



governmentattic.org

"Rummaging in the government's attic"

Description of document: Department of Homeland Security (DHS) Regulatory Reform Documents, 2017

Requested date: June 2017

Release date: 26-March-2018

Posted date: 27-May-2019

Source of document: FOIA Request
Privacy Officer/FOIA Officer
The Privacy Office
US Department of Homeland Security
245 Murray Lane SW
STOP-0655
Washington, D.C. 20528-0655
[DHS FOIA / Privacy Act Request Submission Form](#)

The governmentattic.org web site ("the site") is noncommercial and free to the public. The site and materials made available on the site, such as this file, are for reference only. The governmentattic.org web site and its principals have made every effort to make this information as complete and as accurate as possible, however, there may be mistakes and omissions, both typographical and in content. The governmentattic.org web site and its principals shall have neither liability nor responsibility to any person or entity with respect to any loss or damage caused, or alleged to have been caused, directly or indirectly, by the information provided on the governmentattic.org web site or in this file. The public records published on the site were obtained from government agencies using proper legal channels. Each document is identified as to the source. Any concerns about the contents of the site should be directed to the agency originating the document in question. GovernmentAttic.org is not responsible for the contents of documents published on the website.

From: foia <foia@hq.dhs.gov>

Sent: Mon, Mar 26, 2018 11:38 am

Subject: Department of Homeland Security FOIA 2017-HQFO-00922 Final Response

Good Morning,

Attached is our final response to your request. If you need to contact this office again concerning your request, please provide the DHS reference number. This will enable us to quickly retrieve the information you are seeking and reduce our response time. This office can be reached at 866-431-0486.

Regards,

DHS Privacy Office
Disclosure & FOIA Program
STOP 0655
Department of Homeland Security
245 Murray Drive, SW
Washington, DC 20528-0655
Telephone: 1-866-431-0486 or 202-343-1743
Fax: 202-343-4011
Visit our FOIA website



Homeland Security

June 27, 2017

MEMORANDUM FOR THE CHIEF OF STAFF

FROM: Scott Krause *Scott Krause*

SUBJECT: Response to your June 19, 2017 questions regarding the Regulatory Reform Task Force Report

Attached for your review are the responses from OGC to your questions on June 19, regarding the Regulatory Reform Task Force Report.

Question: (b)(6) - per S1's note- could he or you issue additional guidance/requirements to Components

Answer: Yes to both (i.e., having (b)(6) and the Secretary take additional steps). OGC will use a multi-pronged approach to address the challenges. First, (b)(6), in his capacity as Acting General Counsel, is going to issue a memorandum to the components with the largest regulatory programs (i.e., CBP, TSA, & USCG), explaining that sufficient deregulatory actions have not been identified or developed. Second, the Deputy Secretary, during the next Regulatory Reform Task Force meeting, will ask the components to present to the Task Force on the progress they have made thus far (particularly, in identifying deregulatory actions and the timelines for completing those deregulatory actions). Third, we may later ask the Secretary to assist. We may suggest that the Secretary raise regulatory reform at one of his SLG meetings and ask components to report on their progress, their timeline for completing deregulatory actions, and their resourcing of deregulatory efforts (so far, components are still focusing on "business as usual" and issuing new regulations.)

Question: Also- given the challenges outlined- could we raise the issue of an exemption to a higher level at OMB?

Answer: Yes. OGC will prepare a memo that the Deputy Secretary can send to the OMB Director, Mick Mulvaney. The memo will discuss exemptions from EO 13771. In particular, it will address the need for DHS exemptions for Administration priority regulations, immigration regulations, and national security regulations.


June 14, 2017

DECISION

**Homeland
Security**

MEMORANDUM FOR THE SECRETARY

FROM:

Joseph B. Maher 
Acting General Counsel

SUBJECT:

Regulatory Reform Task Force Report due May 24, 2017

Purpose: This attached Regulatory Reform Task Force Report updates you on the progress that DHS has made in implementing Executive Order 13,777, *Enforcing the Regulatory Reform Agenda*. The DHS Regulatory Reform Task Force submits this report to you pursuant to section 3(g) of the Executive Order.

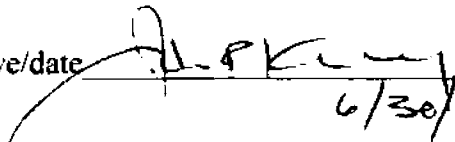
Background or Context: Executive Order 13,777 requires DHS to designate a Regulatory Reform Officer, establish a Regulatory Reform Task Force, and measure its progress in performing the tasks associated with the Executive Order.

In addition, the Executive Order requires the Regulatory Reform Task Force to provide a report to you, by May 24, 2017, detailing the Task Force's progress on two goals: (1) improving implementation of regulatory reform initiatives and (2) identifying regulations for repeal, replacement, or modification. DHS has made significant progress in implementing regulatory reform, and the attached Report discusses DHS's initial efforts and ongoing efforts. The Report also discusses certain challenges unique to DHS, such as OMB's narrowing of the national security exemption in the Executive Order and OMB's decision, thus far, that the national security exemption does not apply to any of regulations for which DHS has requested the exemption.

The Regulatory Reform Task Force includes representation from PLCY, MGMT, OGC, CBP, TSA, and USCG. In addition, OGC shared the draft report with USCIS and FEMA, which are also large regulatory components within DHS. All component comments were adjudicated.

Timeliness: Executive Order 13,777 requires the Regulatory Reform Task Force to provide future updates to you on a schedule that you determine. The Regulatory Reform Task Force recommends that we provide updates to you every six months, although we are happy to provide updates on whatever timetable you prefer.

Recommendation: The Regulatory Reform Task Force recommends that we provide updates to you every six months.

Approve/date  _____ Disapprove/date _____
6/30/2017

Modify/date _____ Needs discussion/date _____

Report to the Secretary on DHS
Implementation of Executive Order 13777,
Enforcing the Regulatory Reform Agenda



DHS Regulatory Reform Task Force
May 24, 2017

Table of Contents

I.	Executive Summary.....	1
II.	Background.....	1
A.	EO 13777, Enforcing the Regulatory Reform Agenda.....	1
B.	Related Executive Orders	2
III.	Initial DHS Efforts.....	3
A.	Stand-up of the Regulatory Reform Task Force.....	3
B.	Guiding Principles for DHS Regulatory Reform.....	4
C.	Deputy Secretary Memorandum to Component Heads	4
D.	Development of Component Plans.....	5
IV.	Ongoing DHS Efforts.....	5
A.	Organizational Structure	5
B.	Developing and Implementing a Strategy for Review.....	6
C.	Input and Feedback.....	8
D.	Performance Measures	8
E.	Institutionalization.....	9
V.	Challenges	10
VI.	Conclusion.....	11
	Attachment A: Executive Order 13777, Enforcing the Regulatory Reform Agenda	13
	Attachment B: Regulatory Reform Task Force Members and SAROs	16
	Attachment C: Memorandum from DHS Deputy Secretary to Component Heads, Implementation of the Regulatory Reform Executive Orders (Apr. 14, 2017) ...	17
	Attachment D: Guidance on Component’s June 14th Submission to Task Force (dated May 5, 2017).....	20

I. Executive Summary

This Report updates you on the progress that the U.S. Department of Homeland Security (DHS) has made in implementing Executive Order (EO) 13777, *Enforcing the Regulatory Reform Agenda*. The DHS Regulatory Reform Task Force submits this report to you pursuant to section 3(g) of the EO.

DHS has made significant progress in implementing regulatory reform. You designated the Deputy Secretary as the Regulatory Reform Officer for DHS, and the DHS Regulatory Reform Task Force has been stood up. In addition, the Regulatory Reform Task Force has developed a five-factor framework by which to address regulatory reform at DHS.

Efforts are underway to educate personnel throughout the Department about the requirements of the EO, and steps have been taken to incorporate regulatory reform into the fabric of DHS. Finally, each DHS component has designated a Senior Accountable Regulatory Official to oversee their component deregulatory efforts, and each DHS component is developing a component-specific plan on the steps they will take to implement regulatory reform.

In this Report, we discuss the above items in further detail, and we discuss the many other steps that DHS has taken to implement EO 13777. We also discuss some of the challenges that DHS will encounter as it implements regulatory reform. EO 13777 requires the Regulatory Reform Task Force to provide future updates to you on a schedule that you determine. The Regulatory Reform Task Force recommends that we provide updates to you every six months, although we are happy to provide updates on whatever timetable you prefer.

II. Background

A. EO 13777, Enforcing the Regulatory Reform Agenda

On February 24, 2017, the President signed EO 13777, which establishes a policy to alleviate unnecessary regulatory burdens on the American people. The EO contains three main provisions: (1) requires each agency to designate a Regulatory Reform Officer, (2) requires each agency to establish a Regulatory Reform Task Force, and (3) directs each agency to measure its progress in performing the tasks associated with this EO. Please see Attachment A for a copy of EO 13777.

The EO directs each agency head to designate a Regulatory Reform Officer by April 24, 2017. The Regulatory Reform Officer is to oversee the agency's implementation of regulatory reform initiatives and policies and to ensure that the agency effectively carries out regulatory reforms consistent with applicable law. The Regulatory Reform Officer is to periodically report to the Secretary and regularly consult with agency leadership.

The EO also directs each agency to establish, and designate the members of, a Regulatory Reform Task Force (Task Force). The Task Force shall evaluate existing DHS regulations and make recommendations to the agency head regarding their repeal, replacement, or modification.

In evaluating existing regulations, the Task Force must seek input from the public. By May 24, 2017, the Task Force must provide a report to the agency head detailing progress on two goals: (1) improving implementation of regulatory reform initiatives, and (2) identifying regulations for repeal, replacement, or modification. The Task Force shall provide further updates to you on a timeline that you determine.

Finally, the EO directs DHS to incorporate performance indicators into DHS's annual performance plan required under the Government Performance and Results Act, as amended. The performance indicators shall measure progress toward the two goals listed above. The EO also instructs the agency head to consider progress toward the above two goals in assessing the performance of the Task Force and the performance of those individuals responsible for developing and issuing agency regulations.

Since issuance of the EO 13777, the Office of Management and Budget (OMB) has issued several guidance documents, providing direction to agencies on implementation.

B. Related Executive Orders

The President issued a number of executive orders that feed into the work of the Task Force and inform the decisions of the Task Force.

On January 30, 2017, the President issued an EO that imposed a new requirement on the issuance of all new "significant" regulations. EO 13771, *Reducing Regulation and Controlling Regulatory Costs*, requires agencies to identify, for every new regulation that the agency wishes to issue, two prior regulations for elimination and cost offsets equivalent to the cost of the new regulation. The EO also sets DHS's FY 2017 regulatory budget at zero, and provides that the Director of OMB will set a regulatory (and deregulatory) budget for each agency beginning in FY 2018.

In addition, the President issued Executive Order 13783, *Promoting Energy Independence and Economic Growth* on March 28, 2017. EO 13783 requires agencies to identify existing regulations and other actions that potentially burden the development or use of domestically produced energy resources. Where agencies identify such regulations, they should take steps to alleviate or eliminate them. As the Task Force considers regulations for repeal, the Task Force will consider any energy regulations that fall in this category.

Similarly, the EOs on immigration (EOs 13767, 13768, 13780, and 13788) contain a number of provisions that require DHS to review existing regulations and take steps to eliminate any that are inconsistent with the policies in the EOs. For example, section 10 of EO 13768, *Enhancing Public Safety in the Interior of the United States*, requires DHS to "review agency regulations . . . and, if required publish . . . regulations rescinding or revising any regulations inconsistent with this order." As the Task Force considers regulations for repeal, the Task Force will have consider any existing regulations that are inconsistent with these EOs. In addition, these EOs contain a number of provisions, directing DHS to issue new regulations. When identifying regulatory offsets, the Task Force will also have to take into account the new regulations required by these EOs.

Finally, there are a few EOs on international trade issues (EOs 13785 and 13796) that may require regulations. For example, Section 4(b) of EO 13785 directs the Secretary of Treasury and the Secretary of Homeland Security to “take all appropriate steps, including rulemaking if necessary” to ensure the timely and efficient enforcement of laws protecting intellectual property rights holders. Similar to the immigration EOs above, the Task Force, in identifying regulatory offsets, will need to take into account any new regulations required by these trade EOs.

III. Initial DHS Efforts

DHS acted swiftly to implement all aspects of EO 13777. Below are some highlights of our initial efforts.

A. Stand-up of the Regulatory Reform Task Force

By memorandum dated April 3, 2017, you designated Deputy Secretary Elaine Duke to serve as the DHS Regulatory Reform Officer and thus as the chair of the Task Force. You also designated the following members of the Task Force: the General Counsel (who is the Regulatory Policy Officer for DHS), Under Secretary for Policy, Under Secretary for Management, Performance Improvement Officer, Associate General Counsel for Regulatory Affairs, Chief Regulatory Economist, and a representative each from CBP, USCG, and TSA. See Attachment B for a list of the individuals on the Task Force.

The Task Force membership provides a balanced mix of expertise and perspective. The Task Force includes both senior political leadership to facilitate decision-making and senior career individuals to provide expertise on regulatory matters. In addition, the Task Force includes both headquarters and component (i.e., CBP, USCG, and TSA) representation. Relative to other DHS components, these three components issue the most high-cost regulations and impose the greatest monetized regulatory burden on industry.

The Task Force held a kick-off meeting on Wednesday, April 26, 2017. The Task Force discussed, and ultimately approved, the following five-factor approach that DHS is using to implement regulatory reform: (1) Identify organizational structures for decision-making related to regulatory reform, (2) Identify a strategy to review regulatory actions, (3) Seek external and internal input to assist with decision making, (4) Incorporate performance indicators to measure success, and (5) Institutionalize regulatory reform into the fabric of DHS.

The Deputy’s Management Action Group (DMAG), which provides a forum for the Deputy Secretary to solicit senior leader input on major decisions, will play an important role in DHS’s regulatory reform efforts. The Task Force will use the DMAG to affirm its decisions.

B. Guiding Principles for DHS Regulatory Reform

DHS established the following guiding principles that inform our regulatory reform and deregulatory efforts:

- We must embrace regulatory reform.
- We must institutionalize deregulatory efforts into the fabric of DHS.
- We will think creatively about regulatory reform and deregulation, and we will continuously seek cost savings and operational efficiencies.
 - For statutorily-required regulatory actions, can we meet the Congressional mandate in a more cost-effective way?
 - For discretionary regulatory actions (i.e., not required by law), do we still need these regulations or are they ripe for repeal?
 - How can we aggressively reduce DHS's paperwork burden on the public?
- We will reallocate resources to meet regulatory reform needs.
- For regulations required by law and regulations necessary to implement Administration priorities, we will develop them in the most cost-effective way possible.
- Employees matter and often have great ideas. We will seek grassroots ideas.
- We will incorporate robust public engagement into our efforts. The public can help us understand the impact of our regulations.

C. Deputy Secretary Memorandum to Component Heads

In a memorandum dated April 14, 2017, Deputy Secretary Elaine Duke provided direction to all Component Heads on DHS implementation of the Regulatory Reform EOs. The Deputy Secretary directed all components to place a high priority on evaluating their regulations for purposes of regulatory reform; identifying candidates for repeal, replacement, or modification; and working diligently to reduce any unnecessary burdens posed by their regulatory actions. She emphasized that all components must dedicate adequate resources and reallocate resources where necessary. See Attachment C for a copy of the Deputy Secretary's memorandum

The Deputy Secretary requested active engagement from across the Department. The EO applies to every component that issues regulations, guidance, or information collections – which is virtually every component in DHS. The Deputy Secretary directed all components to immediately begin review of their actions to identify opportunities for cost savings and burden reduction. She further requested that all components prepare, by June 14, 2017, a submission, for the Task Force on their component's plan to implement regulatory reform.

In response to the request in the Deputy Secretary's memorandum, each component designated a Senior Accountable Regulatory Official to oversee their regulatory reform efforts and to liaise with the Task Force. On Tuesday, May 9, 2017, the Office of the General Counsel (OGC) hosted a kick-off call with all component Senior Accountable Regulatory Officials to discuss the responsibilities associated with regulatory reform and the components' June 14th plans.

D. Development of Component Plans

Pursuant to the Deputy Secretary's memorandum, every component must submit their Component Plan on regulatory reform to the Task Force by June 14. On May 5, 2017, OGC, in conjunction with the Task Force, issued Guidance to components regarding the content of their Component Plans. See Attachment D for a copy of the May 5th Guidance to components.

The Guidance specified that the Component Plans should address the following elements:

- Identify the component's "stock" of regulations, policy and guidance documents, and information collections;
- Identify the component's plan to review that "stock;"
- Provide a preliminary list of deregulatory actions the component has identified thus far;
- Describe the component's organizational approach to regulatory reform;
- Identify the component approach and timeline for seeking input and feedback;
- Provide preliminary goals for the OMB-identified performance indicators; and
- Explain how the component has realigned resources to support regulatory reform.

Component Plans are due to the Task Force on June 14. The Task Force will consider the plans in the overall context of all DHS efforts. The Task Force will work with components to implement their respective plans.

IV. Ongoing DHS Efforts

Our approach for regulatory reform involves the following five factors: Organizational Structure, Strategy for Review, Input and Feedback, Performance Measures, and Institutionalization. The Task Force will address each of these five factors. In addition, all of the components will address these five factors in their plans due to the Task Force on June 14. Below we discuss several of our ongoing efforts in these areas.

A. Organizational Structure

We have established the overall organizational structure that DHS will use to implement regulatory reform. Components are now determining the structure that each will use to implement regulatory reform within their component.

1. At the Departmental Level

The DHS Regulatory Reform Task Force has been stood up and begun its work. The Task Force will oversee overall implementation of DHS's regulatory reform efforts and oversee component progress in implementing regulatory reform efforts. The Task Force may decide to take actions, on a departmental-level, like the components are taking at the component level.

Components that are not members of the Task Force will engage with the Task Force through their designated Senior Accountable Regulatory Officials. Those senior-level component officials will oversee their component's regulatory reform efforts, be accountable for

deregulatory efforts within their component, and liaise with the Task Force. Finally, the Task Force will use the DMAG to affirm the decisions and direction of the Task Force.

2. At the Component Level

Components are still determining the organizational structures they will use. Some, like TSA and U.S. Coast Guard, have developed component Regulatory Reform Task Forces. Others, like CBP, have stood up regulatory working groups in offices with heavy regulatory portfolios. As discussed above, each component must provide a June 14th submission to the Task Force. Among other things, the Component Plan must outline their organizational structure for regulatory reform. We anticipate that there will be a variety of approaches depending on the size of the component and the size and cost of their regulations and information collections.

Regardless of how components choose to organize their regulatory reform efforts, all will be held accountable for achieving results. Per the May 5th Guidance to components, senior leadership must be engaged and there must be active participation from cross-cutting elements of the component.

Some components have made notable, laudable progress in advance of the June 14th deadline. TSA, for example, has established an Integrated Project Team made up of senior leadership within the agency and subject matter experts from operational, policy, and administrative offices. TSA has developed an assessment model for deregulatory actions, and begun designating accountable “owners” for each regulation.

B. Developing and Implementing a Strategy for Review

A critical element of the Task Force’s work will be an ongoing, systematic review of DHS’s regulatory “stock” to identify opportunities for regulatory burden and cost reduction. This will be a multi-step, resource intensive process, and arguably, the most complicated responsibility of the Task Force.

1. Work Involved with Reviewing Regulatory Stock

There is a great deal of work involved with evaluating DHS’s entire regulatory “stock.” At a minimum, the Task Force will need to take the following steps:

- Identify DHS’s full “stock” of regulations, guidance and policy documents, and information collections.
- Review DHS’s entire “stock” against the criteria in EO 13777. The EO directs agencies, at a minimum, to identify regulations that eliminate jobs or inhibit job creation; are outdated, unnecessary, or ineffective; impose costs that exceed benefits; interfere with regulatory reform initiatives; are inconsistent with the Data Quality Act; or derive from or implement EOs or other Presidential directives that have been subsequently rescinded or substantially modified.

- Set target amounts for total regulatory reduction, taking into consideration the need for sufficient deregulatory actions and cost savings to offset all new significant regulations, especially Administration-priority and legally required regulations. In other words, the Task Force must set a target to be able to “keep doing business.”¹
- Recommend regulations for repeal, replacement, or modification, consistent with law and policy.

The Task Force’s work will not end after it recommends regulations for repeal. The Task Force will need to track component implementation of its recommendations. There are some challenges associated with implementation, which we describe further below.

2. Efforts Thus Far

Since January when the President issued the first regulatory reform EO, OGC and the major regulatory components – CBP, ICE, FEMA, NPPD, TSA, USCG, and USCIS – have been collaborating to identify deregulatory actions. DHS has already begun identifying its regulatory “stock” and reviewing it.

OGC, for example, has identified the 50 highest-cost DHS regulations since the Department’s creation in 2003. And OGC, working with the Office of the Chief Information Officer (OCIO), has identified all existing DHS information collections and their associated burden hours. OGC and OCIO have, furthermore, established an informal process for identifying and flagging burden reductions in future information collections. In addition, OGC developed and maintains a master DHS-wide list of deregulatory proposals. Brainstorming began when OGC issued its first data call to the major regulatory components in February, and there are currently 53 deregulatory proposals on the list.

Components likewise have started identifying possible deregulatory actions. FEMA has made notable progress, having identified almost half of the 53 deregulatory proposals on the DHS-wide list. FEMA is considering elimination of a number of outdated regulatory provisions, and, while the elimination of those regulatory provisions would not result in significant cost savings, these efforts demonstrate FEMA’s commitment to “cleaning out” their regulatory stock. CBP has performed a first-pass preliminary analysis of all of its customs regulations, noting those that are ripe for follow-up analysis or outreach to program owners.

Looking across the Department, there is a wide range of deregulatory actions that DHS is currently considering. They include proposals such as removing outdated regulatory provisions, automating forms, reducing the frequency of reporting requirements, eliminating data elements from forms, consolidating overlapping information requests, and proposing the repeal of regulations based on policy direction in the immigration EOs. These are only preliminary ideas that still need to be analyzed through legal, economic, and operational lenses. While they all might not be viable, they are a solid starting point for further analysis.

¹ For now, the Task Force will set its targets based on the assumption that the regulatory budget for FY 2018 and beyond will remain at zero. We realize such targets represent the minimum baseline for regulatory reform.

C. Input and Feedback

Robust public engagement is critical to the success of regulatory reform. To that end, and as required by EO 13777, DHS will seek input and feedback from both internal (e.g., employees) and external sources. There are a range of possible external sources, including other federal agencies, members of Congress, citizens, industry representatives, trade associations, non-profit organizations, non-governmental organizations, academic institutions, advocacy organizations, State/local/Tribal governments, and Federal Advisory Committees.

DHS will likely seek input in a variety of ways (e.g., *Federal Register* notices, social media, public meetings, etc.) and from a variety of sources. Some components have already begun work on this front. CBP, for example, has begun engaging with key stakeholders, to seek input on potential areas for deregulation. CBP has begun a dialogue with the Commercial Customs Operations Advisory Committee (CBP's federal advisory committee), the National Customs Brokers and Forwarders Association of America, Inc., the Customs and International Trade Bar Association, and other trade and industry groups. The specifics about DHS's public and internal engagement will take shape once the Task Force receives and reviews the Component Plans.

Finally, DHS is actively considering the public input we have received thus far. On October 11, 2016, DHS published a notice in the *Federal Register* titled *Retrospective Review of Existing Regulations – A Focus on Burden Reduction*. The notice sought comment from the public on regulations that DHS should consider for streamlining or repeal. We received 25 comments, many of which are very detailed and provide specific suggestions.

D. Performance Measures

EO 13777 includes an important provision to ensure accountability for regulatory reform. As mentioned above, DHS has to incorporate performance indicators into DHS's Annual Performance Plan required under the Government Performance and Results Act. The performance indicators will measure DHS's success in (1) improving implementation of regulatory reform and (2) identifying regulations for repeal, replacement, or modification.

OMB identified five performance indicators that each agency must use. OMB noted that agencies are free to include additional performance indicators if they wish. See OMB's April 28 Guidance titled *Regulatory Reform Accountability under EO 13777 titled "Enforcing the Regulatory Reform Agenda."* Beginning in FY 2018, agencies must report on the data associated with each performance indicator, and agencies must identify each action they take for each performance indicator. Beginning in FY 2019, agencies must include the performance indicators in their Annual Performance Plan and set a goal for each performance indicator.

OMB requires agencies to set goals for each performance indicator beginning in FY 2018, which means that agencies (such as DHS and each of its components) will need to establish their goals for each of the performance indicators by late FY 2017. OGC is working closely with the Office of Program Analysis and Evaluation (PA&E) within the DHS Office of the Chief Financial Officer to understand the requirements and the timeline. OGC and PA&E have begun

connecting their two “universes” – historically, regulatory personnel and performance analysis personnel have operated in two different spheres.

To identify the overall DHS goal for each performance indicator, each component will have to set an individual goal. The aggregate number (of component goals) will constitute the overall DHS goal for each performance indicator. Components have been asked to start thinking about their annual goal for each performance indicator and, if possible, include it in their June 14th submission. Some components have indicated that they need time to do further analysis before they set their goals.

As components submit their Component Plans and the Task Force’s strategy for review takes shape, the Task Force will be better positioned to establish deadlines for when components and DHS will set goals for the performance indicators.

E. Institutionalization

The Task Force will also seek to institutionalize regulatory reform and deregulatory efforts within DHS. We discuss a few ideas below and look forward to the ideas in Component Plans.

First, regulatory reform will only occur if resources are assigned to it. The Deputy Secretary’s April 14th memorandum requested that components make any necessary resource alignments to support regulatory reform. She explained that, within each component, adequate personnel need to be assigned to deregulatory functions. For their June 14th Plan, components have been asked to provide a through accounting of their component regulatory/deregulatory staff, especially regulatory economists. Given the emphasis on cost savings in regulatory reform, adequate staffing and support for economists is essential to the success of DHS’s deregulatory efforts.

Second, we believe it is useful to incentivize the retrospective review of existing regulations. EO 13771’s “2-for-1 one” requirement (i.e., eliminate two regulations and offsets before issuing one new regulation) provides a strong incentive for regulatory review. The Task Force can maintain that incentive by continuing the current policy of allowing components, absent extenuating circumstances, to retain all their own “credits” and own savings.

Another way to incentivize retrospective review is to make the review more straightforward. To that end, OGC is working with OCIO to obtain OMB approval on an expedited process for obtaining information from the public for purposes of regulatory reform. If we are successful in obtaining this “generic clearance” from OMB for collecting information, DHS will be able to more easily gather the data necessary to analyze regulatory impacts and understand the regulatory burdens of our regulations.

Third, we believe a culture of regulatory reform starts with front line personnel. The Task Force will consider incentives for building employee engagement into the regulatory reform process. Current ideas include department- or component- level awards, which reward employees for implementing regulatory reform efforts that result in cost savings, and DHS-wide or component-wide contests, which recognize employees for generating the best regulatory reform idea. The Task Force may also work with OGC to explicitly incorporate regulatory reform criteria into the

DHS legislative proposal process, such that components would be required to assess the likely regulatory impacts of their legislative proposals, including the need for offsetting deregulatory actions and cost savings.

Fourth, regulatory reform will succeed only if we understand it. To that end, there have been several educational efforts at DHS. OGC, who has the lead in DHS for implementing these EOs, has briefed numerous personnel across the Department and also met with a number of components, individually and collectively, to discuss the EO's requirements. Components, likewise, have had such engagements with their program offices.

There are cross-component educational efforts too. In April, the DHS Regulatory Affairs Practice Group hosted an event to watch and discuss a presentation by one of the OMB officials who developed EO 13771. In addition, as part of OGC's standard regulatory meetings, OGC and component regulatory coordinators frequently discuss regulatory reform and "lessons learned." OGC is also establishing a clearinghouse of "ideas for regulatory reform," so that there is a readily-available resource to assist with brainstorming.

DHS is also engaging with interagency regulatory partners. For example, in April, DHS personnel collaborated with interagency colleagues, at several different events, to "compare notes" on how agencies are implementing these EOs. In early May, OGC hosted the Small Business Administration's Office of Advocacy for a meeting to discuss regulatory reform as it relates to small businesses.

Finally, OGC is researching other countries' experience with regulatory reform. Canada, Australia, and the United Kingdom implemented a requirement similar to the "2 for 1" provision in EO 13771. OGC's preliminary findings indicate that other countries focused primarily on paperwork reductions, automation of forms, and reducing duplicate efforts, and also found savings by reducing audit requirements for small businesses and instituting a one-stop-shop for environmental approvals. DHS may be able to learn from these other countries' experiences.

V. Challenges

Prompt and thorough implementation of EO 13777 is critical to DHS's ability to meet statutory mandates, accomplish Administration regulatory priorities, and otherwise regulate as necessary to fulfill its mission. Yet there are challenges, some of which DHS uniquely faces, which may impact the success of DHS's deregulatory efforts. The Task Force will have to plan for, and mitigate, these challenges.

First, within DHS, there has been some institutional resistance to regulatory reform. In the months since issuance of the regulatory reform EOs, there has been reluctance to identify potential meaningful deregulatory actions and to shift resources toward regulatory reform. We are aware of other federal agencies that have already made significant progress in identifying regulations for repeal and identifying regulatory cost-savings. At DHS, however, some components are proceeding with "business as usual," in that they are seeking to issue a number of *new* regulations (both significant and non-significant) instead of evaluating and reducing their existing regulatory stock.

Second, it may be difficult for DHS to identify deregulatory actions with large cost-savings, because almost all of DHS's highest-cost regulations are legally-required security regulations. Over 90% of the highest-cost regulations issued by DHS between 2003 (when DHS was stood up) and 2016 are security regulations required by law. A major challenge will be to figure out how to deliver an equivalent level of security at a cheaper price. Complicating the matter further, repealing certain DHS regulations may not provide the savings we would have otherwise expected from repealing that regulation, because OMB's guidance does not allow agencies to count "sunk costs" (costs already incurred, such as bollards already installed or lifeboats purchased) and many of DHS's regulations have these "sunk costs."

Third, the need to issue regulations to accomplish Administration priorities and fulfill existing legislative mandates will also pose a challenge, because we do not currently have the offsets necessary to proceed with such regulations. For example, the immigration EOs require DHS to issue costly new regulations that, in the absence of an exemption from EO 13771, would require significant offsetting deregulatory actions and cost savings. In March, OGC sought an exemption from EO 13771 for these immigration Administration-priority regulations, but thus far OMB has refused to grant such an exemption, asserting that to do so would go against the spirit of the regulatory reform EOs.

Fourth, DHS will face a similar challenge with respect to our need to issue regulations that support national security. EO 13771 exempted national security regulations from all its requirements, however subsequent OMB guidance significantly narrowed the scope of the national security exemption. In March 2017, OGC sought an explicit exemption from OMB for several of our national security regulations (including several required by law), and OMB refused to grant any such exemptions. This refusal significantly increases DHS's need for deregulatory actions and for cost savings to offset its national security regulations.

Fifth, both the review of existing regulatory stock and the issuance of any resulting deregulatory regulations will present timing and resource challenges. Many components have a large number of regulations and/or information collections, and it will take time to review them. This is especially the case for older components (such as CBP and U.S. Coast Guard), who issued their regulations decades ago, and thus cannot easily quantify the costs and benefits of those regulations today. In addition, the regulatory process is resource-intensive and time-intensive by design. The regulatory process ensures that when an agency issues, amends, or repeals a regulation, the agency acts consistent with law and policy, and only after the agency has carefully studied the potential real-world effects of its action. The Task Force will need to incorporate timing considerations into its planning and recommendations.

VI. Conclusion

The success of regulatory reform at DHS will turn on each of the five factors outlined above – our organizational structure for decision making related to regulatory reform, our strategy for reviewing our regulations, the input and feedback we obtain on our deregulatory efforts, the performance measures to gauge our success in meeting regulatory reform goals, and the

institutionalization of regulatory reform into the fabric of DHS. We look forward to continuing to update you on our efforts in the months and years ahead.

Attachment A: Executive Order 13777, Enforcing the Regulatory Reform Agenda



12285

Federal Register

Vol. 82, No. 89

Wednesday, March 1, 2017

Presidential Documents

Title 3—

Executive Order 13777 of February 24, 2017

The President

Enforcing the Regulatory Reform Agenda

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to lower regulatory burdens on the American people by implementing and enforcing regulatory reform, it is hereby ordered as follows:

Section 1. Policy. It is the policy of the United States to alleviate unnecessary regulatory burdens placed on the American people.

Sec. 2. Regulatory Reform Officers. (a) Within 60 days of the date of this order, the head of each agency, except the heads of agencies receiving waivers under section 5 of this order, shall designate an agency official as its Regulatory Reform Officer (RRO). Each RRO shall oversee the implementation of regulatory reform initiatives and policies to ensure that agencies effectively carry out regulatory reforms, consistent with applicable law. These initiatives and policies include:

(i) Executive Order 13771 of January 30, 2017 (Reducing Regulation and Controlling Regulatory Costs), regarding offsetting the number and cost of new regulations;

(ii) Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), as amended, regarding regulatory planning and review;

(iii) section 6 of Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review), regarding retrospective review; and

(iv) the termination, consistent with applicable law, of programs and activities that derive from or implement Executive Orders, guidance documents, policy memoranda, rule interpretations, and similar documents, or relevant portions thereof, that have been rescinded.

(b) Each agency RRO shall periodically report to the agency head and regularly consult with agency leadership.

Sec. 3. Regulatory Reform Task Forces. (a) Each agency shall establish a Regulatory Reform Task Force composed of:

(i) the agency RRO;

(ii) the agency Regulatory Policy Officer designated under section 6(a)(2) of Executive Order 12866;

(iii) a representative from the agency's central policy office or equivalent control office; and

(iv) for agencies listed in section 901(b)(1) of title 31, United States Code, at least three additional senior agency officials as determined by the agency head.

(b) Unless otherwise designated by the agency head, the agency RRO shall chair the agency's Regulatory Reform Task Force.

(c) Each entity staffed by officials of multiple agencies, such as the Chief Acquisition Officers Council, shall form a joint Regulatory Reform Task Force composed of at least one official described in subsection (a) of this section from each constituent agency's Regulatory Reform Task Force. Joint Regulatory Reform Task Forces shall implement this order in coordination with the Regulatory Reform Task Forces of their members' respective agencies.

(d) Each Regulatory Reform Task Force shall evaluate existing regulations (as defined in section 4 of Executive Order 13771) and make recommendations to the agency head regarding their repeal, replacement, or modification, consistent with applicable law. At a minimum, each Regulatory Reform Task Force shall attempt to identify regulations that:

- (i) eliminate jobs, or inhibit job creation;
- (ii) are outdated, unnecessary, or ineffective;
- (iii) impose costs that exceed benefits;
- (iv) create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;
- (v) are inconsistent with the requirements of section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note), or the guidance issued pursuant to that provision, in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility; or
- (vi) derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

(e) In performing the evaluation described in subsection (d) of this section, each Regulatory Reform Task Force shall seek input and other assistance, as permitted by law, from entities significantly affected by Federal regulations, including State, local, and tribal governments, small businesses, consumers, non-governmental organizations, and trade associations.

(f) When implementing the regulatory offsets required by Executive Order 13771, each agency head should prioritize, to the extent permitted by law, those regulations that the agency's Regulatory Reform Task Force has identified as being outdated, unnecessary, or ineffective pursuant to subsection (d)(i) of this section.

(g) Within 90 days of the date of this order, and on a schedule determined by the agency head thereafter, each Regulatory Reform Task Force shall provide a report to the agency head detailing the agency's progress toward the following goals:

- (i) improving implementation of regulatory reform initiatives and policies pursuant to section 2 of this order; and
- (ii) identifying regulations for repeal, replacement, or modification.

Sec. 4. Accountability. Consistent with the policy set forth in section 1 of this order, each agency should measure its progress in performing the tasks outlined in section 3 of this order.

(a) Agencies listed in section 901(b)(1) of title 31, United States Code, shall incorporate in their annual performance plans (required under the Government Performance and Results Act, as amended (see 31 U.S.C. 1115(b))), performance indicators that measure progress toward the two goals listed in section 3(g) of this order. Within 60 days of the date of this order, the Director of the Office of Management and Budget (Director) shall issue guidance regarding the implementation of this subsection. Such guidance may also address how agencies not otherwise covered under this subsection should be held accountable for compliance with this order.

(b) The head of each agency shall consider the progress toward the two goals listed in section 3(g) of this order in assessing the performance of the Regulatory Reform Task Force and, to the extent permitted by law, those individuals responsible for developing and issuing agency regulations.

Sec. 5. Waiver. Upon the request of an agency head, the Director may waive compliance with this order if the Director determines that the agency generally issues very few or no regulations (as defined in section 4 of Executive Order 13771). The Director may revoke a waiver at any time. The Director shall publish, at least once every 3 months, a list of agencies with current waivers.

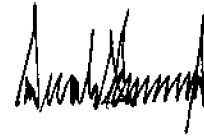
Sec. 6. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
February 24, 2017.

[FR Doc. 2017-04167
Filed 2-28-17; 11:15 am]
Billing code 3295-P7-P

Attachment B: Regulatory Reform Task Force Members and SAROs

DHS Regulatory Reform Officials

Regulatory Reform Task Force Members

Deputy Secretary (Regulatory Reform Officer) Elaine Duke
General Counsel (Regulatory Policy Officer) Joseph Maher (acting)
Office of Policy – Michael Dougherty (acting Assistant Secretary for Border Immigration & Trade Policy)
Under Secretary for Management – Chip Fulghum (acting)
Performance Improvement Officer – Chip Fulghum
Associate General Counsel for Regulatory Affairs - Christina McDonald
Chief Regulatory Economist - David Houser
CBP – Robert E. Perez, Executive Assistant Commissioner, Operations Support (acting)
TSA – Chad Wolf, Chief of Staff
USCG – Jeff Lantz, Director of Commercial Regulations and Standards

Senior Accountable Regulatory Officials (SAROs)

CISOMB - Elissa McGovern, Chief of Policy
CRCL – Scott Shuchart, Senior Advisor
DNDO - Laura Wilson, Branch Chief, Actions Team
FEMA – Adrian Sevier, Chief Counsel
FLETC - Trisha I. Besselman, Deputy Chief Counsel
ICE – Debbie Seguin, Director, ICE Policy
MGMT – Vince Micone, DHS Presidential Transition Officer & Senior Counselor
NPPD - Robert Kolasky, Deputy Under Secretary (acting)
OHA - Krystal Jordan, Deputy Chief of Staff
PRIV – Jordan Gottfried, Chief of Staff
S&T – Nicole Marcson, Deputy Associate General Counsel for Technology Programs
USCIS - Kathy Kovarik Nuebel, Chief, Office of Policy & Strategy
USSS – Anne L. Rowland, Office of Chief Counsel

Attachment C: Memorandum from DHS Deputy Secretary to Component Heads, Implementation of the Regulatory Reform Executive Orders (Apr. 14, 2017)

Deputy Secretary
U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

April 14, 2017

MEMORANDUM FOR COMPONENT HEADS

FROM: Elaine C. Duke 

SUBJECT: Implementation of the Regulatory Reform Executive Orders

This memorandum provides direction on the Department's implementation of two recent executive orders on regulatory reform. Both executive orders are designed to alleviate the unnecessary regulatory burdens placed on the American people by agency regulations.

Executive Order 13,771, *Reducing Regulation and Controlling Regulatory Costs*, requires agencies to identify, for every new regulation that the agency wishes to issue, two prior regulations for elimination and cost offsets equivalent to the cost of the new regulation. The executive order also sets DHS's FY 17 regulatory budget at zero, and provides that the Director of the Office of Management and Budget (OMB) will set a regulatory (and deregulatory) budget for each agency beginning in FY 18.

Executive Order 13,777, *Enforcing the Regulatory Reform Agenda*, includes a number of requirements to institutionalize and enforce regulatory reform initiatives. The executive order requires agencies to designate a Regulatory Reform Officer and to establish a Regulatory Task Force that will oversee DHS's implementation of regulatory reform initiatives. The Task Force is also to evaluate existing regulatory actions (defined broadly to include regulations, guidance document, policy statements, information collection reviews, and the like) and make recommendations for repeal, replacement, or modification, consistent with applicable law.

Secretary Kelly has designated the members of the Regulatory Reform Task Force and has designated me as the Department's Regulatory Reform Officer. The General Counsel is the Department's Regulatory Policy Officer. The attached list contains the membership of the Regulatory Reform Task Force, which is made up of headquarters personnel as well as Component personnel from those Components whose regulations impose the greatest relative costs on industry (i.e., USCG, CBP, and TSA).

The Task Force faces a near-term deadline, as it must submit a report to the Secretary by May 24, 2017. Upon receiving the names of your Component's officials, we will move swiftly

www.dhs.gov

to begin the work of the Task Force. We intend to hold the first Task Force meeting during the week of April 24th.

In my role as Regulatory Reform Officer, I ask for your assistance in fulfilling our obligations under these executive orders. I expect all Components to place a high priority on evaluating their regulations for purposes of regulatory reform; identifying candidates for repeal, replacement, or modification; and working diligently to reduce any unnecessary burdens posed by their regulatory actions. I expect all Components to dedicate adequate resources, and to re-allocate resources where necessary, for this effort. I expect full engagement from all Components.

As the Regulatory Reform is stood up, I have a few specific requests for assistance:

1. Within 5 days of issuance of this memorandum, each Component head shall designate a senior-level accountable official to oversee their Component's regulatory reform efforts and to liaise with the Task Force. This is necessary for every Component that enforces regulations, issues guidance documents, or collects information from the public.
 - a. The senior-level officials for the CBP, USCG, and TSA will serve on the Task Force, and all other officials will serve on the Task Force as needed.
 - b. Please provide the name of your Component's senior-level accountable official to Christina McDonald, Associate General Counsel for Regulatory Affairs, Office of the General Counsel.
2. Active engagement by all in the Department is essential to our Department's success with these efforts, and so I ask for your full and active engagement.
 - a. Component senior regulatory accountable officials should immediately initiate a review of their Component's regulations, guidance documents, and information collections to identify opportunities for regulatory reform and cost savings.
 - b. Component senior regulatory accountable officials should also immediately initiate a review of Component procedures for prioritizing and developing regulations, to ensure that each Component allocates appropriate attention and resources to implementing regulatory reform initiatives and policies.
 - c. Within 60 days of the issuance of this memorandum, Component senior regulatory accountable officials should be prepared to brief the Task Force on opportunities for regulatory reform within their Component and on the Component's regulatory reform efforts thus far.

3. In line with their responsibility to manage DHS's regulatory program, OGC will continue to reach out to Components for additional data, information, and analysis. Please ensure your Component's full support of these efforts.
4. Component heads should make any necessary resource alignments to support regulatory reform initiatives. Within each Component, adequate personnel need to be assigned to deregulatory functions. Accordingly, Component personnel (such as attorneys, economists, analysts, and information collection specialists) who previously would have worked on *regulatory* actions will likely need to be focused to instead work on *deregulatory* actions.

Thank you for your attention to this important matter.

Attachment

Attachment D: Guidance on Component's June 14th Submission to Task Force (dated May 5, 2017)

Guidance on Component Submission due to Regulatory Reform Task Force on June 14, 2017

Introduction

By June 14, 2017, your Component Senior Accountable Regulatory Official must submit information to the DHS Regulatory Reform Task Force about your Component's progress in implementing regulatory reform. In response to several inquiries from Components asking what they should submit, the Office of the General Counsel (OGC), in conjunction with the Task Force, is providing this guidance.

Your Component submission should outline all efforts your Component has taken, since issuance of Executive Orders 13771 and 13777, to support regulatory reform and deregulatory efforts. Your Component should address the below items. In addition, your Component should include any other information that you think would help the Task Force implement regulatory reform or identify regulations for repeal, replacement, or modification.

Background

In early 2017, the President issued two Executive Orders related to regulatory reform: Executive Order 13771, *Reducing Regulation and Regulatory Costs*, and Executive Order 13777, *Enforcing the Regulatory Reform Agenda*, directing all agencies to immediately initiate regulatory reform activities. The Office of Management and Budget (OMB) issued implementing guidance on February 2, April 5, and April 28.

On April 17, 2017, the Deputy Secretary issued a Memorandum to Component Heads, providing additional direction to DHS Components:

- By Thursday, April 20, each Component had to designate a senior-level accountable regulatory official (SARO) to oversee their Component's regulatory reform efforts and to liaise with the Task Force. This applies to every Component that issues or enforces regulations, issues guidance or policy documents, or collects information from the public. See the attachment for a list of SAROs.
- The April 14th Memorandum directed each Component to take immediate actions: (1) to initiate a review of Component regulations, guidance and policy documents, and information collections, to identify opportunities for regulatory reform and cost savings, and (2) to review Component procedures for prioritizing and developing regulations, to ensure that each Component allocates appropriate attention and resources to implement regulatory reform initiatives and policies.
- Finally - and of most note here - the Memorandum directed each Component to "be prepared [by June 14] to brief the Task force on opportunities for regulatory reform within their Component and on the Component's regulatory reform efforts thus far."

The Regulatory Reform Task Force will use the Component submissions to inform their decision-making in the coming months.

DHS/OGC/RLD: 5/5/2017

Guidance on Component Submission due to Regulatory Reform Task Force on June 14, 2017

Differences in Components Submissions

Given that Components have different-sized regulatory programs and impose varying information collection burdens on the public, we recognize that Component submissions will vary. Components – such as CBP, ICE, FEMA, MGMT/OCPO, NPPD, TSA, USCIS, and USCG – that have several regulations or several information collections will have robust submissions. Components – such as CISOMB, CRCL, DNDO, FLETC, OHA, PLCY, PRIV, and S&T – that have few to no regulations, fewer guidance documents, or fewer information collections will likely have more basic submissions.

Component Submissions

1. Identify Your Stock & Your Plan to Review that Stock

As a starting point, each Component should identify their universe of regulations, policy and guidance documents, and information collections.

For example, FEMA would, at a minimum, identify the following:

FEMA has regulations located in Title 44 (Emergency Management & Assistance) at parts 1-399 that address general procedures that apply internally to FEMA (subchapter A), insurance and hazard mitigation (subchapter B), fire prevention and control (subchapter C), disaster assistance (subchapter D), Cerro Grande fire assistance (subchapter E), and preparedness (subchapter F).

FEMA has [#] active information collections totaling [#] burden hours.

FEMA has [insert general description of the universe of guidance/policy documents.]

You should consider your entire “stock.” For components that existed prior to 2003 (when DIIS was stood up), you should consider all pre-2003 actions. For example, USCIS, ICE, and CBP should consider legacy INS actions, TSA should consider legacy FAA actions, USCG should consider actions issued as part of the U.S. Department of Transportation, and CBP should consider actions issued as part of the U.S. Department of Treasury.

In addition to identifying your stock, please identify your *preliminary* plan for reviewing that stock of regulations, information collections, and guidance/policy documents. Please include a timeline for what you believe you can accomplish in the near term (i.e., within the next 12 months) and in the long term.

We are *not* asking you to conduct a review of all these items before June 14th. Rather, we are asking that you (a) identify your stock and (b) identify your plan for how you plan to review that stock.

2. Provide a Preliminary List of Deregulatory Actions

Please also provide a *preliminary* list of items that your Component has identified thus far for potential repeal, modification, or replacement. We are interested in learning generally about the best ideas that you have identified thus far and that you are looking to explore further. Since OGC issued the first data

DIIS/OGC/RLD; 5/5/2017

Guidance on Component Submission due to Regulatory Reform Task Force on June 14, 2017

call in early February, Components (at least, the major regulatory Components) have been brainstorming. We are interested to hear about the best ideas you have been able to identify so far, any “low-hanging fruit” that you may have identified so far, and any other ideas where you think there may be a potential for meaningful savings.

In evaluating actions for repeal, modification, or replacement, please consider the following criteria from section 3(d) of EO 13777:

At a minimum, [agencies] shall attempt to identify regulations that:

- (i) eliminate jobs, or inhibit job creation;*
- (ii) are outdated, unnecessary, or ineffective;*
- (iii) impose costs that exceed benefits;*
- (iv) create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;*
- (v) are inconsistent with the requirements of [the Data/Information Quality Act or its implementing guidance];*
- (vi) derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.*

Your *preliminary* list should include the following types of deregulatory actions:

- “Significant” regulations (as defined in Executive Order 12866, *Regulatory Planning and Review*) for which you *considering* conducting an additional economic analysis to determine the actual costs imposed by that regulation;
- Regulations or guidance/policy documents that you are *considering* for repeal or elimination. You should separately identify repeals (for the “2 for 1”) and cost offsets;
- Regulations or guidance/policy documents that you are *considering* for revision or modification to reduce burdens or costs; and
- Information collections that you are *considering* eliminating or revising.

We are *not* asking for a commitment that you are eliminating any particular regulation, guidance/policy document, or information collection. Rather, we are seeking information on your *preliminary* findings, thoughts, and ideas.

3. Structure of Regulatory Reform Efforts

Please describe your Component’s organizational approach to regulatory reform and identify the individuals leading the regulatory reform effort in your Component. (Are you standing up a component regulatory reform task force or using an existing decision-making body? Who are the members of that task force? If there is no task force, who is leading the deregulatory effort and with whom are they coordinating?). Finally, please describe the work accomplished thus far by those individuals.

Regardless of which organizational approach you use, it is important that you have senior leadership engaged. It is also important that there be active participation from cross-cutting sections of the

DIIS/OGC/RLD; 5/5/2017

Guidance on Component Submission due to Regulatory Reform Task Force on June 14, 2017

Component – for example, there should be participation from the office responsible for information collections, the office responsible for performance measures under the Government Performance and Results Act, and the program offices that “own” the regulations or guidance/policy documents.

4. Input and Feedback

Please identify the primary stakeholders affected by your Component’s regulations, information collections, and guidance and policy documents. Stakeholders may include industry, trade associations, non-profit organizations, academic institutions, trade associations, advocacy organizations, and State/local/Tribal entities.

Please identify the mechanisms you are *considering* using to get stakeholder input. Mechanisms could include publication of a Federal Register notice, public meetings, conference calls, Federal Advisory Committee Act (FACA) meetings, focus groups, or Small Business Administration (SBA) Office of Advocacy roundtable discussions.

Please explain whether you are likely to seek input or feedback from other sources, such as DHS employees or other federal agencies.

Please share your *proposed* timeline for obtaining input and feedback.

Finally, for CBP, TSA, USCIS, and ICE Please explain your Component’s plan to address the public comments received in response to DHS’s October 11, 2016 *Federal Register* notice titled “*Notice of Retrospective Review Initiative and Request for Comments.*” See 81 FR 70060. The public had a number of suggestions on specific regulations that DHS should consider as candidates for streamlining or repeal. (Note: The public did not provide any comments related to FEMA or USCG regulations.)

5. Performance Measures

On April 28, 2017, OMB identified performance indicators that all agencies must incorporate into their performance plans required by the Government Performance and Results Act. The OMB Guidance provides that “[b]eginning with their FY 2018 Annual Performance Reports, agencies must report the appropriate performance data for each performance indicator and goal, and identify each action evaluated for indicator 1, each Regulatory Reform Task Force recommendation for indicator 2, and each EO 13771 regulatory and EO 13771 deregulatory actions for indicators 3 and 4 respectively.”

Below are the five performance indicators that OMB identified for all agencies at this time.

1. Number of evaluations to identify potential EO 13771 deregulatory actions that included opportunity for public input and/or peer review:

For purposes of this performance indicator, DHS defines an “evaluation” as a written analysis that satisfies the requirements in OMB’s guidance implementing EOs 13771 and 13777. An evaluation can be a stand-alone analysis or it can be an analysis that is part of a rulemaking action (e.g., the Regulatory Impact Analysis associated with, or contained

DHS/OGC/RLD; 5/5/2017

Guidance on Component Submission due to Regulatory Reform Task Force on June 14, 2017

within an NPRM). This definition is subject to change based on further guidance from OMB.

2. Number of EO 13771 deregulatory actions recommended by the Regulatory Reform Task Force to the agency head, consistent with applicable law;

You should think about this indicator (and #3 below) in terms of what is in your Component's control. For example, for this indicator, you would identify the number of actionable deregulatory actions that you believe your Component will recommend to the Regulatory Reform Task Force in the specified time period.

3. Number of EO 13771 deregulatory actions issued that address recommendations by the Regulatory Reform Task Force;

For purposes of this performance indicator, DHS defines the term "issue" to refer to publication in the *Federal Register*. This definition is subject to change based on further guidance from OMB.

4. Number of EO 13771 regulatory actions, and separately, EO 13771 deregulatory actions issued; and
5. Total incremental cost of all EO 13771 regulatory actions and EO 13771 deregulatory actions (including costs or cost savings carried over from previous fiscal years).

Please start thinking about your Component's annual goal for each of the above performance indicators. Please also think about how your Component will gather the performance data for each indicator and goal. At a future date, the Regulatory Reform Task Force will set a deadline by which all Components must submit their annual goals. In the meantime, if you can identify your Component's proposed annual goal at this time, please include that information in your June submission.

Finally, in their April 28 Guidance, OMB indicated that agencies should also "establish and report other meaningful performance indicators and goals for the purpose of evaluating and improving the net benefits of their respective regulatory programs." The Regulatory Reform Task Force will contact Components if and when the Task Force believes it would appropriate for DHS to develop *new* performance indicators in addition to the five required ones above.

For more background on these performance indicators, see section 4(a) of the EO 13777 and OMB's April 28, 2017 Guidance.

6. Realignment of Resources

Please explain how your Component has realigned resources to support regulatory reform and deregulatory efforts.

DHS/OGC/RLD; 5/5/2017

Guidance on Component Submission due to Regulatory Reform Task Force on June 14, 2017

Please include a thorough accounting of the your Component regulatory/deregulatory staff. Please provide specific numbers on the Component staff such as – How many regulatory economists does your Component employ? How many regulatory attorneys? How many regulatory writers/analysts? Please also identify how many of those Component regulatory economists are solely dedicated toward deregulatory efforts; similarly, please identify how many of those Component regulatory attorneys are solely dedicated toward deregulatory efforts.

For the major regulatory Components (i.e., CBP, FEMA, ICE, NPPD, TSA, USCG, and USCIS), please also identify your plan to accomplish your regulatory priorities (including Administration priority regulations and legally-required regulations) while still adequately resourcing deregulatory efforts. What steps are you taking to be able to meet both goals?

Thank you for your assistance and cooperation with these important initiatives.

Questions

Please direct any questions to Christina McDonald, Associate General Counsel for Regulatory Affairs

(b)(6)