Insight

Highlights of the Fall Regulatory Agenda

DAN BOSCH | DECEMBER 13, 2021

EXECUTIVE SUMMARY

- The Biden Administration recently unveiled its second regulatory agenda, which provides a list of regulatory actions that the administration plans to work on over the next year.
- Much like the Biden Administration's first agenda from June, the fall version continues the trend of reversing many notable Trump Administration rules.
- Notable issue areas with newly listed rules include the environment, labor, and immigration.

INTRODUCTION

The Biden Administration released its second Unified Agenda of Regulatory and Deregulatory Actions (UA) on December 10. The semiannual document provides a list of regulatory actions that the administration plans to work on (but not necessarily complete) over the next year.

Much like the Biden Administration's first UA from June, the fall version continues the trend of reversing many notable Trump Administration rules. This analysis features a by-the-numbers look at the new UA, and highlights several new regulatory actions not previously included.

FALL 2021 UNIFIED AGENDA BY-THE-NUMBERS

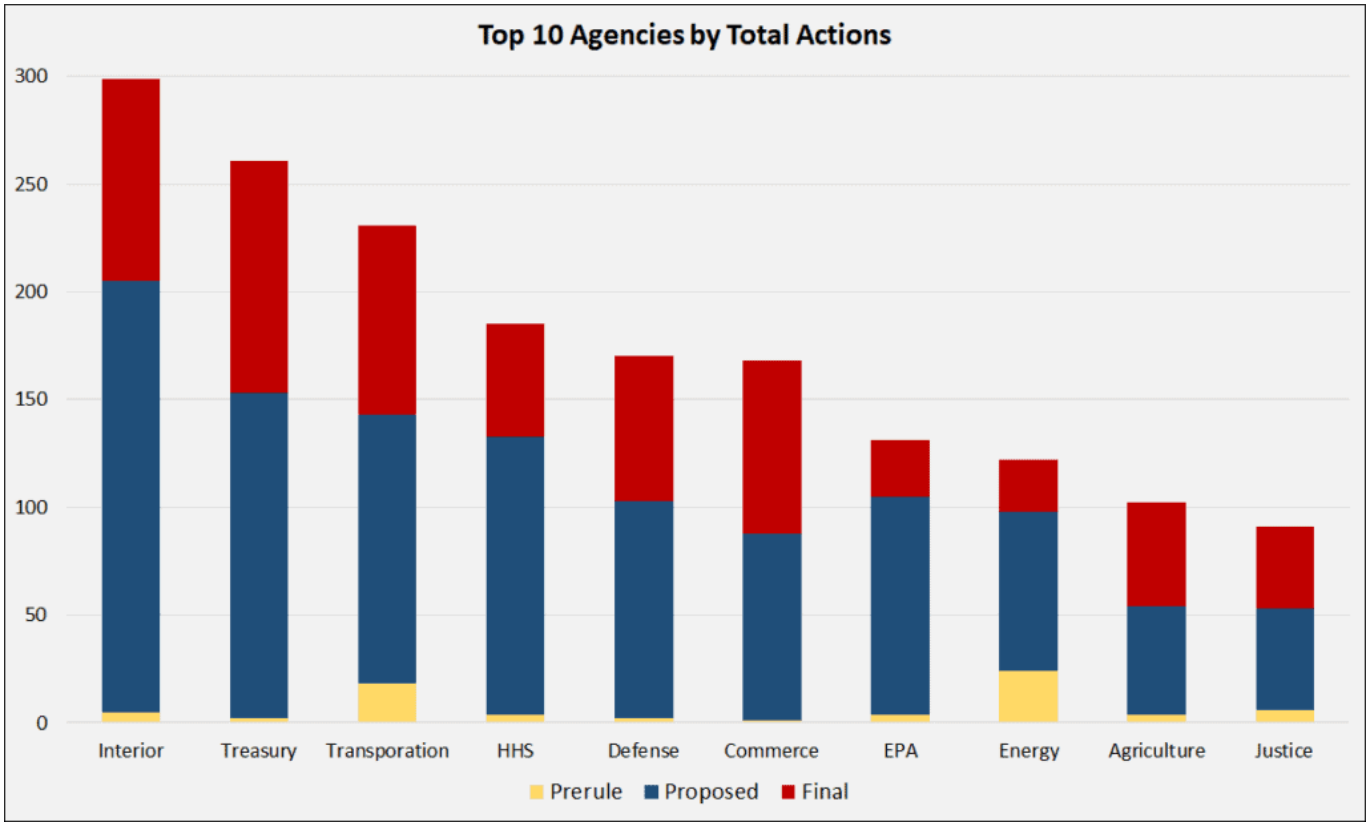
The UA contains 2,678 total "active actions," or those expected to be worked on over the next 12 months. That total is a small increase over the 2,550 active actions in the Biden Administration's first agenda. The difference is made up by a net increase of 142 actions in

the proposed rule stage, as one would expect as the first-year administration begins working on its rulemaking plan in earnest. Rulemakings in the prerule and final rule stages declined slightly. The table below shows notable figures from the UA.

Total Active Actions	2678
Prerule Stage	135
Proposed Rule Stage	1566
Final Rule Stage	977
Major Actions	200
Newly Listed Actions	495

As is typical, the major cabinet departments lead the way in the total number of actions among agencies. Topping the list is the Department of the Interior (DOI) with 299 actions. DOI's total includes 200 actions in the proposed rule stage, with at least 130 of those pertaining to the Endangered Species Act.

Coming in second is the Department of the Treasury (Treasury) with 261 actions, followed by the Department of Transportation (DOT) with 231. The chart below shows the top 10 agencies in terms of active actions.



NOTABLE NEWLY LISTED RULEMAKINGS

Like June's edition of the UA, the most notable newly listed actions in the most recent UA seek to undo Trump Administration rules and replace them with rules more like the Obama Administration's. In most cases, the rules listed below are not surprising but are now turning up for the first time in the UA, with timelines for their development.

Environment

The Environmental Protection Agency (EPA) expects to be busy over the next 12 months implementing several of the policies announced in a first-day executive order aimed at addressing climate change and other environmental issues. The new UA includes new rules on carbon dioxide emissions from power plants that will reverse Trump Administration policies that eased limits compared to the Obama Administration. EPA expects to propose updated standards on new power plants in June 2022, followed by similar guidelines for existing plants in July 2022. The agency plans to finalize both proposals one year later.

EPA will team with U.S. Army Corps of Engineers to – once again – alter the definition of Waters of the United States. The agencies will do so via two rulemakings. The first, proposed earlier this month, returns the definition to its pre-2015 version but would modify it to give it broader reach. The second, anticipated in February 2022, will rely in part on

public comments from the first proposal to make further changes regarding "implementation considerations, scientific developments, and environmental justice values."

EPA will reconsider a Trump Administration determination to retain standards on particulate matter, likely proposing to strengthen acceptable limits in August 2022. The agency also expects to propose new standards on emissions limits from new heavy-duty vehicles in January 2022.

Labor

Two newly listed actions stand out on labor issues. The first is a rulemaking to – for the third time in the last decade – update the salary threshold and key definitions that determine which employees are eligible for overtime pay. The proposal will likely increase the salary threshold adopted by the Trump Administration, which itself revised downward the level finalized by the Obama Administration. The Department of Labor plans a proposed rule for April 2022.

The National Labor Relations Board (NLRB) expects to propose a new definition for its a "joint employer standard," which defines which companies are liable for the conditions of employees and typically affects contractors and franchises, in February 2022. Similar in dynamic to the overtime rule, the Biden NLRB will seek to undo a Trump-era decision, which reversed an Obama-era decision.

Immigration

It is clear from the UA that a point of emphasis for the Biden Administration will be reversing policies adopted by the Trump Administration that made claiming asylum in the United States more difficult. The Department of Homeland Security and Department of Justice (DOJ) will reconsider a 2020 final rule governing credible fear determinations for asylum seekers, with a proposal expected in August 2022.

Separately, DOJ will propose to require immigration judges to "conduct an evidentiary hearing before denying an application for asylum, withholding of removal, or protection under the Convention Against Torture," with a proposal anticipated this month.

Finally, the State Department expects to issue a temporary final rule this month that will amend its regulations on visa fees to provide for exemptions for certain applicants. In an abstract for the rulemaking, the State Department says it will reconsider exemptions removed by the Trump Administration.

Other Notable Rulemakings

Department of Commerce: Securing the Information and Communications Technology and Services Supply Chain; Connected Software Applications

Department of Defense: Prohibition on Certain Metal Products

Department of Energy: Energy Conservation Standards for Refrigerated Beverage Vending Machines

Department of Health and Human Services: Transitional Coverage for Emerging Technologies

DOI: Protection of Marine Archaeological Resources; Regulations for the Protection, Management, and Control of Wild Horses and Burros

DOJ: Federal Regulations on Telepharmacy

DOT: Electronic Logging Device (ELD) Revisions; Unique Electronic Identification of Commercial Motor Vehicles

Treasury: Additional New Grape Names for American Wine

Nuclear Regulatory Commission: Advanced Nuclear Reactor Generic Environmental Impact Statement

Surface Transportation Board: Reciprocal Switching

CONCLUSION

The Biden Administration's second unified agenda expanded upon its first. The most notable actions continue to be rules that will undo Trump Administration actions. In a blog post touting the agenda, however, the administration hints that the next edition will include actions aimed at implementing the recently enacted Infrastructure Investment and Jobs Act. In the meantime, it is clear the administration remains hard at work undoing the policies of its predecessor.