



Information Alert

State-Federal Relations Division

White House Releases Fall 2019 Unified Agenda

Nov. 25, 2019

On Nov. 20 the White House Office of Information and Regulatory Affairs released the [Fall 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 future regulatory actions across the federal government. Below is a short breakdown of the five major federal agencies that govern agriculture, energy, environment, and transportation policy. For further information, or any questions on the issues highlighted below, or on any of the administration’s regulatory actions, please contact [Kristen Hildreth](#), or [Ben Husch](#).

U.S. Department of Agriculture (USDA):

Many of the program changes outlined by USDA are being made to comply with the [Agriculture Improvement Act of 2018](#), more commonly known as the 2018 Farm Bill, which authorizes programs through 2023. For instance, the administration indicates plans to publish interim final rules for the [Conservation Reserve Program](#) and the [Conservation Stewardship Program](#) later this month.

Department of Energy (DOE):

DOE plans on a number of status updates of several efficiency standards rulemakings, including: [walk in freezers](#), [consumer water heaters](#), [general service fluorescent lamps](#), and more. Many of those updates will come in 2020.

On the efficiency standard front, the department will [initiate](#) a rulemaking to consider whether to revise test procedures for general service fluorescent lamps, general service incandescent lamps and incandescent reflector lamps consistent with the Energy Policy and Conservation Act in early 2020. Additionally, later this month it [plans to issue](#) a supplemental notice of proposed rulemaking that includes a proposed determination with respect to whether to amend or adopt standards for general service LED lamps and that may include a proposed determination with respect to whether to amend or adopt standards for compact fluorescent lamps.

Department of the Interior (DOI):

Several rules are underway in the Bureau of Land Management (BLM) including one to address [wild horse and burro management challenges](#) by “adding regulatory tools that better reflect” the authority BLM already has to manage the herds on federal lands. Other BLM proposals include allowing the use of [electric bicycles on BLM lands](#), and several rules to address the administration of rights of way (ROW) on public lands, such as updating [bonding procedures for ROW](#) on acreage overseen by BLM, [wildfire risks on powerline ROW](#) on public lands, and [vegetation management on ROW](#).

DOI is also working to publish a rule [clarifying existing regulations relating to “ten-day notices.”](#)—the Office of Surface Mining Reclamation and Enforcement is working on an oversight tool for the department as states begin to take primary charge of regulating coal mining under federal law.

The Fish and Wildlife Service plans to reclassify, resolve or modify the Endangered Species Act status of numerous plants and animals including the [Sierra Nevada red fox](#) and the [sage grouse](#). A proposed rule also exists to allow the incidental taking of [polar bears](#) during oil and gas exploration of the Arctic National Wildlife Refuge.

Department of Transportation (DOT):

The report lists several actions the department 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 in December. Regulations related to drones include: 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.

Environmental Protection Agency (EPA):

The agency will continue work to finalize its rollback of the [2015 Waters of the United States](#) (WOTUS) 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. [The revised definition of “waters of the United States,”](#) step two in the two-step process to repeal and replace the 2015 Clean Water Rule, is expected to be released in early 2020. For more information on WOTUS, please read NCSL’s [Info Alerts](#) or [Blogs](#) and follow the [timeline](#) of the rule.

Vital to states is the administration’s move to [“clarify” state certification procedures under Section 401 of the Clean Water Act](#) (CWA), which they hope to finalize by late spring 2020. 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 Alerts [here](#), NCSL's letters to the administration [here](#), and EPA's [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, and is expected to issue a proposed rule in the Spring.

Following the passage of the [Vessel Incidental Discharge Act \(VIDA\)](#) last December, the agency is working in tandem with the Coast Guard to [develop national performance standards](#) for approximately 30 different categories of discharges from commercial vessels greater than 79 feet long, and for ballast water from commercial vessels of all sizes. VIDA requires the EPA to establish discharge performance standards at least as stringent as the 2013 National Pollutant Discharge Elimination System Vessel General Permit. This proposed rule is intended to implement VIDA.

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 received EPA approval to proceed with its 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 are not handling permitting themselves. That [rulemaking](#) was initially slated for this past summer, but is now expected by the close of 2019. [Additional](#) coal ash related regulations are being considered as well, to address the 2018 U.S. Court of Appeals for the District of Columbia's [finding](#) that some portions of the [2015 regulations](#) were unlawfully weak.

Proposed changes to the [Lead and Copper Rule](#) were unveiled last month—they were initially expected in January 2018, with a final rule expected in 2020. It is unclear when the agency will finalize the rule. For more information on what it contains, read [NCSL's Info Alert](#). We should see a finalization of the [regulation of Perchlorate](#) by mid-December 2019. 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](#).

The agency anticipates finalizing replacements for the previous administration's [carbon standards for new and modified power](#) plants as well as a methane standards for oil and natural gas. [New Source Review Changes Program](#), which were initially proposed as part of the Affordable Clean Energy proposed rule but not included in the final version, are expected to be finalized in the spring of 2020. For more information on those changes, read [NCSL's Info Alert](#). Additionally, the agency plans to finalize the second portion of revising 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 the end of November 2019. For more information on the proposed rule, please read [NCSL's Info Alerts](#).

[EPA's science transparency proposal](#) is expected sometime in the future, but the final publication date is unknown. Also plans for a review of the [National Ambient Air Quality Standard \(NAAQS\) for particulate matter](#) are expected by April 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.

The White House Council on Environmental Quality indicated that it could soon release [proposed updates](#) to the 1978 National Environmental Policy Act regulations following a [2017 executive order](#).

Important Links:

- [Fall 2019 Unified Agenda of Regulatory and Deregulatory Actions](#)
- [Long Term Actions](#)