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OFFICE OF MANAGEMENT AND BUDGET
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ADMINISTRATOR
OFFICE OF
INFORMATION AND
REGULATORY AFFAIRS

August 11, 2020

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

FROM: Paul J. Ray, Administrator
Office of Information and Regulatory Affairs 

SUBJECT: Data Call for the Fall 2020 Regulatory Plan, Fall 2020 Unified Agenda of Federal Regulatory and Deregulatory Actions, and FY 2021 Regulatory Cost Allowances

This Data Call requests from all Federal agencies information for compilation of the Fall 2020 Regulatory Plan (Plan) and Unified Agenda of Federal Regulatory and Deregulatory Actions (Agenda). The Plan and Agenda provide important public notice and transparency about proposed regulatory and deregulatory actions across the Federal Government. This process highlights agency priorities, promotes planning and coordination, and opens agency priorities to public inspection, participation, and accountability.

For Executive branch agencies, this Data Call also requests proposed Fiscal Year 2021 regulatory cost allowances pursuant to Executive Order (EO) 13771, "Reducing Regulation and Controlling Regulatory Costs."¹ The Office of Information and Regulatory Affairs (OIRA) will work with agencies to establish their cost allowances for FY 2021 based on agency submissions. Agencies are also expected to complete final accounting for FY 2020 through the ROCIS system.

Important Dates

September 4, 2020

- Fall 2020 Regulatory Plan and Agenda submissions are due.
- FY 2021 proposed EO 13771 cost allowance submission is due.
- FY 2020 provisional EO 13771 accounting submission is due.

October 1, 2020

- FY 2020 final year-end EO 13771 accounting submission is due.

More information on these deadlines is provided below.

¹ Exec. Order No. 13771, 82 Fed. Reg. 9339 (Feb. 3, 2017) ("No regulations exceeding the agency's total incremental cost allowance will be permitted in that fiscal year, unless required by law or approved in writing by the Director."). OMB Guidance currently does not apply EO 13771 to the traditionally independent agencies.

Priorities for the Regulatory Plan and Unified Agenda

Publication of the Plan and Agenda represent a key component of a longstanding regulatory planning mechanism under EO 12866, “Regulatory Planning and Review.”² The Plan and Agenda should reflect policy initiatives consistent with Administration priorities for regulatory reform, as well as specific actions that will support those initiatives. These might include:

- *Regulatory reform.* The Administration has focused on removing regulatory barriers that impede individual initiative, job creation, innovation, and economic growth. Agencies should be prepared to brief OIRA on their anticipated regulatory reform priorities.
- *Public notice.* The Agenda must reflect only current regulatory policy. Agencies should promote accuracy by removing regulatory actions for which no substantial activity is expected within two years. Regulatory actions listed as “Active” should be issued within 12 months of Agenda publication. “Long-term” actions should be issued between 12 and 24 months. Actions slated beyond 24 months should be included only if necessary to provide meaningful information to the public. Agencies should prioritize accurate timelines for regulatory and deregulatory actions.
- *Transparency.* Agencies should provide the public with the means to track regulatory policy from beginning to end. For example, agencies must publish and assign “regulatory identification numbers” (RINs) to all anticipated regulatory and deregulatory rulemakings. To help promote accessibility, agencies should provide a URL for a website with more information about a rulemaking whenever such a website exists.
- *Consistent practice across the Federal Government.* All Federal agencies, including historically independent agencies and commissions, are strongly encouraged to implement the above policy priorities.

Improving the Regulatory Plan and Unified Agenda

The Regulatory Plan - The narrative in the Regulatory Plan should reflect the priorities of the agency head. The Plan provides an opportunity for sharing with the public an agency’s goals with respect to regulatory policy. As appropriate, agencies should consider including the following in their Plans:

- Regulatory and deregulatory priorities, including recent legislative and programmatic activities.
- The aggregate number of anticipated regulatory and deregulatory regulations in the Agenda, as well as categories of anticipated actions, such as the repeal of guidance documents or streamlining of paperwork burdens that do not appear in the Agenda.
- Rulemakings that streamline existing regulations and reduce unjustified burdens.
- Rulemakings expected to have large net benefits.
- Rulemakings that promote open government and use disclosure as a regulatory tool.
- Rulemakings of particular interest to small businesses. Agencies should discuss these regulations in a separate section of the introductory narrative.

² Exec. Order No. 12866, 58 Fed. Reg. 51,735 (Oct. 4, 1993).

The Unified Agenda - The Unified Agenda provides a comprehensive list of anticipated regulatory and deregulatory actions. The utility of the Agenda depends on having up-to-date entries that reflect immediate agency priorities. In addition to removing items that no longer reflect agency priorities, the following are steps an agency can take to improve the Agenda's quality:

- *Informative abstracts.* Abstracts should include the reason for developing the rulemaking. Entries with outdated information, or abstracts that merely repeat the title, timetable, or legal authority, detract from the Agenda's usefulness.
- *Accurate timing.* The public relies on agency projections of timing for meaningful participation in the regulatory process. Agencies should take all reasonable steps to ensure the accuracy of timetable information.
- *Consistency across entries.* Each agency should coordinate designations and ensure that responses for priority, EO 13771 designation, major status under the Congressional Review Act, unfunded mandates, federalism, and government levels affected (State, local, tribal, or Federal) are consistent within the agency.
- *Accessibility.* To help promote accessibility of the Agenda, agencies should provide, when available, URLs of websites with more information about a rulemaking.
- *Streamlining the Agenda.* Agencies should review Agenda entries marked "Routine and Frequent" or "Informational/Administrative/Other" and evaluate whether these entries are categorized correctly and meet the criteria for inclusion in the Unified Agenda under EO 12866.

Preparing and Transmitting the Regulatory Plan and Unified Agenda Submissions

Detailed instructions for submitting the Regulatory Plan and Unified Agenda are available online on the [ROCIS homepage](#). Please follow the procedures carefully and include all required documents. Agencies may direct questions regarding the content of the agency's Agenda submission to the appropriate OIRA desk officer. For further information concerning automated production, information requirements, format, or submission of materials, contact the Regulatory Information Service Center at (202) 482-7340.

Consistent with prior practice, the complete Agenda will be published online at www.reginfo.gov as well as in the *Federal Register* in a streamlined format.

OIRA appreciates prompt attention to this call for data. All submissions are due by **September 4, 2020**.

Compliance with EO 13771

In agency submissions for the Agenda, agencies should give particular attention to EO 13771 and OIRA's "Guidance Implementing Executive Order 13771."³ Consistent with these principles, agency submissions should adhere to the following EO 13771 requirements to the extent permitted by law:

³ Office of Mgmt. & Budget, Exec. Office of the President, OMB M-17-21, "Guidance Implementing Executive Order 13771" (Apr. 5, 2017).

- *Regulatory Plan.* For its Regulatory Plan, an agency should summarize regulatory and deregulatory priorities. The Plan should provide an agency’s aggregate number of anticipated regulatory and deregulatory actions and incorporate by reference the itemized actions in the Agenda.
- *Unified Agenda.* The Agenda should demonstrate compliance with EO 13771, as an agency anticipates the number of deregulatory and regulatory actions over the next fiscal year. Specifically, the Agenda should reflect through the end of FY 2021 at least two deregulatory actions taken for each regulatory action (except items not typically included in the Agenda). Preliminary EO 13771 designations are required for each action submitted in the Agenda.⁴
- *Regulations must be on the Agenda.* As required by EO 13771, agencies should not issue significant regulations that have not been included in the most recent version or update of the Agenda, unless otherwise required by law or approved in advance in writing by the Director of the Office of Management and Budget (OMB). This requirement applies to all significant regulatory actions, both proposed and final. If an agency plans to issue regulations that were not in the most recent Agenda, they will need to request a waiver. More information on this process can be found in the OIRA Memorandum, “Compliance with Section 3(c) of Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs.”⁵

Proposed Cost Allowance Submissions under EO 13771 for Fiscal Year 2021

Section 3(d) of EO 13771 provides that the Director of OMB shall identify a regulatory cost allowance for each agency for FY 2021. The Order further provides that “[n]o regulations exceeding the agency’s total incremental cost allowance will be permitted in that fiscal year, unless required by law or approved in writing by the Director.”

In addition to Unified Agenda preparations, Executive departments and agencies are directed to prepare a proposed total incremental cost allowance for FY 2021 to inform the Director’s determinations under Section 3(d) of EO 13771. Each agency’s proposed FY 2021 cost allowance should be informed by its submissions for the Fall 2020 Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions. Each agency should include along with its proposed FY 2021 cost allowance an explanation of how the agency developed its proposed allowance and how that proposed allowance is consistent with the Administration’s regulatory policies and priorities established in EO 13771, as well as EO 13777, “Enforcing the Regulatory Reform Agenda.”⁶

OIRA will review each agency’s proposed FY 2021 cost allowance for consistency with the regulatory policies and priorities set forth in EOs 13771 and 13777, including the goal “to lower regulatory burdens on the American People by implementing and enforcing regulatory

⁴ For more detail, see the ROCIS guidelines for compliance with EO 13771 and submission of the Fall 2020 Unified Agenda, which are available at <https://www.rocis.gov>.

⁵ Office of Mgmt. & Budget, Exec. Office of the President, *Compliance with Section 3(c) of Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs* (Feb. 22, 2018), available at <https://www.whitehouse.gov/wp-content/uploads/2017/12/Final-3c-EO-13771-guidance.pdf>.

⁶ Exec. Order No. 13,777, 82 Fed. Reg. 12,285 (Mar. 1, 2017).

reform.” EO 13777 also explains that “[i]t is the policy of the United States to alleviate unnecessary regulatory burdens placed on the American people.” Finally, EO 13771 provides that this Administration’s policy is “to be prudent and financially responsible in the expenditure of funds, from both public and private sources.”

In light of these policies, OIRA expects that each agency will propose a net reduction in total incremental regulatory costs for FY 2021. OIRA expects to publish each agency’s final total incremental cost allowances in conjunction with the 2020 Fall Regulatory Plan and Agenda. By September 4, 2020, agencies should submit the proposed total incremental cost allowance for FY 2021 via the EO 13771 module in www.rocis.gov, along with any supporting explanation, at the same time as submissions for the Fall 2020 Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions.

Final Accounting under EO 13771 for Fiscal Year 2020

Along with the Regulatory Plan and Unified Agenda, OIRA will publish the results of agency compliance with EO 13771 in FY 2020. This will include a list of completed deregulatory and regulatory actions by agency, as well as regulatory costs and cost savings by agency. OIRA will also report the numbers of deregulatory and regulatory actions and total cost savings achieved across Executive branch agencies.

Each agency should provide its accounting of deregulatory and regulatory actions and total regulatory cost savings in two parts: (1) provide a provisional accounting of all actions completed during the first eleven months of the fiscal year (October 1, 2019, through August 31, 2020) by September 4, 2020, and (2) provide a final year-end accounting no later than October 1, 2020.

OIRA encourages agencies to submit final year-end accounting as close as possible to publication of the agency’s last final action of FY 2020. For example, agencies that do not plan to issue any final actions in September may wish to submit their year-end accounting on August 30, 2020. OIRA will take the provisional accounting submissions into account when considering the final cost allowance proposals for FY 2021.