# TABLE OF CONTENTS

Panel Outlines ................................................................. TAB 1
- Energy Imports and Exports ..................................... PAGE 4
- Grid Reliability ............................................................ PAGE 9
- Cyber Security and the Energy Sector ..................... PAGE 13

Legal Updates ................................................................. TAB 2

Energy & Environment Team ......................................... TAB 3

Data Security Team ........................................................... TAB 4

About Faegre Baker Daniels & FaegreBD Consulting ........... TAB 5

Moderator Biographies .................................................... TAB 6
AGENDA

TUESDAY, FEBRUARY 24, 2015  |  All times EST

Noon – 1:15 p.m.  WELCOME, LUNCH & KEYNOTE SPEAKER
WELCOME ▶ Dave Zook, Chair, FaegreBD Consulting
MODERATOR ▶ The Honorable Mary Bono, Principal, FaegreBD Consulting
KEYNOTE SPEAKER ▶ U.S. Representative Ed Whitfield, Chairman of the House Subcommitteee on Energy and Power

1:15 p.m. – 1:30 p.m.  BREAK (15 min.)

1:30 p.m. – 2:20 p.m.  ENERGY IMPORTS AND EXPORTS
Given the change in the global market, what are the policy, legal and business considerations that need to be discussed/addressed?
MODERATOR ▶ Michael Bolton, Partner, Faegre Baker Daniels
PANELISTS ▶ Tania Perez, Partner, Norton Rose Fulbright US LLP; John Seale, Legislative Counsel, Majority Whip Steve Scalise; Brendan Williams, Senior Vice President of Advocacy, American Fuel & Petrochemical Manufacturers

2:20 p.m. – 3:10 p.m.  GRID RELIABILITY
How do we maintain a reliable electricity grid with infrastructure needs and growing federal regulations?
MODERATOR ▶ Andrew Wheeler, Principal, FaegreBD Consulting
SETTING THE STAGE ▶ Patrick Morrisey, West Virginia Attorney General
PANELISTS ▶ Martha Rudolph, ECOS Vice President, Director of Environmental Programs; Carolyn S. Brouillard, Manager, Regulatory Policy and Strategy, Xcel Energy Inc.
3:10 p.m. – 3:30 p.m.  **BREAK (20 min.)**

3:30 p.m. – 4:10 p.m.  **CONGRESSIONAL COMMITTEE LEADERS**
What should we expect from Congress this year both in legislation and oversight?

**MODERATOR**  ▶ Andy Ehrlich, Principal, FaegreBD Consulting

**PANELISTS**  ▶ Ryan Jackson, Majority Staff Director, Senate Environment & Public Works Committee, Jason Knox, Majority Staff Director, House Natural Resources Committee, Jeff Navin, Partner, Boundary Stone Partners (former Acting Chief of Staff/Deputy Chief of Staff, Department of Energy)

4:10 p.m. – 4:55 p.m.  **CYBERSECURITY & THE ENERGY SECTOR**
Drilling down on the threats, the myths and the realities.

**MODERATOR**  ▶ Kathleen Rice, Senior Director, FaegreBD Consulting

**PANELISTS**  ▶ Christopher Pogue, MSIT, CISSP, CREA, GCFA, QSA SVP, Cyber Threat Analysis, Nuix, Jessica Matlock, Director, Government Relations; Snohomish County PUD, Rebecca Seidel, General Counsel, Senate Commerce Committee

4:55 p.m. – 5:00 p.m.  **CLOSING REMARKS**

**SPEAKER**  ▶ Jim Spaanstra, Partner, Faegre Baker Daniels
ENERGY IMPORTS AND EXPORTS PANEL OUTLINE

GIVEN THE CHANGE IN THE GLOBAL MARKET, WHAT ARE THE POLICY, LEGAL AND BUSINESS CONSIDERATIONS THAT NEED TO BE DISCUSSED / Addressed?

INTRODUCTION AND RECENT HISTORY

The last decade has seen a major transition for U.S. energy production and use. Just a decade ago it was considered unimaginable that the United States would consider exporting fossil fuels like natural gas and crude oil. Even less than a decade ago, the U.S. was experiencing very high gasoline prices, in some regions surpassing $4 per gallon. The press constantly featured headlines about the United States being hostage to OPEC and high international oil prices. Utilities and manufacturers were preparing for a future of natural gas imports, investing billions of dollars in facilities to import liquefied natural gas (LNG) from abroad and natural gas pipelines that would bring gas from the import terminals to consumers. The conventional wisdom was that much of our abundance of crude oil and natural gas was simply inaccessible due to high costs and limitations on drilling technology. Yet over time, these obstacles faded from the front page as technologies like hydraulic fracturing and horizontal drilling made so much of those long-sought reserves accessible for the first time.

Fast forward to 2015: the United States is now the world’s largest producer of natural gas and crude oil. Natural gas prices are at an all-time low and crude oil and gasoline prices are at some of the lowest levels that we have seen in a decade. The U.S. is now on track to be a major exporter of LNG and momentum is slowly building in some quarters for loosening the longstanding prohibitions on crude oil exports. At the same time, the coal industry is responding to market and regulatory conditions by looking for overseas markets for coal. U.S. energy policy is in a very different place from a decade ago.

LNG EXPORTS

Paving the way for the United States’ newfound role as an energy superpower is natural gas:

- Production from major shale formations has increased from under 250 million cubic feet in 2007 to over 1 billion cubic feet in 2014.

- Total natural gas imports (both pipeline and LNG) peaked at 400 million cubic feet per year in mid-2007 to approximately a little over 200 million cubic feet in late 2014 (Department of Energy, EIA).

- U.S. natural gas exports by pipeline to Canada and Mexico went from 663 million cubic feet in 2006 to 1.57 billion cubic feet in 2013.
At the same time, a record number of applications to export LNG are pending before the Department of Energy (DOE) and/or Federal Energy Regulatory Commission (FERC). As of January 2014, 40 applications to export LNG to countries with which the United States currently has a free trade agreement have been approved, as is required under the Natural Gas Act, by the DOE, and another four are pending approval before DOE. A vast majority of those applicants have also filed to export LNG to non-FTA countries, and of the 37 applications filed, nine have been approved.

DOE’s consideration of non-FTA applications has been a challenge for the agency as it and the Obama administration try to balance the push for LNG exports with the “Public Interest” requirement in the Natural Gas Act. DOE has been under considerable pressure for the last few years to provide more certainty for applicants in the process. Congress has considered various bills to expedite and streamline the review process but none has made it to the President’s desk. DOE has responded to congressional pressure by approving several non-FTA applications. Additionally, on August 15, 2014, DOE announced that it will no longer issue conditional approvals of LNG export locations subject to FERC issuing a favorable final NEPA analysis on the project. Instead, DOE will only make a final determination on individual projects as a last step in the process, when the entire NEPA analysis is complete. At the same time, DOE continues working through the process of individually considering, assessing and approving pending LNG export applications.

The United States seems set on a long-term trajectory to become the largest exporter of natural gas in the world. Furthermore, the role of natural gas exports is taking on policy and political implications beyond just energy policy. For example, the unprecedented natural gas production from domestic shale formations is creating economic development activity in areas of Appalachia, the South, mid-Atlantic and elsewhere that have long struggled to provide employment opportunities to residents. Furthermore, our record production and projected exports are giving the U.S. increased leverage in international affairs. At the same time, questions about the impact that LNG exports will have on natural gas prices and by extension, American manufacturing jobs, remain. Furthermore, while demand for natural gas is at an all-time high, we do not have sufficient pipeline capacity to keep up with it, leading to bottlenecks in the pipeline system and potential delays in delivery of natural gas for a variety of uses. As U.S. LNG export policy continues to evolve, many of these factors will need to be weighed against each other.

**CRUDE OIL IMPORTS AND EXPORTS**

While exporting LNG was considered unlikely just a decade ago, exporting crude oil was considered unthinkable. But crude production is at its highest levels since the late 1980s. In January of 1989, the U.S. produced 246,056 barrels of crude; in January of 2004 it was 173,132 barrels, but since 2007 production has increased from 158,208 to
246,598 barrels in January of 2015. And domestic crude and gasoline prices are at the lowest levels that they have been in decades. In early February, Crude WTI spot prices were $45.50 per barrel, which is the lowest since December 2009, when the price was $41 per barrel and the U.S. economy and financial markets were in a tailspin. The same trends have held for gasoline prices, with New York Harbor conventional gasoline costing $1.54 per gallon in early February and Gulf Coast conventional gasoline costing about $1.52 per gallon during that same period. When it comes to crude oil production and gasoline prices, the United States is in a position of strength that it has not seen in decades.

The newfound U.S. strength in crude oil production has led in recent years to discussion of lifting the longstanding near prohibitions on crude oil. While politicians in Washington, D.C. have generally urged a cautious, deliberative approach to potentially changing policy (for fear of concerns about raising U.S. gasoline prices), the Obama administration has shown some willingness to entertain shifts in policy. The Secretary of Energy recently acknowledged that a re-evaluation of our crude oil export policies may be called for given the drastic change in domestic supply and prices over the last decade. The administration has already taken limited steps, indicating some willingness to engage on the issue. For example, late last year, the Commerce Department’s Bureau of Industry and Security (BIS) updated the circumstances under which companies can export lease condensate, which is a very light form of crude oil. BIS simply addressed the issue as a clarification to existing policy, and wrote on its website that condensate “that has been processed through a crude oil distillation tower is not crude oil but a petroleum product” (BIS website).

While this public guidance has not fundamentally altered the administration’s position on exports, some in industry believe that it could signal a slight willingness on the administration’s part to revisit the near-ban on crude oil exports. Still, all signs point to a multiyear debate over a more formal loosening of the restrictions on crude exports: high-ranking members of Congress have emphasized caution and the need for Congress to be thorough in its assessment of what a new policy could mean, particularly in the context of gasoline prices. Furthermore, while Congress is going to debate this issue over the next two years, the closer we get to the 2016 presidential elections, the less likely it becomes that either Congress or the administration will want to focus too much on this issue.

Regardless of what happens over the next two years in politics, major questions remain about a fundamental shift in our policy on exporting crude oil. For example, if we are oversupplied in one type of oil and we are unable to export it, what options do we have for moving that product? Additionally, are there alternative markets for the export of the crude oil that we can begin to supply and that can help justify the lifting of the ban? There are also legitimate questions about the role of such exports in conducting and influencing U.S. trade and foreign policy. The questions follow a similar trajectory to those regarding LNG exports, but could be more difficult to fully understand and...
resolve due to the nature of oil as a worldwide commodity. These matters and others will need to be examined in considerably more detail before there will be a major shift in U.S. policy regarding crude oil exports.

No discussion over exports would be complete without considering that the United States still imports oil from places like Canada, Saudi Arabia, Mexico, Venezuela and Nigeria. In 2013, the U.S. imported nearly 10 million barrels per day of petroleum (petroleum refers to both crude oil and refined products). In 2013, about 78 percent of gross petroleum imports were crude oil. The United States exported 3.6 million barrels daily of crude oil and petroleum products in 2013, resulting in net imports of 6.2 million barrels per day. Net imports accounted for 33 percent of the petroleum consumed in the United States, the lowest annual average since 1985. While under normal circumstances we may expect imports to continue to drop, the Keystone XL Pipeline, if built, could deliver up to 830,000 barrels per day from Western Canada, Eastern Montana and North Dakota to U.S. refineries based mainly on the Gulf Coast. While the pipeline remains mired in political controversy, most still expect the pipeline to be eventually built, guaranteeing a substantial influx of continued crude oil imports for years to come. Some of those products would be exported onto the world market but much of it is expected to stay in the United States once refined. Regardless of how these questions are answered, Congress and the administration clearly need to reconsider how the traditional energy policy is viewed under these new realities.

**COAL EXPORTS**

The discussion over exporting coal from the United States was necessitated by a very different set of circumstances than the ones that brought on discussions over exports of LNG and crude oil. While a newfound abundance of natural gas and crude oil has driven the discussion and shifts in policy for natural gas and crude oil, exports of coal came about as a result of significant downsizing in U.S. domestic coal markets. While some may have viewed exports as a lifeline for the industry at one point, exports are projected to remain below the records seen over the last few years due to strong coal supplies in developing nations, a slowdown in consumption in places like China and the strength of the U.S. dollar. For example, ICF International forecasts tough conditions for U.S. export markets due to low global prices and competition from countries like South Africa and Colombia.

While there were initially six new coal export terminal projects proposed on the West Coast, only two proposals remain under consideration: Millenium and Gateway Pacific, both in Washington State. While there has been political opposition to such projects, cost and economic viability have also played into some of these proposals being discontinued. Nonetheless, the remaining projects continue to have support from organized labor and others due to their job creation potential, particularly for longshoremen and steelworker groups.
A new coal export terminal had also been proposed on the Gulf Coast that generated controversy as well. Several local governments expressed opposition to the RAM Terminals proposed export project in Plaquemines Parish due to increased rail shipments moving coal through communities and the related potential health and environmental impacts. Concerns have also been expressed regarding how the project would affect a large diversion designed to rebuild wetlands in the area. A Louisiana state judge ruled late last year that the Louisiana Department of Natural Resources had not done a sufficient analysis by investigating alternative sites for the project. It is unclear at this point if and how that project will go forward.

While coal exports provide an opportunity for producers to move their product to friendlier markets, there are multiple barriers to entry and the international market demand for American coal has weakened. Going forward, industry continues to view exports as a potential opportunity to stop some of the bleeding from the abrupt, substantial downsizing of the U.S. coal markets, but proposals to build new ports have encountered significant opposition and challenges. Even in cases where export terminals are built, they are not projected to drive net industry growth or make up for the losses in the domestic market.

CONCLUSION

The early 21st century has seen the United States positioned to be an energy superpower. Natural gas and crude oil production are at an all-time high and will be for years to come. At the same time, while domestic markets for coal have shrunk and international markets for coal exports are not a panacea for the industry’s woes, the United States still has estimated recoverable reserves of nearly 258 billion short tons of coal, and worldwide demand for coal generally remains strong. Beyond giving the United States the ability to produce and use its own energy, the energy boom has put the U.S. in a position of strength in terms of economic development and trade / international affairs. At the same time, our new position in the worldwide energy picture does bring potential risks, such as overreliance on one fuel source like natural gas (which will put upward pressure on prices), potentially raising prices for gasoline, increased environmental risks from hydraulic fracturing and emissions of additional greenhouse gases into the atmosphere, and others. Questions also remain about having the infrastructure, including sufficient pipeline capacity and safe and reliable rail infrastructure, to ensure that these energy resources can reach their markets. These risks and considerations will not be resolved overnight, but will be weighed against the many projected benefits of exports as American energy export policy continues to evolve.
GRID RELIABILITY PANEL OUTLINE STATE PERSPECTIVES ON III (d)

HOW DO WE MAINTAIN A RELIABLE ELECTRICITY GRID WITH INFRASTRUCTURE NEEDS AND GROWING FEDERAL REGULATIONS?

The Environmental Protection Agency’s (EPA) landmark proposal to regulate carbon dioxide emissions from power plants is unprecedented in scope, complexity and the requirements that it will impose on state governments. Unlike so many EPA proposals that require industrial sectors to comply with a new or modified standard — as we see with National Ambient Air Quality Standards for criteria pollutants — the Clean Power Plan and its requirements will directly and indirectly impact the way states generate, manage and use electricity. While the proposal is directed at reducing carbon dioxide emissions from power plants, it will require substantial modifications in the structure and operation of the electric grid, particularly in states that are heavily reliant on coal-fired power.

Public comments on the proposal were due on December 1, 2014. What resulted was one of the most significant stakeholder mobilizations in response to a proposed federal policy in decades. State and local governments in particular showed an unprecedented level of engagement on the proposal. The range of state personnel weighing in on the proposal runs the gamut from governors, attorneys general, legislators and mayors to appointed and career officials at state public utility commissions, departments of environmental quality and energy regulatory agencies, amongst others. In addition to submitting public comments and letters from high-ranking state and local government officials, some states are taking action by passing both symbolic and binding measures in response to the proposal. Below are some key figures laying out where various states’ governments and stakeholders stand on the proposal and steps that they have taken up to this point:

STATE GOVERNMENTS

» 31 states have submitted public comments critical of the proposal: Alabama, Alaska, Arkansas, Arizona, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Michigan, Missouri, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Wisconsin and Wyoming.

» 16 states have submitted public comments that are generally supportive of the proposal: California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maryland, Massachusetts, Minnesota, New York, Virginia, Washington State and the District
of Columbia. Of these 16 states, all of them but Virginia have renewable portfolio standards (Virginia has a state renewables / alternatives “goal,” but not a mandate).

- 12 state departments of environmental quality have submitted public comments: Arizona, Louisiana, Michigan, Mississippi, North Dakota, Nebraska, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, and Virginia.

- 16 state public utility commissions have submitted public comments: Florida, Georgia, Hawaii, Louisiana, Maine, Minnesota, Missouri, Mississippi, Montana, New Hampshire, New Mexico, Ohio, Pennsylvania, South Dakota, Texas, and Wyoming.

- 10 public power jurisdictions or associations have submitted public comments: Arkansas, Florida, Georgia, Illinois, Iowa, Michigan, Minnesota, Nebraska, Tennessee and Utah.

- 50 municipalities have submitted public comments: Arkansas (5), California (2), Colorado (5), Florida (3), Montana (1), Ohio (1), Illinois (4), Oregon (1), Pennsylvania (3), Texas (14), Washington (1), Louisiana (5), Massachusetts (1), Maryland (3) and Minnesota (1).


- Five states have passed laws that set standards based on “inside-the-fence” measures: Kansas, Kentucky, Louisiana, Missouri and West Virginia.

- Nine states have passed resolutions supporting “inside-the-fence” standards: Alabama, Arizona, Florida, Georgia, Nebraska, Oklahoma, South Dakota, West Virginia and Wyoming.

- Six states have passed resolutions or legislation in either their House or Senate supporting “inside-the-fence” standards or opposing EPA’s proposal: Arkansas, Illinois, Indiana, Ohio, Pennsylvania and Tennessee.

- The Commonwealth of Virginia passed legislation requiring an analysis of inside-the-fence policy options.
The Commonwealth of Pennsylvania passed legislation requiring legislative approval of the state 111(d) plan, with a default approval if the legislature doesn’t act within a certain period of time.

24 states have submitted two or more sets of public comments from multiple agencies.

27 states have argued that EPA does not have the legal authority to regulate CO2 emissions from coal-fired power plants under section 111(d) because coal-fired plants are already regulated under section 112.

28 states said explicitly that EPA’s guidelines must be based solely “on inside-the-fence” measures.

26 states said explicitly that EPA should withdraw the proposal.

STATE AND LOCAL STAKEHOLDERS

But state and local governments are not the only stakeholders in the states that are engaged on this proposal. Industry groups are also interested in what the proposal will mean for their members, and the range of industries that have had something to say on the proposal has been quite broad and diversified. Below is a summary of trade groups and industry associations in various states that have engaged on this proposal.

- 10 state chambers of commerce: Arizona, Colorado, Georgia, Kentucky, Minnesota, Ohio, South Carolina, Tennessee, Virginia and Wisconsin.

- 24 local and regional chambers of commerce: Siloam Springs (AR), Nashville (AR), Rogers-Lowell Area (AR), Springdale (AR), Denver Metro (CO), Manatee (FL), Greater Rome (GA), Sabine Parish (LA), Minden-South Webster (LA), Greater Shreveport (LA), Natchitoches (LA), Billings (MT), Indiana County (PA), Berkley (SC), Tyler (TX), Daingerfield (TX), Gladewater (TX), Greater New Braunfels (TX), Longview (TX), Mount Pleasant / Titus County (TX), Shelby County (TX), Plano (TX) and Frisco (TX).


- 19 state electric cooperatives and cooperative organizations: Arizona, Florida, Iowa, Illinois, Indiana, Kentucky, Michigan, Montana, Minnesota, Missouri, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Washington and Virginia.

ANALYSIS
The above-referenced facts and figures demonstrate the degree to which a broad array of state and local governments and relevant industries have conducted outreach to EPA after the guidelines were proposed. While the proposal certainly has its supporters, entities expressing concerns related to legality, cost and reliability were larger in number. Generally speaking, the strongest opposition tended to come from states, municipalities and non-governmental stakeholders whose economies rely on fossil fuels for electricity generation and where manufacturing plays a major role in the state and local economies. For example, of the 22 states that directly called on EPA to withdraw the proposal, 11 of them generated more than half of their electricity from coal in 2013. They are: Arkansas (53), Indiana (84), Kansas (61), Missouri (83), New Mexico (67), North Dakota (79), Ohio (69), Utah (81), Wisconsin (62), West Virginia (95) and Wyoming (89). States that submitted comments favorable to the proposal tended to be less reliant — and in some cases, much less — on coal production and coal-fired power for electricity and manufacturing. For example, of the 16 states that submitted comments that were generally supportive of the proposed guidelines, all of them except Virginia have adopted renewable portfolio standards (Virginia has a state renewables / alternatives “goal,” but not a mandate).

LATEST DEVELOPMENTS
In January, EPA announced that it was delaying its deadline for finalizing the 111(d) guidelines as well as two other proposed rules for existing and modified units. President Obama’s Climate Action Plan called for the existing power plant rule to be final by June 1, 2015. All three rules will now by finalized by mid-summer of 2015. EPA credited the modified timelines to the agency’s decision to delay the deadline for public comments on the 111(d) guidelines by six additional weeks during 2014. The additional time will give the agency an opportunity to sort through more than 2 million comments for the rules for existing and modified power plants, and another 2 million for the new source rule. At the same time, EPA also announced that it will write a federal model rule for the Clean Power Plan for existing power generators. The model, which will also be final this summer, will offer guidance to states as they consider how to comply with the rule and will show what EPA would impose in lieu of state implementation plans. That model rule has already generated controversy amongst states and organizations that are opposed to the proposal. While the deadlines for finalizing the rules have been pushed back, the deadlines for states to write and submit state implementation plans have not changed. Those begin in June 2016 — within a year of when EPA plans to have issued a final rule.
CYBERSECURITY AND THE ENERGY SECTOR

PANEL OUTLINE

HOW TO PREPARE AND ACT ON OPPORTUNITIES, THREATS AND REALITIES.

THE TOPIC

Amid the ongoing reports of high-profile data breaches and significant cyber threats, our panel of experts will examine legal, policy and practical measures that, with the support of the energy sector, Congress and the administration, could help prevent and mitigate cyber threats.

BACKGROUND

The threat of cyberattacks is not a new one. For years, intelligence experts, information security professionals and law enforcement organizations have raised concerns about the increased risks to critical infrastructure posed by nation states, lone actors, organized crime, “hacktivists” and others. These concerns have prompted periodic calls for more preventative action, better proactive planning, stronger coordination, or new legislation or regulation applicable to critical infrastructure, including the energy sector.

Today, recent data breaches have propelled cybersecurity issues to the front of many public policy debates. With the prospect of significant financial loss, compromised information, protracted litigation or regulatory enforcement, these breaches highlight the risk faced by every sector of our economy, from health care to retail to insurance to the energy sector.

Understanding this risk is essential to improving cybersecurity for both industry and the government. In past congressional debates, it was the risk of a large-scale attack on the electricity grid, causing widespread blackouts, that seemed to motivate specific legislative proposals. As the new Congress considers its legislative options and oversight priorities and the NIST Cybersecurity Framework continues to be implemented, the security of the energy sector will likely once again be a key topic. Any debate concerning the sector’s cybersecurity should be informed by the nature of the threats facing the energy sector, how those threats compare to other sectors, whether the energy sector is prepared to meet them and what it can or should do differently.
KEY LEGAL AND PUBLIC POLICY ISSUES

While legislation relating to the government’s own network security and organization was signed into law at the end of the last Congress, significant pieces of legislation have yet to be acted upon. In just the first two months of the new Congress, legislative and oversight activities are off to a quick start with cyber-related hearings and briefings already taking place on Capitol Hill. Committees of jurisdiction in the House of Representatives and the Senate, as well as individual members of Congress, are promoting various legislative and oversight concepts to address the growing threat of cyberattacks. At the same time, the administration has announced several legislative and administrative proposals that are sure to add to the debate.

DATA BREACH NOTIFICATION REQUIREMENTS: Efforts to reach consensus on a federal data breach notification bill are underway. A key question will be the scope of any preemption language that is included in the bill. Most lawmakers agree that strong language is needed to preempt current state requirements in this area, but there is disagreement on the extent to which a federal law should weaken existing state protections.

INFORMATION SHARING: Information sharing legislation is largely intended to encourage industry to voluntarily share cyber threat information with its partners and with the federal government. As a result, legislative efforts to incentivize such sharing have focused on providing specific authorities, removing legal barriers, providing solid privacy protections, and affording clear and responsible liability protections.

There is a second aspect to information sharing that, while not requiring specific legislation, is still in need of improvement. Efforts to encourage the federal government to share with industry in a timely manner more classified, declassified and unclassified cyber threat information should continue, a point emphasized in the recent Executive Order on information sharing. The Cybersecurity Risk Information Sharing Program (CRISP) is a public-private partnership that is designed to facilitate the sharing of threat information between energy sector partners, industry groups and the government. Managed by the Electricity Sector Information Sharing and Analysis Center, CRISP is intended to help provide near-real time actionable information for detecting, preventing and responding to threats to the energy sector.

THE NIST CYBERSECURITY FRAMEWORK: It has been just over a year since the National Institute of Standards and Technology unveiled its Cybersecurity Framework that was developed with industry input. This voluntary framework lays out guidelines to help organizations across sectors assess their current cybersecurity practices and put themselves on the path to better overall security. Intended to align with each
organization’s business needs, resources and risk tolerance, the framework is organized by specific core functions that define effective cybersecurity: identify, protect, detect, respond and recover. Since its release, the framework has been praised for incorporating industry perspective and encouraging voluntary adoption. Yet, concerns remain that the framework could lead to new or additional regulations within certain sectors. Congressional oversight of the framework’s implementation, and the related Critical Infrastructure Cyber Community Voluntary Program, is likely to continue.

STANDARDS AND REGULATION: Amid concern about cyber threats to the energy sector, the debate continues about the merits of imposing new or additional regulations relating specifically to cybersecurity. The electricity sector is already subject to mandatory cybersecurity standards and there is reluctance to add to these requirements or impose similar measures on the remainder of the energy sector.

STATE INITIATIVES: Efforts to improve cybersecurity across the energy sector are not just occurring in Washington, D.C. Many states are now incorporating cybersecurity-related prevention and response measures into their risk planning or conducting cybersecurity reviews of their energy resources. For instance, the State of Washington now has a National Guard unit that specifically addresses cyber threats. In addition, new information sharing and analysis centers and sharing initiatives have been created to further the timely exchange of threat information.

UNDERSTANDING THE THREAT: The administration recently announced that a new Cyber Threat Intelligence Integration Center would be created in the Office of the Director of National Intelligence. Similar to the National Counterterrorism Center (NCTC) that analyzes terrorist threats to the nation, this new center will analyze and integrate cyber threat information. Questions remain about how the center will interact with or receive information from industry and other government agencies, and whether it will resolve or heighten current difficulties in quickly sharing threat information with industry.
EPA DELAY OF 2014 RFS RULE INCREASES POTENTIAL FOR CONGRESSIONAL ACTIVITY

25-NOVEMBER-2014

AUTHORS ▶ Andrew L. Ehrlich, David C. Lyons and Andrew R. Wheeler
OTHER AUTHORS ▶ Andrew Anderson

On November 21, 2014, the Environmental Protection Agency (EPA) announced that it would further delay finalizing the 2014 Renewable Fuel Standard (RFS) volumetric blending requirements until 2015. This announcement put the controversial program back in the spotlight with federal legislators, increasing the likelihood of legislative activity when Congress reconvenes in January. Meanwhile, supporters and detractors of the program were left trying to understand what this latest action means for the future of the program.

Congress most recently considered reforms to the program in 2013, when the House Energy & Commerce Committee initiated a series of white papers looking at different aspects of the program and then formed a working group to consider reform proposals. Those efforts stalled and were eventually abandoned when the EPA issued its 2014 proposed rule, which would have reduced the renewable fuel volumes below statutorily required volumes. This draft proposal was met with serious concern by renewable fuel producers who have made substantial commercial investments based on the long-term requirements of the program. Refiners and other obligated parties welcomed the proposed reductions, arguing that infrastructure limitations made fulfilling the statutorily prescribed volumes impossible.

The EPA has missed numerous deadlines in issuing regulations for this program in recent years. Final volume obligations are required, by law, to be released the November before the compliance year to give industry certainty as to what volumes they will be required to blend into the transportation fuel pool. In the case of biomass-based diesel, final volumes are to be released 14 months prior to the compliance year. At this point EPA has not only punted on finalizing the 2014 regulations but they have also missed the deadline for compliance year 2015.

RFS FORECAST FOR 2015

As we move toward 2015, both sides of Capitol Hill will be actively reviewing the RFS program. The landscape of Congress has shifted dramatically, with Republicans retaking control in the Senate. The Environment & Public Works Committee, which has jurisdiction over the program, will be chaired by Sen. Inhofe (R-OK), a long-time opponent of the program who, in light of this announcement, has already renewed his
calls to reform the program. Similarly, the House Energy & Commerce Committee leadership has indicated its intentions to consider energy legislation early in 2015, and RFS reform proposals will certainly be considered.

However, reforming the RFS will not be an easy task. Many states, particularly in the Midwest, still benefit from the increased demand on agricultural products, making the politics of this issue very complicated. As we get closer to 2016, Senate Republicans will be defending a large number of seats, many from states where the RFS is still supported. In addition, 2016 presidential candidates will begin shifting their attention to Iowa, which has become the hotbed for support for the renewable fuels program. These factors will make outright repeal of the program unlikely, and enacting significant reforms will require a delicate balance.

### WHITE HOUSE, DEPARTMENT OF ENERGY
TAKE NEW APPROACH TO LNG EXPORT APPLICATIONS

08-AUGUST-2014

AUTHORS ▶ Andrew L. Ehrlich and Luke S. Tomanelli

In late May 2014, the Department of Energy (DOE) proposed changes to its process for approving applications to export liquefied natural gas (LNG) to foreign countries that do not have free trade agreements with the United States. In announcing the proposed changes, DOE said that it will stop issuing conditional approvals of LNG export applications. DOE’s proposed procedural changes would not grant LNG export licenses until the Federal Energy Regulatory Commission (FERC) has completed its obligations under the National Environmental Policy Act. Only after FERC has completed its work would DOE issue a final determination that the project is in the public interest, as is required by the Natural Gas Act.

This proposed change in policy occurs at an important period in the debate over LNG and other energy exports from the United States. Several bills are pending on Capitol Hill in Washington, D.C. that would alter the process for reviewing LNG export applications. One bill, H.R. 6, has passed the House and has become a political issue for a U.S. Senate race that could determine which party controls the chamber in 2015. Additionally, DOE has continued granting licenses to export LNG; on July 31, DOE conditionally authorized LNG Development Company LLC to begin exporting LNG. That is the eighth LNG export application to be approved by DOE, and the second since March. There has also been a strong push for loosening some of the restrictions on exports of crude oil from the United States. Such exports have essentially been
banned for nearly four decades, but the boom in American oil production is forcing a change in the debate, and the White House is paying attention.

This is a busy time in energy policy in Washington, D.C., and the issue of exports remains front and center as the United States faces a newfound abundance of domestic fossil fuels. Those resources have taken on new importance as geopolitical conflicts have increased between Russia and the West in recent months. Fossil fuel companies looking for expansion opportunities into new fuel markets should monitor these developments closely and consider personally advocating for their interests in our nation’s capital.

SETTING THE STAGE FOR THE EPA POWER PLANT PROPOSAL — THE WEEK THAT WAS…

04-AUGUST-2014

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On June 2, 2014, the Environmental Protection Agency (EPA) released its first-ever proposal to regulate carbon dioxide emissions from existing power plants. The Republican-controlled House of Representatives, Democrat-controlled Senate and President Obama’s EPA have taken different approaches to the rule, but all three have spent substantial time focusing on the proposal. Last week was particularly insightful in understanding the roles that these institutions are playing relative to the proposal.

In the House, several committees held hearings looking at the mechanics of the proposal, trying to ascertain how it would function once implemented. The Committee on Energy and Commerce, Subcommittee on Energy and Power, held a hearing with commissioners from the Federal Energy Regulatory Commission, seeking to understand how the proposal would impact the reliability of the electric grid. The House Committee on Science, Space and Technology also held a hearing on the proposal, featuring former high-level officials at the EPA and Department of Energy. And, the House Committee on Small Business held a hearing examining whether major EPA regulatory initiatives like this one are in compliance with the Regulatory Fairness Act. These hearings were focused on oversight and the mechanics of the proposal with House Republicans taking a critical approach to the administration and its regulatory agenda.

In the Senate, two committees held hearings looking at the dangers of climate change. The Senate Committee on Environment and Public Works, Subcommittee on Clean Air and Nuclear Safety, heard from witnesses representing local governments
and businesses concerned with the impacts of climate change. The Senate Budget Committee also held a hearing examining the economic costs associated with a changing climate with testimony from current and former federal officials. These hearings served as a counter-point to the House hearings and demonstrated support for the EPA’s proposal from the Democrat-controlled Senate.

The EPA held perhaps the most anticipated events of the week on the issue, hearing from hundreds of stakeholders around the country over two full days in Atlanta, Denver, Washington, D.C. and Pittsburgh. Rallies were held by various organizations to coincide with the hearings. In Denver, speakers from all over the Western United States came out to speak on both sides of the issue, and the hearings provided a stage for the candidates in the state’s tight senatorial race to rally their supporters. In Pittsburgh, several labor unions hosted a rally opposing the EPA proposal which resulted in the arrest of dozens of union officials. In Washington, D.C., several high-profile elected officials attended the hearing and expressed strong views for and against the proposal. Senate Minority Leader Mitch McConnell (R-KY), perhaps the highest-profile speaker at the Washington, D.C. hearing, called on EPA to do more outreach to communities that will be impacted by the proposal, particularly by holding additional hearings in coal country.

In the coming weeks and months, EPA and the administration will continue to hear from stakeholders on all sides of the issue through the public comment process. Comments on the proposal will be accepted through October 16, 2014. Stakeholders should contact the authors of this update or consult EPA’s Clean Power Plan website for more information on how to submit comments.

Another development in the greenhouse gas space last week, while not directly related to the existing unit proposal at issue in the hearings, may speak to the rocky road that EPA’s proposed carbon dioxide regulations could face in the courts in the final two years of the Obama administration. In June, in Utility Air Regulatory Group v. EPA, the U.S. Supreme Court ruled that EPA had exceeded its authority under the Clean Air Act when it required greenhouse gas emissions, alone, to trigger permitting requirements under the Prevention of Significant Deterioration and Title V permitting programs. Justice Antonin Scalia, writing for the majority in UARG, was scathing in his critique of what he considered to be EPA overreach under the CAA. Some in the industry interpreted that as a warning to EPA that the Supreme Court would be watching its NSPS regulations very closely in the coming months and years.

In a July 24 memorandum, EPA provided a short-term response to the UARG decision by directing its regional offices to stop requiring permits under those two programs for sources which triggered permitting thresholds only based on greenhouse gas emissions. EPA stated it would no longer apply or enforce federal regulations and resulting state regulations appearing in State Implementation Plans that require these permits. However, EPA noted its view that the UARG opinion did not preclude states from exercising their independent authority to regulate greenhouse gas emissions.
EPA DELAY ON RENEWABLE FUEL PUTS BALL IN CONGRESS’ COURT

LAW360, NEW YORK (DECEMBER 23, 2014, 10:56 AM ET) –

On Nov. 21, 2014, the U.S. Environmental Protection Agency announced that it would further delay finalizing the 2014 Renewable Fuel Standard volumetric blending requirements until 2015. This announcement put the controversial program back in the spotlight with federal legislators, increasing the likelihood of legislative activity when Congress reconvenes in January. Meanwhile, supporters and detractors of the program were left trying to understand what this latest action means for the future of the program.

RFS PROGRAM

The RFS program was created under the Energy Policy Act of 2005 and established the first renewable fuel volume mandate in the U.S. The original RFS program required 7.5 billion gallons of renewable fuel to be blended into gasoline by 2012.

Congress then expanded the RFS program pursuant to the Energy Independence and Security Act of 2007 along the following lines:

- the RFS program was expanded to include diesel, in addition to gasoline;
- the volume of renewable fuel required to be blended into transportation fuel was increased from 9 billion gallons in 2008 to 36 billion gallons by 2022;
- new categories of renewable fuel were established and separate volume requirements for each one were set; and
- the EPA was directed to apply lifecycle greenhouse gas performance standards to ensure that each category of renewable fuel emits less greenhouse gas than the petroleum fuel it replaces.

Under the RFS program, the EPA is responsible for developing and implementing regulations to ensure that transportation fuel sold in the U.S. contains a minimum volume of renewable fuel. However, the fact is that the EPA has historically been late promulgating regulations when mandating the volume for renewable fuel to be blended with gasoline. In addition, some of the mandated volumes have been set far too high and are not reflective of market conditions, whereas other mandated volumes have been set too low, forcing plants to halt production or shut down. Finally, there has been fraud in the RIN program, which forced the EPA to develop a program requiring verification of production.
MISSED OPPORTUNITY IN 2014

Congress most recently considered reforms to the RFS program in 2013, when the House Energy and Commerce Committee initiated a series of white papers looking at different aspects of the program and then formed a working group to consider reform proposals. Those bipartisan efforts stalled and were eventually abandoned when the EPA issued its 2014 proposed rule, which would have reduced the renewable fuel volumes below statutorily required volumes. This draft proposal was met with serious concern by renewable fuel producers who had made substantial commercial investments based on the long-term requirements of the program. Conversely, refiners and other obligated parties welcomed the proposed reductions, arguing that infrastructure limitations made fulfilling the statutorily prescribed volumes impossible.

Last month, the EPA missed its deadline again. Final volume obligations are required, by law, to be released in November before the compliance year to give industry certainty as to what volumes they will be required to blend into the transportation fuel pool. In the case of biomass-based diesel, final volumes are to be released 14 months prior to the compliance year. At this point the EPA has not only punted on finalizing the 2014 regulations, but it has also missed the deadline for compliance year 2015. The EPA’s failure to act leaves renewable fuel producers, refiners and other stakeholders holding the bag and pushes production and blending uncertainty at least into the summer of 2015.

CONGRESSIONAL FORECAST FOR 2015

As we move toward 2015, both sides of Capitol Hill will be actively reviewing the RFS program. The landscape of Congress has shifted dramatically, with Republicans retaking control of the Senate. The Senate’s Environment and Public Works Committee, which has jurisdiction over the program, will be chaired by Sen. James Inhofe, R-Okla., a long-time opponent of the program who, in light of this announcement, has already renewed his calls to reform the program. Similarly, the House Energy and Commerce Committee leadership has indicated its intentions to consider energy legislation early in 2015, and RFS reform proposals will certainly be considered.

However, reforming the RFS program will not be an easy task. Many states, particularly in the Midwest, still benefit from the increased demand on agricultural products, making the politics of this issue very complicated. As we get closer to 2016, Senate Republicans will be defending a large number of seats, many from states where the RFS program is still supported. In addition, 2016 presidential candidates will begin shifting their attention to Iowa, which has become the hotbed of support for the renewable fuels program. These factors will make outright repeal of the program unlikely and enacting significant reforms will require a delicate balance.
JUDICIAL FORECAST FOR 2015

The EPA’s decision to propose a 2014 RFS below the statutorily mandated volumes has generated vigorous debate. For those in the ethanol industry, it is important to understand the legal objections to the EPA’s proposal, not just the public policy objections, because the legal arguments may determine the outcome of the dispute and set the legal precedent that limits the agency’s ability to adjust the RFS in the future.

Section 211(o)(2)(B) of the Clean Air Act expressly states the RFS mandated volume of renewable fuel to be included in gasoline: “The total for 2014 is 18.15 billion gallons.” However, Section 211(o)(7)(A)(ii) provides a “general waiver” authority under which the EPA may modify these amounts if “there is an inadequate domestic supply.”

On Nov. 29, 2013, the EPA proposed reducing the total renewable fuel volume to 15.21 billion gallons. The EPA specifically found that there was an “inadequate domestic supply” and additionally asserted that the phrase is ambiguous. According to the EPA, this ambiguity empowers the agency to consider not only the production of renewable fuels, but also “factors affecting the ability to distribute, blend, dispense and consume those renewable fuels” when assessing supply. Relying on this broader interpretation, the EPA contends that current limitations regarding the ability to incorporate ethanol fuels into gasoline for consumers (the ethanol blend wall) justify the proposed volumetric reductions.

Iowa Attorney General Thomas J. Miller submitted comments to the proposal, outlining several objections to the EPA’s interpretation of the waiver authority based on the well-known Chevron test used by the courts to assess a federal agency’s interpretation of a statute: (1) if the statute is clear, the court must enforce the law’s unambiguous language; and (2) if the statute is not clear, the agency’s interpretation must be permissible.

Miller argues that the statute unambiguously prohibits the EPA from considering the distribution capacity of blended fuel. Under Section 211(o)(7)(A)(ii), the term “supply” unambiguously refers to the “quantity of renewable fuel” required under Section 211(o)(2). Therefore, in order to reduce the RFS for total renewable fuel, the EPA must find that there is an “inadequate domestic supply” of “renewable fuel.” The term “renewable fuel” means “fuel that is produced from renewable biomass” and “used to replace or reduce the quantity of fossil fuel present in a transportation fuel.” Because this definition does not include “blended fuel,” the EPA cannot consider the distribution capacity of blended fuel when assessing the adequacy of the “supply.” This interpretation is buttressed by the fact that the term “distribution capacity” is expressly included in other parts of Section 211, as well as legislative history demonstrating that the Senate removed the term “distribution capacity” from the legislation.

To the point, Miller further argues the EPA’s interpretation is not permissible. The purpose of enacting the RFS is “to move the United States towards greater energy independence and security” and “to increase the production of clean renewable fuels.” The statutory
RFS achieves these objectives by incrementally increasing renewable fuel volumes so that the fuel industry may adapt. By lowering the RFS due to distribution capacity rather than supply, the EPA manipulates this framework and undermines the statutory objective of changing the country’s fuel composition.

Anticipating the objections to its interpretation of the waiver authority, the EPA provided preemptive counter arguments. The agency disputes that “supply” modifies only the renewable fuel categories in Section 211(o)(2) and asserts that the word “is best understood in terms of the person or place using the product.” Accordingly, the EPA contends that it may consider factors that affect the “supply” of renewable fuel before it reaches “consumers.” The EPA distinguishes other subsections of the statute that include a mandate to consider “distribution capacity” and argues these provisions highlight the ambiguity in Section 211(o)(7)(A)(ii). The EPA also dismisses the legislative history of Section 211(o)(7)(A)(ii) as having minimal “interpretative value” because there is no explanation accompanying the Senate’s alteration of the operative provisions during the legislative process.

Although the 2014 RFS rule has been further delayed, it is possible that the EPA’s authority to alter the statutorily mandated renewable fuel volumes will be disputed in the future. Other aspects, such as the advanced biofuels mandate, are also generating serious legal and public policy pushback. Given that the EPA’s critics have solid legal arguments, the final rule may prompt a judicial response that impacts the agency’s discretion when setting renewable fuel volumes in the future.

— By Andrew Anderson, Andrew Ehrlich, Andrew Wheeler and David Lyons, Faegre Baker Daniels LLP

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KEystone XL WILL SHAPE ENERGY DEBATE FOR 114TH CONGRESS

LAW360, NEW YORK (FEBRUARY 06, 2015, 11:09 AM ET) –

On Jan. 29, 2015, the U.S. Senate passed the Keystone XL Pipeline Approval Act by a vote of 62-36, with all Republicans and eight Democrats voting for the legislation. While President Obama pledged weeks ago to veto the legislation, the debate over it — and particularly over the nearly 250 amendments that were attached to it — foreshadows many of the energy and environmental policy issues that will occupy Congress’ attention over the next two years.

Below is a summary of key themes that arose throughout the Keystone XL Pipeline debate, as well as analysis of how these issues will influence the debate over energy and environmental policy in the 114th Congress.

CLIMATE CHANGE

A number of climate change amendments were offered and several were voted on, although most were “Sense of the Senate” or “Sense of Congress” amendments that did not offer specific actionable measures and were therefore symbolic. The only climate-related amendment to the bill that was adopted was one stating that climate change “is real and is not a hoax.” It received near-unanimous support in the Senate, but it did not take a position on anthropogenic climate change. Democrats will continue looking for opportunities to put Republicans on the record denying anthropogenic climate change, particularly as the 2016 elections approach. Democratic amendments seeking to establish a link between the proposed pipeline and climate change were also not adopted, but opponents of the pipeline will continue to pressure the Obama administration to veto the pipeline due to concerns about emissions of additional greenhouse gases into the atmosphere.

Republicans mostly limited their attempts to use the legislation as a mechanism for attacking President Obama’s environmental regulations impacting the fossil fuel sectors. However, Republicans are not going to hold their fire forever, and their willingness to avoid some of the most contentious environmental issues likely resulted from their confidence that they will have additional opportunities to attack the president’s environmental agenda on other bills in 2015 and 2016.

Stakeholders in particular should expect debate over the president’s proposal to reduce greenhouse gas emissions from coal-fired power plants, the Obama administration’s plan for reducing methane emissions from the coal, oil and natural gas sectors and president’s efforts to reduce greenhouse gas emissions on the international stage through the U.N., World Bank and other multilateral institutions.
ENERGY EFFICIENCY

The Keystone XL Pipeline legislation provided further evidence that energy efficiency can attract significant bipartisan support in Congress. For example, the only binding, actionable amendment adopted by the Senate was a modified version of a comprehensive energy efficiency bill. The language would promote reduced energy consumption in commercial buildings, exempt certain classes of water heaters from forthcoming U.S. Department of Energy regulations and require additional energy efficiency tracking and data disclosure from certain classes of federally leased buildings. That language, as well as a broader energy efficiency bill, had been pending in Congress for over a year with substantial support. Aware of increased public skepticism over partisanship and gridlock in Congress, both parties have used the legislation to demonstrate bipartisan credentials in an otherwise gridlocked Senate. As the 2016 elections approach, members of Congress — particularly vulnerable Republicans in Democratic-leaning states — will point to the legislation as an example of how they can work with Democrats on substantive policy issues.

ENERGY EXPORTS

While the Keystone XL legislation was ostensibly about imports of Canadian oil sands, the number and variety of amendments dealing with energy exports spoke to Congress’ interest in the energy paradigm shift currently underway in the U.S. as we continue growing as a major energy exporter. While various amendments to limit the export of the Canadian oil sands until certain conditions are met were considered and defeated, two amendments dealing with the export of liquefied natural gas and crude oil attracted more attention.

The LNG amendment, which would require the DOE to automatically approve all applications to export LNG to World Trade Organization countries, failed by a vote of 53-45. Another amendment, to lift the near-prohibitions on exporting crude oil from the U.S., was pulled from the floor and not voted on. Yet the outcome on both amendments should not lead one to conclude that these matters lack support. To the contrary, there is considerable bipartisan support in Congress for expediting the consideration and approval of LNG exports, as well as for promoting those exports as key tools in job creation and international diplomacy. While crude oil exports are on a different political and regulatory trajectory from LNG exports, momentum is building from certain constituencies to support lifting the ban. Neither of these issues is going away, and they will continue to be raised throughout the 114th Congress. Crude oil exports in particular will command additional attention as the presidential election season gets underway.

ENVIRONMENTAL PROTECTIONS

Every energy bill on the Senate floor over the last two decades has attracted a number of environmental issues and amendments, and the Keystone XL legislation was no exception. There is a pent-up frustration among mostly Republican members regarding environmental issues that will almost certainly reappear on other energy measures.
or during the appropriations process. Likewise, a number of Democratic members sought to underscore their agreement with the Obama administration on environmental issues and also show where they are frustrated by either a lack of movement or a policy disagreement. Many of the amendments and issues raised centered on home state, parochial issues that have generated significant local attention in some states. For example, one amendment would have subjected the practice of hydraulic fracturing to the jurisdiction of the Safe Drinking Water Act. This issue also reflects a broader national issue, where the practice of fracking has punctuated the gulf between proponents of expanded supplies and economic development and environmental and public health advocates. This debate has taken place in dozens of states and municipalities, and will be brought up again and again by members of Congress as a reflection of a heated, ongoing debate taking place in so many jurisdictions across the country.

Other members, particularly in the West and Midwest, forced votes on environmental policies that have long generated controversy in their states. One amendment sought to return to “multiple use” status for certain federal lands that have long been treated by the government as wilderness, but which were never designated as such by Congress. (The Wilderness Act of 1964 explicitly leaves the designation of federal wilderness to Congress, but some subsequent laws have provided the executive branch with the authority to unilaterally designate lands with very similar protections.)

Another amendment would have prohibited the lesser prairie chicken from being protected under the Endangered Species Act, and yet another would have expedited processes for reviewing and approving drilling permits for oil and gas on federal lands. All of the amendments were defeated, but each of them carries considerable importance in the impacted states, and their congressional supporters will continue raising them to both criticize the Obama administration and promote their state’s interests as presidential candidates make the rounds in advance of the 2016 elections.

CONCLUSION

While only one actionable amendment to the Keystone XL Pipeline legislation was approved, many of the issues that were raised during the bill’s consideration will command Congress’ attention in 2015 and 2016. Assuming President Obama vetoes the legislation as expected, the fate of the pipeline will remain up in the air and Congress will continue to push for its approval. Climate change — and particularly the president’s policies to mitigate it — will be a key oversight topic for House and Senate Republicans. Democrats in both chambers will continue to raise the issue of anthropogenic climate change, especially the degree to which humans influence it, as we get closer to the 2016 elections.

At the same time, Republicans will continue to oppose the president’s environmental regulatory policies on issues ranging from air quality to endangered species, mainly due to the threats those policies may pose to jobs and local economies. Stakeholders should closely monitor developments with these and other key energy and environmental policy issues over the next several months, as many of them will come up and be vigorously debated for the remainder of the 114th Congress.
CONGRESS MUST PASS CYBER LEGISLATION BEFORE NEXT ATTACK

LAW360, NEW YORK (OCTOBER 31, 2014, 10:29 AM ET) –

As the year winds down in Congress, the prospects of passing cyber legislation in the Senate and getting it sent to President Obama for signature seem to be fading once again. Both House Intelligence Committee Chairman Mike Rogers, R-Mich., and Senate Intelligence Committee Vice Chairman Saxby Chambliss, R-Ga., have been making the case that cyberinformation sharing legislation needs to and can get done this year.

Currently, there are two key information sharing bills: the Cyber Intelligence Sharing and Protection Act, which was passed by the House, and the Cybersecurity Information Sharing Act of 2014, which was reported by the Senate Intelligence Committee. Speaking at the Intelligence and National Security Summit in September, Rep. Rogers said bluntly, “We’re in this last window. If we don’t get this bill done in the lame duck this year, the whole process starts over and I guarantee you it will take another two years to get this done.”

Given that many of the key players on cyber legislation, including Rep. Rogers and Sen. Chambliss, as well as Sens. Jay Rockefeller, D-W.Va., Carl Levin, D-Mich., and Tom Coburn, R-Okla., are retiring from Congress this year, Rogers is probably right. It is likely that any new legislation will have to start over through the committee process next year. For cyber legislation, this process has involved numerous hearings before the relevant House and Senate committees, including Intelligence, Commerce, Homeland Security, Armed Services and Judiciary, and involved the solicitation of comments from industry, privacy groups and government representatives.

Some may wonder what difference it makes whether Congress passes an information sharing bill. More sectors are developing information sharing and analysis centers and are engaging
in informal and formal sharing relationships with each other and with the government — all without any protection from lawsuits or open government laws. The U.S. Department of Justice and Federal Trade Commission have issued guidance that some see as resolving concerns about antitrust prosecutions or enforcement in the context of sharing cyberthreat information. So, is there really a need for a bill?

Yes. As James Comey, the Director of the Federal Bureau of Investigation, said at the RSA Cyber Security Conference earlier this year, private sector companies are the “primary victims of the evolving cyberthreat,” but with their expertise and the information they have, they are “also the key to defeating it.”[1]

In the wake of high-profile breaches against banks, retailers and health care providers, some companies are proactively trying to get ahead of the threat, including by doing more to share the cyberthreat and technical information they have that might be useful to others in industry and the federal government. These companies recognize that having the right information at the right time is critical to detecting, deterring, preventing or mitigating a cyberthreat. But they also recognize the legal risk they are accepting by exchanging such information.

Currently, there are no clear liability protections and exemptions from federal and state antitrust and open government laws that would incentivize reluctant companies to move off the sidelines and fully share information about their own breaches or vulnerabilities. The DOJ and FTC’s jointly issued guidance is just that — guidance, and its conclusion that “properly designed sharing of cyber threat information should not raise antitrust concerns”[2] still leaves room for an antitrust prosecution or enforcement action.

In addition, the guidance has no impact on private antitrust litigation or state enforcement. And without explicit federal statutory exemptions that also preempt state law, companies that share proprietary, employee or customer information in confidence with state and federal governments could potentially see that same information subject to release under the Freedom of Information Act and comparable state laws. Given these legal risks, the only real incentive for sharing seems to be a desire to do the right thing. But, when faced with potential litigation and questions from shareholders, boards of directors and customers, wanting to do the right thing is not a great legal defense.

The lack of clarity stemming from the continued failure of Congress to pass information sharing legislation means that companies wanting to share threat information will most likely seek legal advice before any information is ever shared. Yet, in an environment of growing cyber incidents and threats, effectively forcing companies to seek out legal advice before sharing timely information is neither practical for confronting fast-moving threats, nor is it good policy.

Companies need laws that provide clarity and certainty — a point that was at the core of CISA and CISPA. Granted, the bills differ significantly in their approaches toward liability and how information will flow to and throughout the government, but the underlying message is the same: if liability protection is provided to the private sector for specific, defined activities, the private sector will be more likely to share — and share timely — the cyberthreat information that can be so useful in identifying, preventing, and mitigating cyberthreats.
Unfortunately, the debate in Congress over information sharing legislation has become entangled in the more controversial debate over the government’s data collection and surveillance activities under the Foreign Intelligence Surveillance Act and USA Patriot Act. Privacy groups, motivated by what they learned from the National Security Agency information leaked by Edward Snowden last year, have been actively campaigning to put a halt to, or strongly curtail, the government’s FISA activities. And they are finding support for this argument, including within the Obama administration, even as the fight goes on against the Islamic State and other terrorist groups.

Critics of the NSA metadata collection program have insisted that FISA reform be passed first, before any new authority is given to the private sector to share cyberthreat information with the government under a grant of liability protection. This insistence seems to be driven by strong opposition to certain government agencies receiving cyberthreat information directly from the private sector. As can be expected, companies across sectors have over the years developed their own relationships with different agencies, including the NSA and FBI. These are trusted relationships and many companies — and federal agencies — do not want to lose them or have to start over building new ones. These relationships help the government learn immediately about threats to private networks and they help the private sector receive timely intelligence from the government that might help prevent, defeat or mitigate that threat. At the same time, privacy advocates have expressed concerns that the House bill and the Senate Intelligence Committee bill offer insufficient protection for private information, especially for consumers who do not want their information shared with the NSA. Ironically, some solutions that call for companies to do even more to proactively identify and remove personally identifiable information could actually result in a greater intrusion on privacy.

But, is it reasonable or responsible for cyber legislation to be held hostage in this fight over government surveillance? It’s important to remember that both cyber bills are voluntary — they contain no requirement for the private sector to share information with anyone. Moreover, the bills are not a free-for-all to share any information, rather sharing authorities are limited to carefully defined cyber threat information. These facts alone should be enough to separate these bills from the issue of government collection, including court-authorized collection, of foreign intelligence information.

At the Intelligence and National Security Summit, Rogers expressed frustration that the cyber legislation debate has become one over privacy, but having this debate should not become an excuse for inaction in the Senate. There is a path forward, if Senate Majority Leader Harry Reid, D-Nev., chooses to take it.

Given the Obama administration’s objections, and concerns on both sides of the aisle in the Senate, CISPA is unlikely to pass the Senate. Thus, it seems that the best path to success would be for the Senate to take up and pass the Senate Intelligence Committee’s bill and send it to the House. There could still be a full debate over privacy and other issues, but an agreement could be sought to consider amendments under a 60-vote threshold before any changes would be made to the underlying text. This way the debate could go on, and if there is enough support for specific positions, the bill would change accordingly.
This approach has worked in similar contexts relating to national security legislation and would be appropriate here too. At the end of the day, cyber threat information will get to all the same players: the U.S. Department of Homeland Security, FBI, NSA, U.S. Department of Energy and others. But in the cyber world, giving information directly to the agency best suited to provide assistance relating to a particular threat, whether it is the DHS, NSA or the FBI, can be essential to stopping an attack, identifying the source and preventing large-scale economic loss.

Congress has the opportunity to lead now on this critical national security issue and provide much-needed legal clarity. It would be a mistake to squander this moment and wait to legislate until there is a catastrophic cyberattack. Legislation hurriedly passed in the heat of such a crisis can easily miss its mark. Right now, cyberattacks threaten our safety, steal our intellectual property and cause considerable economic loss.

As Rep. Rogers said, cybersecurity is “the greatest national security threat America is not ready to handle.” Whether Congress steps up to the plate and gets the job done remains to be seen, but the window is closing this year, and our nation will continue to bear the consequences of inaction.

— By Kathleen B. Rice, Mary Bono and Robert J. Ehrich, Faegre Baker Daniels LLP

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ENERGY & ENVIRONMENT – WASHINGTON D.C. CONSULTING GROUP

FaegreBD Consulting is at the cutting edge of American law and public policy as the energy sector transforms and environmental policy changes. The executive and legislative branches of the federal government are considering whether and how to forge ahead with a number of complex energy and environmental laws and regulations that could impact almost every sector of the economy. What is clear is that corporate decisions will have to be made today in anticipation of federal and state legal requirements tomorrow.

FaegreBD Consulting is uniquely positioned to assist clients in understanding the potential threats and opportunities presented by the federal regulatory landscape and in developing and executing federal and state government relations programs to realize our clients’ public policy goals. We offer strategic consulting services to corporations, public policy groups, energy companies, industry associations, universities and units of local government affected by a variety of governmental initiatives in the energy and environment arena.

Our dedicated team of energy and environment professionals comprises a bipartisan array of executive branch and Capitol Hill veterans, well versed in high-profile legislative and regulatory initiatives. They include a member of the U.S. House of Representatives, a former House leadership aide and the former staff director and chief counsel for the Senate Environment and Public Works Committee as well as a former EPA career official. They pride themselves on evidence-driven advocacy, working vigilantly against entrenched opposition and taking an interdisciplinary approach to ensure that the client has the necessary strategies and resources to achieve success.

We have an in-depth understanding of fossil fuels, renewable resources and clean energy technologies and can help clients assess the implications of evolving federal policies on the business operation and market both domestically and internationally. Public policy originating in Washington, D.C. affects stakeholders from coast to coast since almost every company, local government or other organization faces increasingly complex environmental challenges, whether from environmental impact reviews, regulatory requirements, enforcement actions, cleanups or policies under a federal law. We can leverage our experience in making federal laws and regulations to give clients crucial insights into governmental plans to address the range of issues that affect the land, water and air. We have assisted clients in the regulatory rulemaking process, grant applications and direct advocacy for changes in regulations, permit delays and policy decisions that affect one stakeholder.

Our Washington, D.C. office has a long history of working closely with clients—either independently or within the structure of larger trade associations—to ensure their federal objectives are being heard and seriously considered. Often times, trade associations take on the key legislative objectives of their largest members, the members who pay the
most dues to the association or the majority of the association’s members. Sometimes a client’s objective conflicts with a trade or is too low a priority of its trade association. We can help clients navigate these industry relationships to raise the profile of our client, help develop legislative or regulatory strategies with the association, emphasize policies that support the unique aspects of a client’s goals, and secure priority for our client’s goals so that the association is supportive (or at least neutral). In many cases, we find ourselves coordinating with the national trade association to supplement its advocacy program when and where necessary. Other times, we find ourselves with a public policy position that conflicts with that of the trade association. It really is determined on a case-by-case basis.

FaegreBD Consulting is a division of Faegre Baker Daniels, a full-service law firm with a dedicated interdisciplinary practice team focused on the business and legal issues related to energy and environment. The law firm offers services related to litigation, transactions and regulation, including rulemaking, compliance, environmental review, due diligence, permitting, acquisitions, divestitures, SEC reporting, enforcement, Superfund, natural resource damages, chemical regulation, real estate, brownfields, project development, finance, patent and trademark protections, and green building contracting, as well as international energy and clean technology initiatives. Our practice is supported by our national, firmwide energy and natural resources industry team of more than 60 professionals.

ENERGY & NATURAL RESOURCES

Lawyers and consultants at Faegre Baker Daniels focusing on energy, natural resources and clean technology have the breadth and depth of legal, commercial and policy expertise to serve clients who need comprehensive, multi-disciplinary solutions or answers to specific, narrow issues that arise in operating within complex and regulated industries.

OIL & GAS

Our team routinely advises and litigates on conventional and unconventional oil and gas exploration and development activities, both onshore and offshore, including coal-bed methane and shale projects. We have worked on transactions both domestically and abroad, including throughout the CIS, South America, Africa and Asia. The practice encompasses the acquisition and divestiture (A&D) of producing properties and acreage plays, host government contracts, project and infrastructure development, financing of these activities, and field operations, including title work and oil field services. The team also represents refiners, petrochemical manufacturers and pipeline and storage companies on environmental matters, permit compliance, eminent domain, project and infrastructure development, A&D, and financings.
Our attorneys arbitrate and litigate, in state and federal courts, oil and gas disputes involving oil and gas leases, burdens on production, joint operating, farmout and unitization agreements, exploration and development agreements, gathering and storage agreements, and issues arising under contractual joint venture accounting procedures. These attorneys have also litigated disputes involving mineral and land rights managed by state and federal agencies such as the U.S. Bureau of Land Management, and have arbitrated international disputes involving shipping contracts, midstream and downstream infrastructure assets, and long-term oil and gas sales contracts.

POWER & UTILITIES
Faegre Baker Daniels’ power and utilities practice advises independent power producers, investor-owned utilities, cooperative and municipal utilities, and project sponsors in acquisitions and divestitures, joint ventures, project development, equity and debt financings, gas sales agreements and power purchase agreements. We also litigate tax, eminent domain, construction and real estate disputes on behalf of power and utility clients. Our power and utilities professionals also work on environmental permitting and compliance matters, and other regulatory matters and legislative affairs to maximize commercial returns within this heavily regulated industry.

MINING
Our mining team provides multidisciplinary expertise to the mining industry through each phase of the mining life cycle, from exploration and development through closure, abandonment and reclamation. The team’s experience is both domestic and international, and encompasses greenfield and brownfield development projects, joint ventures, A&D, title claims and opinions (including the negotiation of host government contracts), and the financing of exploration and development activities via financial sponsors, equity and debt offerings, project finance and asset based loans. We also have a deep understanding of mine construction agreements, exploration and development agreements, environmental approvals, compliance and permitting, and the broad range of litigation matters that arise from mining activities, including natural resources damages actions arising under state and federal law alleging impacts to soil, groundwater, surface water and other protected natural resources.

RENEWABLE ENERGY
As legal advisers to some of the world’s leading producers of water, wind, solar, biomass, geothermal energy and biofuel products, Faegre Baker Daniels lawyers have industry-specific knowledge to assist clients as they face complex political, legal and regulatory challenges including land use and permitting issues, property acquisitions, construction complexities and contracts and contract disputes. We are experienced in private and public financing, including tax-exempt bonds; initial and subsequent public
offerings; entity formation, including limited liability companies, mergers and acquisitions; tax, including credits and exemptions; and intellectual property, including patent, trademark, trade secret, licensing and joint development. We have also defended renewable energy clients in state and federal enforcement actions, multi-million dollar class action disputes, and environmental matters related to the ownership and operation of renewable energy production facilities.

**CLEAN TECHNOLOGY**

We work with clients to address their unique legal needs in the clean technology space, whether those clients have businesses exclusively in clean technology or businesses for which clean technology is an emerging feature. That includes collaborating with clients whose business it is to increase energy efficiency, reduce waste and mitigate the environmental impact of energy development, population growth and industrial practices. We have experience in renewable energy (including biofuels, wind, solar, waste-to-energy and geothermal); smart grid/energy efficiency/energy storage; air, water and waste; transportation; carbon capture; green building; and sustainable and organic products.
TECHNOLOGY & DATA SECURITY TEAM

TECHNOLOGY

Technology touches everything today. It’s the way we stay connected, pay our bills, remain healthy, protect our homes, improve productivity and foster innovation for tomorrow. But to make technology work for us, we must focus on more than just the technology itself.

At FaegreBD Consulting, our professionals provide strategic consulting services to clients on technology-related issues that impact a wide range of sectors and industries, including:

- Manufacturing
- Retail
- Health care
- Technology
- Telecommunications
- Financial services
- Energy
- Agriculture
- National security

From the latest medical device breakthroughs to the use of drones in precision agriculture, our team understands that advancements in technology not only grow the economy, but provide substantial benefits in how we interact with one another — and in how we provide security, food, medical care and products, and services.

ADVANCING LEGISLATIVE POLICY AND BUSINESS INTERESTS

FaegreBD Consulting recognizes that sustaining or developing new technology requires thoughtful policies and responsible legislative and regulatory activities. Through our extensive experience involving the executive branch, Congress, administrative agencies and private sector, we help clients navigate the legislative, regulatory and policy issues that are most important to their businesses. In this competitive and global economy, we understand the importance of building coalitions and developing solid, trusting relationships with stakeholders — inside and outside the government, as well as locally, nationally and internationally. These extra steps are often the keys to success in advancing major policy and business interests.

PRIVACY, DATA SECURITY AND CYBERSECURITY

At the same time, FaegreBD Consulting understands that technological advancements can raise legitimate concerns about privacy, data security and cybersecurity. Our team brings the skills needed to address today’s concerns in any forum — and in the most effective and responsible way — through a team of certified privacy professionals, former federal prosecutors, elected officials and individuals with extensive health care, intelligence, cyber, financial services and regulatory credentials. We understand that a client’s time is better spent on achieving specific business objectives, so we help them:

- Identify issues proactively
- Respond to problems quickly
- Develop the right policies and procedures to mitigate risk
- Ensure full compliance with applicable laws and regulations
LEGISLATIVE AND ADMINISTRATIVE EXPERIENCE

FaegreBD Consulting’s background in technology-related matters is second to none. Our team provides clients with direct insights into effectively navigating the U.S. House of Representatives, U.S. Senate and many of the federal agencies which impact legislative and regulatory policy affecting technology issues. Our professional group includes:

- Former U.S. congresswoman and subcommittee chair with jurisdiction over privacy, data security and FTC
- Former U.S. Senate Intelligence Committee Counsel, federal prosecutor and FBI attorney
- Former senior-level staffers to both Democrat and Republican members in the House and the Senate
- Recognized professionals in related industries, including health care, criminal practice and media matters

Our consulting professionals work closely with our privacy and data security legal professionals at Faegre Baker Daniels.

PRIVACY, DATA SECURITY & CYBERSECURITY

FaegreBD Consulting understands that technological advancements can raise legitimate concerns about privacy, data security and cybersecurity. We take a comprehensive approach to these issues, and our teams work together to bring the skills needed to address today’s concerns in any forum — and in the most effective and responsible way. Our privacy, data security and cybersecurity team includes certified privacy professionals, former federal prosecutors, elected officials and individuals with extensive health care, intelligence, cyber, financial services and regulatory credentials. We understand that a client’s time is better spent on achieving specific business objectives, so we help them:

- Identify issues proactively
- Respond to problems quickly
- Develop the right policies and procedures to mitigate risk
- Ensure full compliance with applicable laws and regulations
OUR COMPREHENSIVE SERVICES

FaegreBD Consulting brings together a team of professionals with comprehensive credentials to provide support and guidance on policy matters relating to cybersecurity, data privacy and technology innovation. With extensive experience in privacy, media, security, intellectual property, government and other related areas, we can navigate these issues for our clients. Our team of experienced professionals collaborates to provide full service and strategy, involving:

Incident Response Team — We investigate the source of a breach, including by assisting forensic efforts; developing a plan to address public, customer and shareholder concerns; interacting with media, elected or regulatory officials and law enforcement or intelligence agencies; and recommending remedial action.

Targeted Guidance and Assistance — We analyze specific regulations or legislation and develop outreach and communications strategy; review data security and privacy policies, both domestic and international, and audit procedures to ensure compliance and effectiveness; assess policy considerations relating to conceptual or developing technologies; and analyze specific threats and response.

Proactive Corporate Planning — We formulate or modify information security policies and processes; conduct audits to identify areas for further action; analyze potential internal and external threats to information security and develop counter-strategies; provide guidance relating to lawful cooperation and exchanges of threat information across sectors and with law enforcement or intelligence agencies; assess potential privacy, security, media and regulatory impacts of developing technologies, including from an international perspective; develop privacy policies and related training; create outreach strategies to address public concerns about privacy; develop crisis and data breach response plans that consider potential shareholder and liability issues, and law enforcement interests; monitor relevant legislative, regulatory and policy actions and advocate for desired results; and develop strategies to ensure compliance with current policies and influence and prepare for future policies.

OUR EXPERIENCED TEAM

In a dynamic and increasingly complex environment where versatility of experience is essential, our team’s collective experience includes:

- Serving as a member of Congress for 15 years, including:
  - Serving on the Energy and Commerce Committee, one of the most powerful legislative bodies in Congress with jurisdiction over privacy, data security, health care, telecommunications, food and drug safety, energy and environment, and public and consumer protection
Serving as chair of the congressional Subcommittee on Commerce, Manufacturing and Trade — the House subcommittee with jurisdiction over the Federal Communications Commission (FCC), Federal Trade Commission (FTC) and Consumer Product Safety Commission (CPSC)

Spending nearly 20 years in law enforcement, intelligence and government affairs, including:

- Serving as counsel on the U.S. Senate Select Committee on Intelligence — the Senate Committee responsible for oversight of the 17 federal agencies and offices in the U.S. Intelligence Community

- Serving as the lead negotiator on cybersecurity information sharing legislation in the U.S. Senate during the 112th and 113th Congresses and being heavily involved in the passage of legislation relating to the Foreign Intelligence Surveillance Act (FISA) and the USA PATRIOT Act

- Serving as an Assistant General Counsel at the Federal Bureau of Investigation (FBI), overseeing all legal aspects of the FBI’s counterterrorism, counterintelligence and cyber undercover operations, and as an Assistant United States Attorney

- Serving as senior-level staffers to both Democrat and Republican members in the House and the Senate

- Being certified by the International Association of Privacy Professionals as Certified Information Privacy Professionals

- Having extensive experience in health care, criminal practice, media matters and other related industries

Our consulting professionals work closely with our privacy and data security legal professionals at Faegre Baker Daniels.
ABOUT FAEGRE BAKER DANIELS

Faegre Baker Daniels is dedicated to serving the legal needs of regional, national and international businesses. From offices in the United States, United Kingdom and China, our more than 750 legal and consulting professionals provide the depth and breadth of expertise necessary to solve complex business challenges. With roots dating back to 1863, we are one of the 75 largest law firms headquartered in the U.S.

As part of the global business community, we recognize that optimal results are driven by a spirit of collaboration and a team approach to service. With that understanding, we collaborate with clients — and each other — every day to handle the complex transactions, regulatory matters and litigation that businesses face. We partner with clients ranging from emerging startups to multinational corporations in more than 85 practice areas and industry segments, providing advice uniquely suited to each company’s individual needs.

From U.S. locations in Boulder, Chicago, Denver, Des Moines, Fort Wayne, Indianapolis, Minneapolis, Silicon Valley, South Bend and Washington, D.C. to international locations in Beijing, London and Shanghai, we serve clients in every U.S. state and more than 100 countries.

Our legal expertise includes corporate; environmental; ERISA, benefits and executive compensation; finance and restructuring; government; health law; intellectual property; international; labor and employment; litigation and advocacy; real estate and construction; regulatory; tax; and wealth management. Our practices are complemented by experience across a wide range of industries, with a strategic focus on energy and natural resources, financial services, food and agriculture, and life sciences.
ABOUT FAEGREBD CONSULTING

FaegreBD Consulting is a nationally recognized, bipartisan advisory and advocacy firm based in Washington, D.C., that provides strategic advice and implementation assistance with the federal government. Founded in 1985 as a division of the international law firm of Faegre Baker Daniels, FaegreBD Consulting employs 40 professionals with extensive legislative and regulatory experience. Most of the firm’s principals are former congressional aides and/or have experience in the federal executive branch.

FaegreBD Consulting has the capacity to provide advice and counsel to clients who have a national presence. The FaegreBD Consulting team includes highly experienced professionals who have served in governmental positions of relevance to our clients:

- Member of Congress (1998-2013); Member of the Energy and Commerce Committee, including serving as chairwoman of the Subcommittee on Commerce, Manufacturing and Trade and serving on the Energy and Telecommunications subcommittees
- Majority Staff Director, Minority Staff Director and Chief Counsel; Senate Committee on Environment and Public Works
- Chief of Staff for leadership of the U.S. House of Representatives
- Legislative and regulatory affairs specialist at the National Association of State Departments of Agriculture (NASDA)
- Chief Counsel for Advocacy at the U.S. Small Business Administration
- Served on the Environmental Protection Agency
- Advisor to Directors of Centers for Disease Control (CDC) and National Institutes of Health (NIH)

Our team’s federal government experience includes developing some of the federal laws that are likely to be of importance to our clients across sectors.

FaegreBD Consulting is defined by the following principles:

- We employ a client-centered, results-driven interdisciplinary team approach.
- We work as an integrated part of our client’s organization, driving innovation, with an unqualified commitment to shared integrity.
- We rely on regular communications, a clear and accountable work plan, and comprehensive strategies with appropriate tactics.
- We work to align government relations investments with the longer-term goals of the client.

We are dedicated to ensuring that we deliver consistent, high-quality results and that all of our clients are pleased with our services. FaegreBD Consulting offers the professional skills, business philosophy and creative culture that will enable clients to meet and exceed their federal agenda goals.
MODERATOR BIOGRAPHIES

DAVID R. ZOOK
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Dave Zook is an advisor to the private and public sectors on federal budgetary, legislative and regulatory matters. His practice focuses on public policy and funding initiatives in the health, higher education and research arenas. As chair of FaegreBD Consulting, Dave leads the development of the firm’s interdisciplinary, sector-focused services. In addition, he serves as the office leader of Faegre Baker Daniels’ Washington, D.C. office. Dave has a two-decade record of client accomplishments with Congress and the Executive Branch. He has directed complex federal relations initiatives for private sector companies, trade and voluntary associations, hospitals, universities and local governments. Several of those projects have involved building and operating nationwide coalitions.

ANDREW R. WHEELER
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Andrew Wheeler leads the firm’s energy and environment D.C. consulting practice. He advises clients on comprehensive legislative, regulatory and operational strategies related to energy and environmental policy. Andrew represents clients before Congress, Department of Energy, Environmental Protection Agency and the Department of Transportation. His broad experience in both domestic and international public policy has helped Andrew develop a highly specialized view of how to execute effective advocacy programs before the U.S. Congress and the Executive Branch involving all aspects of energy, environment and public works policy. He is the former Staff Director and Chief Counsel of the Senate Environment and Public Works Committee.

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Andy Ehrlich is a principal at FaegreBD Consulting where he utilizes his extensive Washington background to help clients address complex legal, legislative and regulatory issues. Andy led the establishment of FaegreBDC’s energy and environment practice team and served as its leader through 2014. He is a well-known professional in Washington circles. He is a leading thinker on policy and political strategies that help clients succeed in the energy, environment and agriculture sectors. Over his career, he has represented public corporations, private businesses and NGOs to promote and advance their public policy goals within the halls of Congress and the executive branch.

FOR COMPLETE MODERATOR & PANELIST BIOGRAPHIES VISIT: faegrebd.com/2015EESymposium
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Mary Bono, a former United States congresswoman who represented California’s Inland Empire and Desert Region in the U.S. House of Representatives from 1998-2013, focuses her government advocacy and consulting practice on legislative, regulatory and policy matters affecting the technology, privacy, data security, energy and health care industries. During Mary’s 15-year congressional career, she served on the Energy and Commerce Committee, the House Armed Services Committee, the Judiciary Committee and the Small Business Committee.

MICHAEL K. BOLTON
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Michael Bolton is a partner who focuses on upstream and midstream transactions in the domestic and international energy sector. He leads the oil and gas industry segment at the firm. His experience includes mergers and acquisitions, divestitures, joint ventures, financings and project development. He advises oil and gas producers, transport and storage providers, power project developers, refiners and petrochemical manufacturers, energy service companies and the private equity firms and financial sponsors that operate in the energy industry.

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Kathleen Rice provides strategic counsel to corporate and government entities on legislative, regulatory and policy matters relating to data privacy, risk management, cybersecurity, and compliance with federal laws and regulations. Kathleen counsels clients on developing thoughtful policies that grow the economy, protect information and enhance innovation, productivity and security. Prior to joining the firm, Kathleen spent nearly 20 years in law enforcement, intelligence and government affairs.

JAMES R. SPAANSTRA
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Jim Spaanstra is the head of the firm’s national Energy & Natural Resources Industry team. For more than 30 years, Jim has counseled commercial, industrial and governmental clients regarding compliance and enforcement matters involving federal environmental laws and their state counterparts. He has participated in drafting and development of environmental laws and regulations at the local, state and federal levels. Jim has also been involved in establishing voluntary cleanup/brownfields initiatives throughout the United States. He provides counsel regarding the purchase and sale of contaminated properties, and regarding environmental permitting and remediation due diligence issues.