

The Coronavirus Aid, Relief, and Economic Security ([CARES Act](#)) passed on Friday afternoon by Congress includes provisions that significantly impact some regulated industries in the US, including the agriculture sector, while punting consideration of provisions to provide relief to other industries, including the energy sector, to a presumed “Phase 4” relief package to be crafted by Congress and the Trump Administration in the coming days and weeks. A quick summary of how the CARES Act impacts the energy and agriculture sectors:

## Energy

### **Stimulus Bill Omits Funding For Strategic Petroleum Reserve and Critical Extensions for Renewable Energy Tax Credits.**

Although earlier draft legislation contained a proposed US\$2.5 billion to US\$3 billion funding for replenishment of the Strategic Petroleum Reserve (SPR) (taking advantage of lower oil prices due to Saudi Arabia’s recent moves to suppress oil prices), such funding was omitted from the Phase 3 stimulus plan.

**Stimulus fails to include relief for solar and wind.** The bill does not include requested extensions of critical deadlines related to the solar investment tax credit (ITC) or the wind production tax credit (PTC). Both the American Wind Energy Association (AWEA) and the Solar Energy Industry Association (SEIA) have raised alarms that, without such extensions, their respective industries will face a near-term crisis. Many solar project developers face a mid-April deadline to take delivery of key equipment, in order to comply with the solar ITC’s 5% safe-harbor provisions, and missing such deadline could jeopardize their eligibility for the full 30% ITC. Similarly, some wind project developers must complete their projects by the end of 2020 in order to qualify for the full PTC; however, interruptions in global supply chains puts those tax credits and projects at risk.

### **The original CARES Act blueprint put forth by Senate Majority Leader Mitch McConnell (R-KY) included the SPR provisions.**

Democratic leaders responded by arguing that if measures to support the oil industry were going to be included in the package, then language to support “clean energy,” such as extension of tax credits for solar and wind power, should be included as well. Unable to reach agreement in this area, congressional negotiators set aside the energy provisions entirely so that the rest of the Phase 3 package could move forward. This move likely means the energy negotiations will be revisited as Congress begins work on an anticipated Phase 4 measure.

## Environment

### **EPA Announces Enforcement Discretion Policy for COVID-19 Pandemic.**

On Thursday, in response to the COVID-19 pandemic, the Environmental Protection Agency announced a temporary policy lifting civil enforcement of environmental legal obligations during the pandemic. Notably, the waives enforcement on a range of legally mandated public health and environmental protections. In a [March 26](#) statement, EPA Administrator Andrew Wheeler said, “EPA is committed to protecting human health and the environment, but recognizes challenges resulting from efforts to protect workers and the public from COVID-19 may directly impact the ability of regulated facilities to meet all federal regulatory requirements. This temporary policy is designed to provide enforcement discretion under the current, extraordinary conditions, while ensuring facility operations continue to protect human health and the environment.”

The policy does not apply to activities that are carried out under Superfund and RCRA Corrective Action enforcement instruments.

### **EPA’s policy will apply retroactively beginning on March 13, 2020.**

For additional information related to US EPA guidance on compliance and enforcement, visit our [frESH law blog](#).

## Agriculture

### **Critical Emergency Funding to Bolster Food Safety Activities.**

As the coronavirus pandemic has created widespread concerns about the safety and availability of food products, the stimulus takes a crucial step in alleviating such concerns. The bill provides multiple US Department of Agriculture agencies responsible for the safety of the nation’s food supply with emergency funds to support temporary and intermittent workers, relocation of inspectors and overtime costs as necessary in responding to the coronavirus.

### **Stimulus Boosts Access to Nutrition Services for Most Vulnerable Elderly Population.**

Statistics show some of the highest coronavirus mortality rates are associated with the elderly population. To support “social distancing” techniques, the bill allows home-delivered food services to be provided to seniors who choose to remain in their homes due to coronavirus concerns. The bill also allows for the waiver of certain nutrition for seniors during the coronavirus public health emergency to ensure continued access to meals regardless of the current availability of certain food products.

### **Emergency Funding for Nutrition and Commodity Programs.**

With some early estimates suggesting the coronavirus pandemic will increase the overall need for strong, domestic nutrition assistance for children and low-income individuals and families, the stimulus provides approximately US\$25 billion in emergency funding for the Supplemental Nutrition Assistance Program, Child Nutrition Programs, and the Commodity Assistance Program. The bill also provides US\$9.5 billion for coronavirus-impacted agricultural producers, including producers supplying farmers markets, restaurants and schools; growing specialty crops; and raising livestock.