On May 23 the White House Office of Information and Regulatory Affairs (OIRA) released the Spring 2019 Unified Agenda of Regulatory and Deregulatory Actions. Commonly known as the “Unified Agenda,” the report is a semiannual update on the administration’s past, present and anticipated regulatory actions across the federal government.

The Unified Agenda keeps in line with the president’s executive order (EO) 13771 from Jan. 30, 2017, which directed that for every new significant federal regulation implemented, two must be rescinded, and for agencies to offset any new regulatory costs. Under EO 12866, significant regulatory actions are most commonly defined as those that have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.

Below is a breakdown of the five major federal agencies that govern agriculture, energy, environment and transportation policy. The next Unified Agenda is anticipated to be released this Fall. For more information on the administration’s current actions please contact Kristen Hildreth, or Ben Husch, and see the resources available below.

**U.S. Department of Agriculture (USDA):**
USDA plans to finalize the establishment of a domestic hemp production program with an interim final rule expected by the end of the summer, an action required to implement provisions within the Agriculture Improvement Act of 2018, more commonly known as the Farm Bill. Once complete, this information will be used to formulate regulations that will include specific details for both federally regulated hemp production and a process for the submission of state and tribal plans to USDA. Also tied to the Farm Bill, the administration plans to publish interim final rules for the Conservation Reserve Program and the Conservation Stewardship Program this Fall.

The Unified Agenda also indicates the administration’s plans to restart the Grain Inspection Packers and Stockyard Administration (GIPSA) regulations which would aim to balance power between meatpackers and the farmers they contract with. In 2017 USDA withdrew an interim final rule for the Grain Inspection, Packers and Stockyards (P&S) Administration that would
have made it easier for contract farmers to sue meatpacking or processing companies by clarifying a section of the law related to competitive injury – the revisions would “specify criteria the Secretary could consider in determining whether conduct or action by packers, swine contractors, or live poultry dealers constitutes an undue or unreasonable preference or advantage and a violation of the P&S Act.”

**Department of Energy (DOE):**

DOE’s report includes a status update of several efficiency standards rulemakings, including: walk in freezers, consumer water heaters, fluorescent lamp ballasts, and more. According to the agenda, a proposed rulemaking on many of those efficiency standards could come as early as September, with others not anticipated until 2020.

**Department of the Interior (DOI):**

Following along with the “America First” offshore executive order issued in 2017, DOI is working on regulatory revisions to “maintain the Nation’s position as a global energy leader.” The Unified Agenda indicates that the Department is working to propose and finalize rules governing offshore rig decommissioning and air quality control this spring. Additionally, the administration extended its plans to replace previous standards for valuing federal oil, gas and coal—a federal court in California struck down the administration’s repeal of the previous standards and reinstated them late April.

The Bureau of Land Management plans to propose a rule changing how it revises and amends resource management plans to “streamline and clarify land use planning processes and improve coordination among Federal, State and local government entities” a move which the previous administration attempted, but was blocked via the Congressional Review Act.

**Department of Transportation (DOT):**

The report lists several actions it plans to take within the next year affecting drones. Notably, the Federal Aviation Administration has again pushed back the date it expects to publish a long-anticipated proposed rule on remote identification of unmanned aerial systems, more commonly known as UAS or drones. The agency is now looking to release a Notice of Proposed Rulemaking (NPRM) in September, according to the latest Unified Agenda. Earlier this month, an FAA official told lawmakers that it had its sights set on July. Among the drone-related regulations is implementing UAS flight restrictions near critical infrastructure facilities; the safe and secure operations of small UAS; and the external marking requirement for small unmanned aircraft.

Additionally, a final rule to establish a pilot program allowing up to five states to conduct their own environmental assessments of infrastructure projects that was mandated by the 2015 surface transportation law is scheduled for release shortly. An Advance Notice of Proposed Rulemaking on amending Federal Motor Vehicle Safety Standards and creating a new safety framework for assessing and validating the success of automated vehicles is due out in December.

**Environmental Protection Agency (EPA):**

The agency will continue work, albeit delayed, regarding its replacement to the 2015 Waters of the United States (WOTUS) final rulemaking, which aimed to determine the scope of federal
authority to regulate WOTUS and when states, local governments and others must seek federal permits to develop land because it contains WOTUS. A two-step process, the recodification of the definition of “waters of the United States,” that existed prior to the 2015 rule is anticipated to be finalized in August, while a final rule for step 2, the revised definition of “waters of the United States,” should be expected in December. For more information on WOTUS, please read NCSL’s Info Alerts or Blogs and follow the Timeline of the rule here.

Vital to states is the administration’s move to “clarify” state certification procedures under Section 401 of the Clean Water Act (CWA). Section 401 provides states the authority to certify, condition or deny any federal permits or licenses that may result in a discharge of pollutants to WOTUS within their borders—the administration is attempting to restrict that authority and plans not only to update or issue new guidance pertaining to implementation of 401, but also to begin the notice and comment period for changes to 401’s implementing regulations. For more information on the agency’s actions read NCSL’s Info Alert here, NCSL’s joint letters to the administration here, and EPA’s webpage here. Also along the CWA vein, the administration is moving along with the CWA 404 Assumption Update Regulation to provide “clarity on the issue of which waters are assumable,” to state, tribal and other stakeholders.

The Water Infrastructure Improvements for the Nation Act established a program allowing states to seek approval from EPA to operate a permitting program that would regulate coal ash facilities within their state. So far only Oklahoma has gotten EPA approval to proceed with their own program. As such, the agency plans to create a federal permitting program for the disposal of coal ash to supplement sites located on tribal lands and in states that aren't handling permitting themselves. The agency plans to issue a proposed rulemaking this July, and a final rulemaking by May 2020.

Another delayed rule, proposed changes to the Lead and Copper Rule are expected to be unveiled this summer; the changes were initially expected in January 2018, with a final rule expected in 2020. New in the pipeline is the regulation of Perchlorate—per a District Court consent decree EPA is required to propose a maximum contaminant level goal (MCLG) for perchlorate in drinking water. Additionally, the agency plans to make preliminary regulatory determinations for Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFAS) by the end of 2019—making a preliminary regulatory determination is the next regulatory step in the Safe Drinking Water Act, which could result in the agency establishing a MCLG for the class of chemicals. Additionally, the administration plans to begin the process of designating the class of chemicals as a Comprehensive Environmental Response, Compensation, and Liability Act hazardous substance by this fall, which would allow the federal government the authority to respond to releases, or threatened releases, of the substances. For more information on PFAS read NCSL’s Info Alert here.

The agency anticipates that the Affordable Clean Energy proposed rule, its replacement to the 2015 Clean Power Plan final rule, will be finalized by June. For more information on the proposed rule, please read NCSL’s Info Alert. Also in June, the agency plans to release a final rule extending deadlines for states to reduce greenhouse gas emissions from municipal solid waste landfills. EPA will also continue to work with DOT to finalize its regulations on fuel efficiency for light vehicles model years 2021-2026 (The Safer Affordable Fuel-Efficient
Vehicles Rule for Model Years 2021-2126 Passenger Cars and Light Trucks by June 2019. For more information on the proposed rule, please read NCSL’s Info Alert.

EPA’s science transparency proposal plans to be finalized by the end of 2019, previously the administration had just included it on its long-term agenda. EPA also plans a review of National Ambient Air Quality Standard (NAAQS) for particulate matter by March 2020—last year, then-EPA Administrator Scott Pruitt directed the agency to prepare to complete the review of the current NAAQS and potentially update the standard by the end of 2020.

Important Links:
Spring 2019 Unified Agenda of Regulatory and Deregulatory Actions
Long Term Actions