Insight

Highlights of the "Spring" Regulatory Agenda

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EXECUTIVE SUMMARY

- The Biden Administration recently unveiled its spring regulatory agenda, which provides a list of regulatory actions that the administration plans to work on over the next year.
- A common element among some of the administration's most consequential rules is that they are being pushed off into the future.
- Some notable newly listed rules include action on e-scooters in national parks, standards for carbon sequestration, and a maximum level of nicotine in cigarettes.

INTRODUCTION

The "Spring 2022 Unified Agenda of Federal Regulatory and Deregulatory Actions" was released on June 21 – the first day of summer. The semiannual compendium of federal regulatory activity's late arrival proved fitting, as some of the most noteworthy regulations the Biden Administration is working on have had their estimated timelines extended into the future since the last edition published in December 2021.

This analysis looks at some of the numbers behind the latest Unified Agenda, examines the slipping timelines of some of the administration's significant rules, and reviews several of the newly listed rules that will be notable in the coming years.

SPRING 2022 UNIFIED AGENDA BY-THE-NUMBERS

The latest edition of the Unified Agenda includes 2,673 "active" actions, or those that agencies expect to work on over the next 12 months (but not necessarily finalize). That amount is virtually unchanged from the last edition (2,678). The number of rules in the final

rule stage increased by 39, while rules in the pre-rule and proposed rule stages dropped slightly. Major rules increased from 200 to 217, suggesting the administration is working on more economically expensive actions. The following table shows the topline numbers behind the administration's regulatory plans.

All Actions		
Category	*Count*	*Percentage*
Total Actions	3803	100%
Active	2673	70.3%
Completed	574	15.1%
Long-Term	556	14.6%

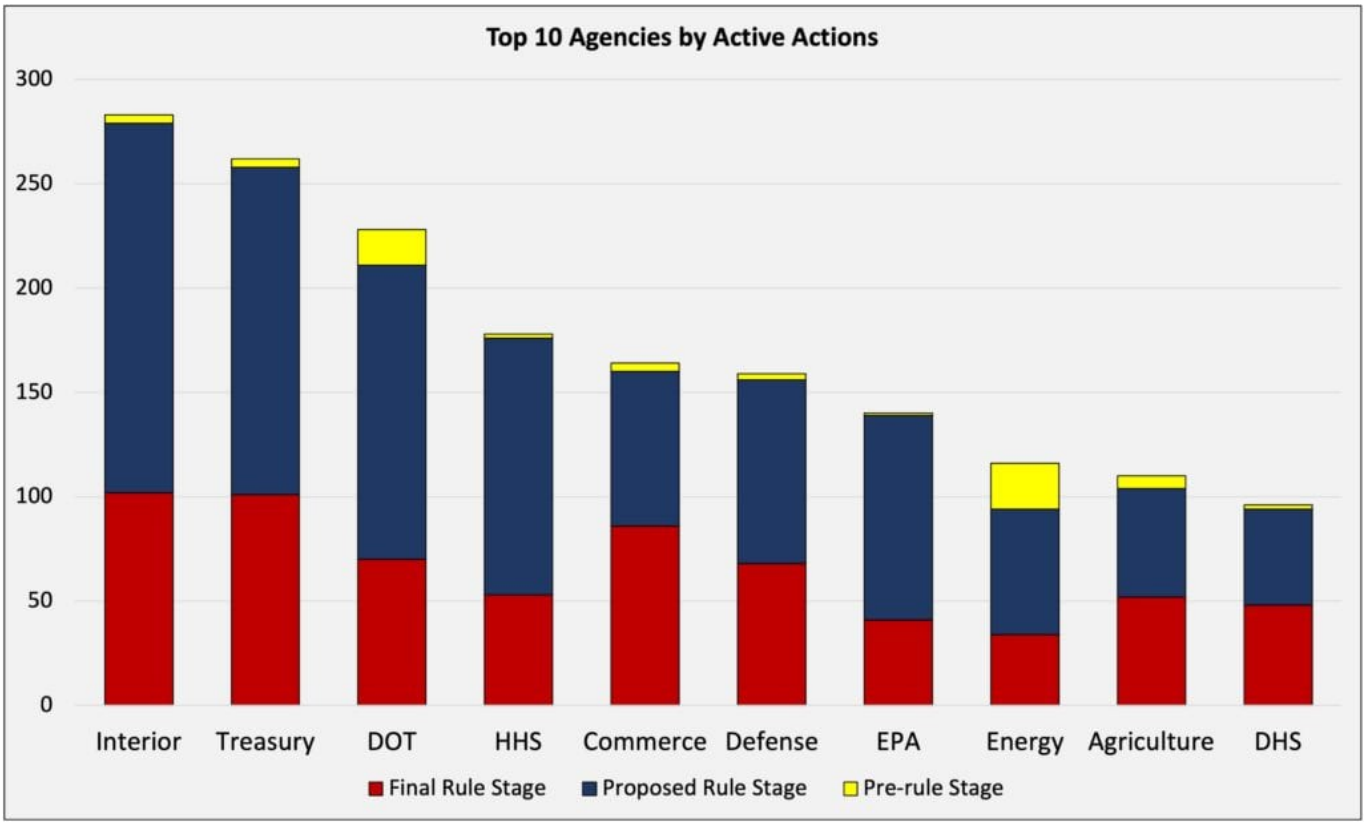
Among active actions, the following table breaks down the nearly 2,700 rulemakings by stage and whether they are:

- Major – Rules expected to have an annual economic impact of more than $100 million or have other sizeable impacts upon certain business sectors or individuals;
- Significant – Rules likely to be reviewed by the Office of Information and Regulatory Affairs due to their economic or policy impacts. This total is the sum of rules marked as "economically significant" or "significant, other;"
- RFA – These rules are expected to produce "significant economic impacts on a substantial number of small entities" and therefore require additional analysis under the Regulatory Flexibility Act.

Active Actions by Stage			
Category	*Final*	*Proposed*	*Pre-rule*
All	1016	1532	125
Major	116	98	3
Significant	373	639	43
RFA	90	124	4

DEPARTMENTS AND AGENCIES

The Department of the Interior continues to have the most active actions among cabinet-level departments and agencies. The Departments of the Treasury and Transportation remain in second and third, respectively. In fact, the top 10 is almost unchanged from six months ago, with the only exceptions being the Departments of Commerce and Defense swapping positions and the Department of Homeland Security ousting the Department of Justice for the number 10 spot. The chart below shows the entire top 10.



SLIPPING TIMELINES

Some of the more significant rules featured in a review of the December 2021 Unified Agenda have had their timelines pushed back. While the Unified Agenda is notorious for its optimistic inaccuracy regarding when rules will be completed, at this point in the Biden Administration, timing is critical if rules are to be completed and excluded from the Congressional Review Act's (CRA) lookback provision in 2025.

The Environmental Protection Agency's (EPA) pair of rules dealing with reducing greenhouse gas emissions from coal and natural gas fired power plants have been pushed

back significantly. In December, those proposal were expected in June and July 2022, but both have now been pushed back until March 2023. A possible reason for the delay is that the Supreme Court is likely to issue a ruling in the coming weeks that could have significant implications for the agency's authority to regulate plants on a statewide level.

The Department of Labor's latest effort to increase the salary threshold below which employees must receive overtime pay has been delayed. A proposed rule was expected in April but is now anticipated for October. Another significant labor proposal, this one from the National Labor Relations Board regarding a definition of "joint employer," had been expected in February but is now expected next month.

NEWLY LISTED RULES

The latest regulatory agenda includes more than 400 rules listed for the first time, spanning everything from "Canned Tuna Standard of Identity" to "Seat Belts in Limousines." The following entries promise to be some of the most interesting and consequential rulemakings for the remainder of the Biden Administration's first term, though there is no guarantee they will be finalized by January 20, 2025.

Department of the Interior

Carbon Sequestration – The Bureau of Ocean Energy Management (BOEM) is due to propose a rule establishing regulations governing carbon transportation and storage on the Outer Continental Shelf. The agency is required to issue a rule under the Infrastructure Investment and Jobs Act of 2021 (IIJA), and says the rule is "likely needed to achieve mid-century climate goals." Despite a statutory requirement that BOEM publish a final rule by November 15, 2022, BOEM does not anticipate publishing a *proposed* rule until December.

Micromobility Devices – The rule, expected to be proposed in July of this year, will set up a framework for where and how the National Park Service will allow use of e-scooters, hoverboards, and Segways in national parks. A key component of the rule involves defining the devices to ensure they are considered separate from motor vehicles and bicycles.

Department of Transportation

Advanced Impaired Driving Technology – The National Highway Traffic Safety Administration (NHTSA) is kicking off its rulemaking, required under the IIJA, to develop a Motor Vehicle Safety Standard "to require passenger motor vehicles manufactured after the effective date of that standard to be equipped with advanced drunk and impaired driving prevention technology." NHTSA anticipates publishing an advanced noticed of proposed rulemaking in December 2022. A statutory deadline for a final rule is set for November

2024.

Department of Health and Human Services

Tobacco Product Standard for Nicotine Level of Certain Tobacco Products – The Food and Drug Administration (FDA) made headlines with the revelation that it expects to publish a proposed rule that would set a maximum nicotine level in cigarettes. FDA says the action would reduce the addictiveness of cigarettes, "thus giving addicted users a greater ability to quit." It also believes such a standard would help prevent older kids and young adults from becoming regular smokers. Despite the headlines, a proposed rule is not expected for nearly a year, in May 2023.

Environmental Protection Agency

Reconsideration of the National Ambient Air Quality Standards for Ozone – EPA will reconsider the Trump Administration's decision not to update the permissible levels of ground-level ozone. The action would likely be among the most-economically consequential rules of the Biden Administration. When it was last updated in 2015 by the Obama Administration, the rule cost an estimated $1.4 billion annually. A proposed rule is expected in April 2023.

Department of the Treasury

Labeling and Advertising of Distilled Spirits, Wines, and Malt Beverages With Statements of Alcohol and Nutritional Content – The Alcohol and Tobacco Tax and Trade Bureau (TTB) is considering a rulemaking that could require alcoholic beverages to have "serving facts" information, including "mandatory information on alcohol content, nutritional content, and appropriate serving sizes for alcohol beverage products."

CONCLUSION

The latest Unified Agenda shows that the Biden Administration is continuing its push to reverse Trump Administration rules. As timelines for some these rules get pushed back, and with the end of its first term getting closer each day, the pressure to complete these rules and avoid possible CRA action in 2025 will begin to ramp up.