



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

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M-17-23

MEMORANDUM FOR: REGULATORY REFORM OFFICERS AND REGULATORY  
POLICY OFFICERS AT EXECUTIVE DEPARTMENTS AND  
AGENCIES

CC: PERFORMANCE IMPROVEMENT OFFICERS AT EXECUTIVE  
DEPARTMENTS AND AGENCIES

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

SUBJECT: Guidance on Regulatory Reform Accountability under Executive  
Order 13777, titled "Enforcing the Regulatory Reform Agenda"

**Background**

This memorandum provides guidance regarding sections 4 and 5 of [Executive Order \(EO\) 13777, titled "Enforcing the Regulatory Reform Agenda."](#) Section 4 requires the Office of Management and Budget (OMB) to issue guidance about the performance indicators that agencies listed in 31 U.S.C. § 901(b)(1) (see Application section below) must incorporate into their annual performance plans. The performance indicators measure progress toward the following goals:

- improving implementation of regulatory reform initiatives and policies pursuant to section 2 of EO 13777;<sup>1</sup> and
- identifying regulations for repeal, replacement, or modification.

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<sup>1</sup> Section 2 of EO 13777 identifies the following regulatory reform initiatives and policies:

- EO 13771 of January 30, 2017 (Reducing Regulation and Controlling Regulatory Costs), regarding offsetting the number and cost of new regulations;
- EO 12866 of September 30, 1993 (Regulatory Planning and Review), as amended, regarding regulatory planning and review;
- Section 6 of EO 13563 of January 18, 2011 (Improving Regulation and Regulatory Review), regarding retrospective review; and
- The termination, consistent with applicable law, of programs and activities that derive from or implement EOs, guidance documents, policy memoranda, rule interpretations, and similar documents, or relevant portions thereof, that have been rescinded.

Section 5 permits waivers from compliance with EO 13777 if there is a determination that the agency “generally issues very few or no regulations.”

### **Application**

The agencies subject to EO 13777 are only those agencies subject to the regulatory review requirements of EO 12866.<sup>2</sup> While independent regulatory agencies are not subject to EO 13777, they are still encouraged to comply.

The *Waivers* section in this Guidance applies to all agencies subject to EO 13777.

In contrast, the *Requirements* section in this Guidance only applies to a subset of agencies subject to EO 13777, in particular:

- The Department of Agriculture
- The Department of Commerce
- The Department of Defense
- The Department of Education
- The Department of Energy
- The Department of Health and Human Services
- The Department of Homeland Security
- The Department of Housing and Urban Development
- The Department of the Interior
- The Department of Justice
- The Department of Labor
- The Department of State
- The Department of Transportation
- The Department of the Treasury
- The Department of Veterans Affairs
- The Environmental Protection Agency
- The National Aeronautics and Space Administration

Nevertheless, agencies subject to EO 13777 that are not included in the above list are strongly encouraged to comply with the *Requirements* section of this Guidance and must still comply with all sections of EO 13777 with the exception of section 4(a).

### **Requirements**

Beginning with the FY 2019 Annual Performance Plan (APP)<sup>3</sup> agencies must, at a minimum, include in their plans the following performance indicators<sup>4</sup> for the fiscal year:

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<sup>2</sup> Agencies subject to regulatory review under EO 12866 are those authorities of the United States that are an "agency" under 44 U.S.C. § 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. § 3502(5).

<sup>3</sup> See 31 U.S.C. § 1115(b).

<sup>4</sup> The terms “EO 13371 deregulatory action,” “EO 13771 regulatory action,” and “total incremental cost” have the same meaning as in the OMB guidance implementing EO 13771.

1. Number of evaluations to identify potential EO 13771 deregulatory actions that included opportunity for public input and/or peer review;
2. Number of EO 13771 deregulatory actions recommended by the Regulatory Reform Task Force to the agency head, consistent with applicable law;
3. Number of EO 13771 deregulatory actions issued that address recommendations by the Regulatory Reform Task Force;
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).

In their FY 2019 APP, agencies must establish performance goal(s) associated with each indicator. They must also set a target for the level of performance to be achieved within the time period. These actions should be consistent with the guidance in Part 6 of [OMB Circular A-11](#). Agencies must also include in their FY 2019 APP the above performance indicators and set targets for the corresponding performance goals for FY 2018. Beginning 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 action for indicators 3 and 4 respectively.

In addition, agencies should establish and report other meaningful performance indicators and goals for the purpose of evaluating and improving the net benefits of their respective regulatory programs (*i.e.*, all of the existing regulations in place that address a specific regulatory objective). This likely will require measuring the costs and benefits of regulatory programs and setting goals for improving those programs' net benefits. The effort to improve net benefits may be conducted as part of developing agency strategic and performance plans and priority goals, and may use existing quarterly and annual performance review processes to assess progress against these objectives. Please consult with your OIRA desk officer during your agency's development of new performance indicators for evaluating the net benefits of regulatory programs.

Agencies should also report on their performance in terminating, consistent with applicable law, any programs or activities that derive from or implement EOs, guidance documents, policy memoranda, rule interpretations, and similar documents, or relevant portions thereof, that have been rescinded or that were terminated during the fiscal year. This performance can be reported as either a performance indicator or other means (*e.g.*, a narrative discussion) in the agency's performance plan and report.

### **Waivers**

Compliance with EO 13777 may be waived if there is a determination that the agency generally issues very few or no regulations.<sup>5</sup> A waiver may be revoked at any time.

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<sup>5</sup> EO 13771 defines "regulation" as an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of

An agency requesting a waiver should provide OMB at least the following information:

- 1) An overview of its existing regulations, including information about the nature and goal of the regulations, and the magnitude of those regulations' benefits and costs;
- 2) The number of significant regulatory actions (see [EO 12866](#)) on its existing and, if available, planned *Unified Agenda of Regulatory and Deregulatory Actions*, and estimates of the total incremental benefits and costs of those actions;
- 3) An overview of the nature, quantity and impact of regulations the agency plans to issue that the agency believes are not significant (see EO 12866); and
- 4) Information about the benefits and costs of its existing and planned significant guidance documents.<sup>6</sup>

OMB may request that the agency provides additional information to help determine the appropriateness of a waiver.

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an agency, but does not include: (a) regulations issued with respect to a military, national security, or foreign affairs function of the United States (For more information about the national security function exemption, see question 7 in the OMB guidance titled "[Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs.'](#)"); (b) regulations related to agency organization, management, or personnel; or (c) any other category of regulations exempted by the Director.

<sup>6</sup> The OMB guidance referenced in the above footnote defines "EO 13771 regulatory action[s]" to include "a significant guidance document (e.g., significant interpretive guidance) reviewed by [OMB's Office of Information and Regulatory Affairs] under the procedures of EO 12866 that have been finalized and that impose total costs greater than zero."