and Public Works Committee approved several measures rolled into a single package, America's Conservation Enhancement Act. The bill includes provisions reauthorizing the National Fish and Wildlife Foundation and the Chesapeake Bay Program until 2025, requiring the National Academy of Sciences to study and set up a task force regarding Chronic Wasting Disease, and $15 million annually for a new program providing grants to states and American Indian tribes to compensate livestock producers for losses due to predation by federally protected species such as wolves or grizzly bears.

Drug and Alcohol Clearinghouse Finally Live
The Federal Motor Carriers Safety Administration (FMCSA) announced that its Drug and Alcohol Clearinghouse, mandated by Congress in 2012, will officially go live on Jan. 6. The aim is to help trucking companies determine whether potential or current employees have had past violations as carriers will be required to query the database. While states will eventually have to query the
database prior to issuing Commercial Drivers Licenses, that requirement was delayed for three years in 2019.

**Nuclear Regulatory Commission Takes Important Steps for Deploying SMRs**
The Nuclear Regulatory Commission (NRC) took two major regulatory actions that would help the licensing and deployment of small modular nuclear reactors (SMRs) in the coming decade. Superficially, the NRC issued a proposed rule would create an alternative emergency preparedness framework for small modular reactors and other new technologies that would adopt a risk-informed, performance-based and technology-inclusive approach. The NRC also approved an early site permit application for a proposed Tennessee Valley Authority SMR site.

**FDA Has Legal Authority to Regulate GMO Drugs**
According to the U.S. District Court of the Northern District of California, the Food and Drug Administration (FDA) has the legal authority to regulate drugs used to modify the genetic makeup of animals, including salmon. The court will now examine whether the agency's specific approval of genetically engineered salmon was faulty. The lawsuit came after federal regulators in March approved a plan by AquaBounty Technologies Inc., a Massachusetts biotechnology company, to import salmon eggs from a Canadian hatchery to a plant in Indiana and grow them into genetically modified salmon.

**FRA Has Reporting Mechanism for Trains Blocking Roadways**
The Federal Railroad Administration (FRA) created a reporting mechanism for trains blocking roadways. The blocked crossing incident reporter is available to the public where they can post information about trains blocking crossings for long periods of time. FRA said that blocked crossings are more than an inconvenience—they present a safety issue as frustrated drivers may try to beat a train in fear that the crossing could be blocked for a long time and pedestrians may be tempted to cross between stopped rail cars. No federal regulation exists on blocked crossings, and several state statutes have been struck down in court.

**DC Appeals Court Unanimously Rules for Legality of President Obama’s Marine Monument**
Judges for the U.S. Court of Appeals for the District of Columbia Circuit ruled unanimously that President Barack Obama acted within presidential authority when he established a 5,000-square-mile marine monument off the coast of Cape Cod.

That’s it for this week! Thanks for reading and we’ll be back mid-month to fill you in on other federal happenings.

Best,
Ben and Kristen