



Week in Regulation

A Net-Cost Week Due to Curious Cases

DAN GOLDBECK, DAN BOSCH | NOVEMBER 4, 2019

Coming off the heels of [the prior week's](#) deregulatory surge, this past week swung back in the cost-adding direction. But there's a twist: The two main drivers of this trend are deemed “deregulatory” for the purposes of Executive Order (EO) 13,771. These two rules – one apiece from the Departments of Agriculture (USDA) and Education (ED), respectively – represent the latest examples of rules that impose direct administrative costs while providing more ephemeral “savings” in the form of eliminating or changing broad-based regulatory barriers in the market. Across all rulemakings, agencies published \$840.8 million in total net costs and added nearly 1.1 million hours of annual paperwork.

REGULATORY TOPLINES

- New Proposed Rules: 43
- New Final Rules: 55
- 2019 Total Pages: 59,184
- 2019 Final Rule Costs: \$23.5 Billion
- 2019 Proposed Rule Costs: -\$4.2 Billion

TRACKING THE REGULATORY BUDGET

The first [rule](#), out of USDA, focuses on the “Establishment of a Domestic Hemp Production Program.” The rule implements provisions in last year’s Farm Bill that directed the department to set up the regulatory framework for the commercial growing and selling of hemp products. Until these legislative and regulatory changes, hemp production was broadly restricted due to its legal categorization as “marihuana,” and thus a Schedule I substance. The new regulatory structure includes a series of administrative requirements that add up to roughly \$41 million in compliance costs annually (or roughly \$590 million in present value). USDA, however, categorizes it as deregulatory since “it allows for the development of a niche market that cannot exist under current regulation.”

The second [rule](#) from ED “amends the regulations governing the recognition of accrediting agencies, certain student assistance general provisions, and institutional eligibility” for particular postsecondary institutions. According to the department, such actions “allow for additional entrants or enhanced competition in the postsecondary accreditation market and to promote innovation in higher education.” It is not, however, able to quantify those effects. For the purposes of our fiscal year (FY) 2020 regulatory budget tracking, the quantifiable effects include \$16 million in annual reporting costs (nearly \$230 million in present value).

For FY 2020, agencies have finalized 14 deregulatory actions and three regulatory actions, totaling \$321.7 million in quantified total net cost savings. The Trump Administration has yet to release its regulatory budget goal for FY 2020, though it is expected soon.

THIS WEEK'S REGULATORY PICTURE

This week, a guidance document on guidance documents.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

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M-20-02

MEMORANDUM FOR REGULATORY POLICY OFFICERS AT EXECUTIVE DEPARTMENTS AND AGENCIES AND MANAGING AND EXECUTIVE DIRECTORS OF CERTAIN AGENCIES AND COMMISSIONS

FROM: Dominic J. Mancini, Acting Administrator
Office of Information and Regulatory Affairs

A handwritten signature in blue ink that reads "Dominic J. Mancini".

SUBJECT: Guidance Implementing Executive Order 13891, Titled "Promoting the Rule of Law Through Improved Agency Guidance Documents"

A recent American Action Forum [Insight](#) explained two executive orders (EOs) issued by President Trump regarding guidance documents issued by federal agencies. That piece concluded that a memorandum to be issued by the Office of Information and Regulatory Affairs (OIRA) would ultimately determine their success. This week, OIRA delivered guidance to agencies on one of those EOs.

The [memorandum](#) pertains to the EO titled "Promoting the Rule of Law Through Improved Agency Guidance Documents." This EO required agencies to develop a single location for all guidance, or "guidance portal," on their websites and to make significant guidance available for public comment before taking effect. We now know more about what is expected of agencies.

Foremost, the memorandum explains what constitutes a guidance document for purposes of the EO. The term can be so broad that OIRA found it easier to list eight exclusions that are not guidance rather than list what is. Among the types of documents excluded: decisions of agency adjudication, legal briefs and opinions, and rules of agency organization, procedure, or practice.

Regarding the new guidance portal requirement, the memorandum offers many more specifics than the EO.

Agencies have until February 28, 2020 to establish their portal and issue a Federal Register notice of its availability and explain that any document not included on that page is no longer in effect. Should an agency fail to include an existing guidance on that page by that date, OIRA is allowing a grace period until June 27, 2020 to correct the error and add it to the site. After that, agencies must reissue the document as if it was new guidance.

The EO also establishes a deadline for agencies to issue new, or amend existing, regulations establishing a process for issuing new guidance documents. That deadline is April 28, 2020. As part of those regulations, agencies must detail how they will take and make available public comments on proposed guidance documents before they take effect.

While this memorandum helps explain many of the key details of the new EO requirements, it leaves open the door for additional information on “what other categories of document that might otherwise constitute guidance are excepted from the requirements of this EO.” That’s right fellow regulatory policy nerds — we may soon see a guidance document on a guidance document on guidance documents.

TOTAL BURDENS

Since January 1, the federal government has published \$19.3 billion in total net costs (with \$23.5 billion in finalized costs) and 48.1 million hours of net annual paperwork burden increases (with 43.6 million coming from final rules). [Click here](#) for the latest Reg Rodeo findings.

Year

- [Select All]
- 2019
- 2018
- 2017
- 2016
- 2015
- 2014
- 2013
- 2012
- 2011
- 2010
- 2009
- 2008
- 2007
- 2006
- 2005

Total Number of
Regulations
Finalized

227

Total Finalized Cost

\$23.5b

Paperwork Hours

43,598,078