



Information Alert

State-Federal Relations Division

White House Releases Fall 2018 Unified Agenda

Oct. 22, 2018

On Oct. 17, the White House Office of Information and Regulatory Affairs (OIRA) released the [Fall 2018 Unified Agenda of Regulatory and Deregulatory Actions](#). More 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13771](#) from Jan. 30, 2017, which directed that for every new significant federal regulation implemented, two must be rescinded, and for agencies to offset any new regulatory costs.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. Per the Unified Agenda, in fiscal year (FY) 2018, agencies achieved \$23 billion in net regulatory cost savings, issued 176 deregulatory actions—57 of which were significant deregulatory actions—and issued 14 significant regulatory actions. The administration estimates it has reduced regulatory costs by \$33 billion since it came into office.

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 mid-2019. 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):

In FY 2019, USDA plans to issue 16 final deregulatory actions resulting in either a cost savings or meeting the presidential direction under EO 13771 that an agency issue twice as many deregulatory actions as regulatory actions.

Prior to the close of calendar year (CY) 2018 it aims to finalize implementation of the [National Bioengineered Food Disclosure Standard rule](#), which would establish a national standard to “supersede a patchwork of similar standards implemented or planned by individual States,” and is required by law. This rule is commonly referred to as the genetically modified organisms (GMO) labeling rule. Additionally, in Spring 2019, the department plans to issue two proposed

rules—the first an [update the National Organic Program](#) to strengthen the oversight of organic products, improve the enforcement of organic standards and protect organic integrity, and the second to update its rules [regarding the “importation, interstate movement, and environmental release” of genetically engineered crops](#).

Department of Energy (DOE):

DOE is planning to issue [a proposed rule updating and modernizing its “Process Rule,”](#) which outlines its procedures for establishing energy conservation standards and test procedures for its appliance program. This proposal would be a follow up to its [Dec. 2017 Request for Information](#) to identify potential modifications. You can read [NCSL comments here](#).

The report also includes a status update of several efficiency standards rulemakings: [fluorescent lamp ballasts](#), [walk in freezers](#), [room air conditioners](#), [clothes dryers](#), and more.

Department of the Interior (DOI):

In FY 2019, DOI expects to complete deregulatory actions that provide \$50 million in annualized cost savings, and does not, at this time, expect to promulgate any significant regulatory actions that would be subject to the requirements of EO 13771.

DOI indicates that it will pursue an agenda in line with [EO 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects](#), which directs federal agencies to undertake actions to improve the effectiveness, efficiency, transparency, and accountability of their environmental review and permitting processes for infrastructure projects. As such, regulatory actions for FY 2019 not only include a rule to update and streamline the department’s [National Environmental Policy Act implementation processes](#), but also several regulations [revising the listing of species under the Endangered Species Act](#).

Additionally, the Bureau of Land Management, Bureau of Ocean Energy Management, and the Bureau of Safety and Environmental Enforcement will [continue to review and consider potential regulatory action](#) related to oil and drilling on the outer continental shelf, as the administration continues to increase offshore energy leasing and development per [EO 13795, Implementing an America-First Offshore Energy Strategy](#).

Department of Transportation (DOT):

DOT indicates that even with the cost of significant regulatory actions, the department’s deregulatory actions in FY 2018 will result in over \$500 million in net cost savings. It is currently pursuing over 120 deregulatory rulemakings.

The report lists several actions the administration is planning on taking within the next year surrounding drones. Within the next month the Federal Aviation Administration is anticipated to release a proposed rule on [drone flights over people](#), and request comments on [drone safety and security](#). Additionally, the agency plans to finalize a rule on [drone registration](#) and issue a final rule on [drone marking requirements](#) by the close of 2018. In 2019 the agency plans to propose rules on [remote identification](#) and develop an application process to place [limitations on drone flights near “critical infrastructure.”](#)

In addition to drones, the department has several rulemakings pending, which reflect its commitment to “safety, innovation, infrastructure, and reducing burdens.” The National Highway Transportation Safety Administration has pending rules surrounding [autonomous vehicles](#) and updating 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). The Federal Transit Administration will focus on [streamlining the environmental review process for transit projects](#) and updating its [Project Management Oversight regulation](#) and the Pipeline and Hazardous Materials Safety Administration (PHMSA) will continue to focus on [pipeline safety and the movement of hazardous materials across multiple modes of transportation](#). A top priority for PHMSA in FY 2019 is to publish the final [“Hazardous Materials: Oil Spill Response Plans and Information Sharing for High-Hazard Flammable Trains,”](#) rule, required by the [Fixing America’s Surface Transportation Act](#), which would expand the applicability for comprehensive oil spill response plans and requires railroads to share information about such high-hazard flammable operations with state emergency response commissions.

Environmental Protection Agency (EPA):

The agency will continue work surrounding 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 March of 2019, while a notice of proposed rulemaking for [step 2, the revised definition of “waters of the United States,”](#) in accordance with [EO 13778, “Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule,”](#) should be expected prior to the end of CY 2018, with a final rule expected in the fall of 2019. For more information on WOTUS, please read NCSL’s [Info Alerts](#) or [Blogs](#).

The agency anticipates that the [Affordable Clean Energy proposed rule](#), its replacement to the 2015 Clean Power Plan final rule, will be finalized by March 2019. For more information on the proposed rule, please read [NCSL’s Info Alert](#).

Delayed again, proposed changes to the [Lead and Copper Rule](#) are expected to be unveiled in [February 2019](#), they were initially expected in January 2018. Also in the pipeline since 2017, the agency plans to both repeal, issue a proposed rule and take final action on amendments to the [certification of pesticide applicators rule](#) and established [agricultural worker protection standards](#). 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 spring of 2020. For more information on the proposed rule, please read [NCSL’s Info Alert](#).

[EPA’s science transparency proposal](#) was included on EPA’s long-term action agenda, which lists the items the agency does not plan to act on in the upcoming year—the agency now predicts it will finalize the rule in 2020, although press reports following the report’s publication indicated that additional work on this rule may occur in CY 2019. Other items without set timelines include the review of the [National Ambient Air Quality Standard \(NAAQS\) for](#)

[particulate matter](#), which did not include a projected date for the agency to propose action on the standard despite former EPA Administrator Scott Pruitt’s memo directing the agency to make preparations to complete the review of the current NAAQS and potentially update the standard by the end of 2020. Additionally, while the Unified Agenda does not list a date for any actions, the agency indicates that it will begin the process of designating perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS), more commonly referred to as PFAS, as “hazardous substances,” within its [Fall 2018 Statement of Priorities](#) accompanying the Unified Agenda. [NCSL staff attended](#) a two-day National Leadership Summit at EPA on the issue earlier this year.

Other long-term items to watch include: [the Clean Water Act 404 Assumption Update Regulation](#); the [Clarification of State Certification Procedures Under Section 401 of the Clean Water Act](#); a repeal of the [Obama-era carbon dioxide rules for “glider” trucks](#); the proposal of [emissions rules for aircraft](#) following the agency’s 2016 endangerment finding; and the issuance of [two proposed bans](#) on the uses of trichlorethylene under the Toxic Substances Control Act.

Important Links:

[Fall 2018 Unified Agenda of Regulatory and Deregulatory Actions](#)

[Agency Statements of Regulatory Priorities](#)

[Long Term Actions](#)