

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

PUBLIC CITIZEN, INC., et al.,

Plaintiffs,

v.

DONALD TRUMP, President of the United  
States, et al.,

Defendants.

Civil Action No. 17-253 (RDM)

**DECLARATION OF ALLISON M. ZIEVE**

I, Allison M. Zieve, declare as follows:

1. I am lead counsel for plaintiffs in this action.
2. Attached hereto as Exhibit A is a true and correct copy of Defendant Secretary of Transportation Elaine L. Chao's Responses to Plaintiffs' First Set of Requests for Admission, served on me as counsel for plaintiffs on May 7, 2019.
3. Attached hereto as Exhibit B is a true and correct copy of Defendant Secretary of Transportation Elaine L. Chao's Responses to Plaintiffs' First and Second Set of Interrogatories, served on me as counsel for plaintiffs on May 7, 2019.
4. Attached hereto as Exhibit C is a true and correct copy of OMB, Memorandum for Regulatory Reform Officers at Executive Departments and Agencies (Sept. 7, 2017), which I printed from the URL <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/FY%202018%20Regulatory%20Cost%20Allowances.pdf>.
5. Attached hereto as Exhibit D is a true and correct copy of OMB, Regulatory Reform: Cost Caps Fiscal Year 2018 (Dec. 2017), which I printed from the URL

[https://www.reginfo.gov/public/pdf/eo13771/FINAL\\_TOPLINE\\_ALLOWANCES\\_20171207.pdf](https://www.reginfo.gov/public/pdf/eo13771/FINAL_TOPLINE_ALLOWANCES_20171207.pdf).

6. Attached hereto as Exhibit E is a true and correct copy of OMB, Regulatory Reform: Regulatory Budget for Fiscal Year 2019 (Nov. 2019), which I printed from the URL [https://www.reginfo.gov/public/pdf/eo13771/EO\\_13771\\_Regulatory\\_Budget\\_for\\_Fiscal\\_Year\\_2019.pdf](https://www.reginfo.gov/public/pdf/eo13771/EO_13771_Regulatory_Budget_for_Fiscal_Year_2019.pdf).

7. Attached hereto as Exhibit F is a true and correct copy of OMB, Current Regulatory Plan and the Unified Agenda of Regulatory and Deregulatory Actions, RegInfo.gov (Dec. 14, 2017), which I printed from the <https://web.archive.org/web/20171215071216/https://www.reginfo.gov/public/do/eAgendaMain>.

8. Attached hereto as Exhibit G is a true and correct copy of OMB, Regulatory Reform: Two-for-One and Regulatory Cost Caps (Dec. 14, 2017), which I printed from the URL [https://www.reginfo.gov/public/pdf/eo13771/FINAL\\_TOPLINE\\_All\\_20171207.pdf](https://www.reginfo.gov/public/pdf/eo13771/FINAL_TOPLINE_All_20171207.pdf).

9. Attached hereto as Exhibit H is a true and correct copy of OMB, Regulatory Reform Results for Fiscal Year 2018, which I printed from the URL <https://www.reginfo.gov/public/do/eAgendaEO13771>.

10. Attached hereto as Exhibit I is a true and correct copy of DOT/NHTSA, Federal Motor Vehicle Safety Standard (FMVSS) 150—Vehicle to Vehicle (V2V) Communication, RegInfo.gov (Spring 2017), published by OMB with the Spring 2017 regulatory agenda in the list of “Current Long Term Actions,” which I printed from the URL <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201704&RIN=2127-AL55>.

11. Attached hereto as Exhibit J is a true and correct copy of DOT/NHTSA, Federal Motor Vehicle Safety Standard (FMVSS) 150—Vehicle to Vehicle (V2V) Communication,

RegInfo.gov (Spring 2019), published by OMB with the Spring 2019 regulatory agenda in the list of “Current Long Term Actions,” which I printed from the URL <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201904&RIN=2127-AL55>.

12. With respect to DOE/EE, Energy Conservation Standards for Commercial Water Heating Equipment, attached hereto as Exhibit K are true and correct copies of the page of the Fall 2017 long-term agenda, which I printed from the URL <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201710&RIN=1904-AD34>; the page of the Spring 2018 regulatory agenda, which I printed from the URL <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201804&RIN=1904-AD34>; the page of the Fall 2018 regulatory agenda, which I printed from the URL <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201810&RIN=1904-AD34>; and the page of the Fall 2018 regulatory agenda, which I printed from the URL <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201904&RIN=1904-AD34>.

13. Attached hereto as Exhibit L is a true and correct copy of Defendant Secretary of Energy Rick Perry’s Responses to Plaintiffs’ First Set of Requests for Admission, served on me as counsel for plaintiffs on May 7, 2019.

14. Attached hereto as Exhibit M is a true and correct copy of Defendant Director of the Office of Management and Budget Mick Mulvaney’s Responses to Plaintiffs’ First Set of Interrogatories, served on me as counsel for plaintiffs on May 7, 2019.

15. Attached hereto as Exhibit N is a true and correct copy of DOE, *Saving Energy and Money with Appliance and Equipment Standards in the U.S.*, Jan. 2017. [https://www.energy.gov/sites/prod/files/2017/01/f34/Appliance%20and%20Equipment%20Standards%20Fact%20Sheet-011917\\_0.pdf](https://www.energy.gov/sites/prod/files/2017/01/f34/Appliance%20and%20Equipment%20Standards%20Fact%20Sheet-011917_0.pdf).

16. Attached hereto as Exhibit O is a true and correct copy of Berkeley Energy & Resource Collaboration, *DOE Appliance Standards Program*, Nov. 8, 2017, which I printed from the URL <https://berc.berkeley.edu/news/doe-appliance-standards-program>.

17. Attached hereto as Exhibit P is a true and correct copy of Defendant Secretary of Labor Alexander Acosta's Response to Plaintiffs' First Set of Requests for Admission, served on me as counsel for plaintiffs on May 7, 2019.

Executed this 17th day of June, 2019

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Allison M. Zieve  
Allison M. Zieve

**EXHIBIT A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

PUBLIC CITIZEN, INC., *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, in his official  
capacity as President of the United States,  
*et al.*,

Defendants.

Civil Action No. 1:17-cv-00253-RDM

**DEFENDANT SECRETARY OF TRANSPORTATION  
ELAINE L. CHAO'S RESPONSES TO PLAINTIFFS'  
FIRST SET OF REQUESTS FOR ADMISSION**

Pursuant to Federal Rule of Civil Procedure 36 and Local Civil Rules 26.2(d) and 30.4, defendant Elaine L. Chao, in her official capacity as United States Secretary of Transportation (hereinafter, "DOT")), by and through undersigned counsel, hereby objects and responds to Plaintiffs' First Set of Requests for Admission as follows:

**I. PRELIMINARY STATEMENT**

1. DOT's investigation and development of all facts and circumstances relating to this action is ongoing. DOT's responses and objections contained herein are based solely upon such information as is presently available and known to DOT upon information and belief at this time. Further discovery, investigation, research, and analysis may supply additional facts, and meaning to currently known information. DOT expressly reserves the right to supplement, clarify, revise, or correct any or all of the responses and objections herein in one or more subsequent supplemental response(s).

2. These responses and objections are made without prejudice to, and are not a waiver of, DOT's right to rely on other information or documents in any further proceeding.

3. By making the accompanying responses and objections to Plaintiffs' First Set of Requests for Admission, DOT does not waive, and hereby expressly reserves, its right to assert any and all objections as to the admissibility of such responses into evidence in this action, or in any other proceedings, on any and all grounds. Further, DOT makes the responses and objections herein without in any way implying that it considers Plaintiffs' First Set of Requests for Admission, and DOT's responses to such requests, to be relevant or material to the subject matter of this action.

### **III. RESPONSES**

*1. In undertaking the V2V rulemaking, the agency intends to comply with Executive Order 13771, as long as that Executive Order remains in force.*

Response to Request No. 1: Admit that the agency intends to comply with E.O. 13771 as long as it remains in force, as well as all applicable statutes and other applicable Executive Orders, in undertaking the Federal Motor Vehicle Safety Standard (FMVSS) 150 – Vehicle to Vehicle (V2V) Communication rulemaking, RIN 2127-AL55 (hereinafter “V2V Rulemaking”).

*2. Absent a waiver from OMB of the offset requirement of Executive Order 13771 or withdrawal of that Executive Order, issuance of a final rule on the V2V rulemaking would require offsets of more than \$2 billion, according to the agency's published estimate of the costs of the proposed V2V standard, 82 Fed. Reg. 3854.*

Response to Request No. 2: Deny. Defendants aver that this request for admission appears to assume that any final rule on the V2V rulemaking necessarily would be the same as the proposed V2V standard, but that assumption is incorrect. Defendants further aver that it is premature to estimate the new incremental costs of any such final rule. Finally,

Defendants aver that the agency may not need costs offsets were the agency's annual cost allowance sufficient.

3. *The agency has not identified two or more existing regulations to be repealed that would offset fully the costs of finalizing the V2V rulemaking.*

Response to Request No. 3: DOT objects to this request to the extent that it calls for the disclosure of privileged deliberative process, attorney work product, and attorney-client communication information by seeking information about the agency's pre-decisional reasoning or reasoning reflected in the work product of attorneys or communications with attorneys for the purposes of seeking legal advice.

DOT further objects to this request to the extent that it reflects an erroneous understanding of the operation of E.O. 13771. Compliance with the numerical requirement and the cost offset requirement in E.O. 13771 is not assessed on a rule-by-rule basis. Instead, the U.S. Office of Management and Budget ("OMB") assesses compliance with those requirements Department-wide on an annual basis only at the end of each fiscal year. For example, the cost savings from one deregulatory action could support the agency's compliance with the cost offset requirement for several new regulations. OMB's E.O. 13771 guidance thus does not require an agency to identify specific regulations, prior to issuing a rule, that would satisfy both the E.O. 13771 numerical requirement and the cost offset requirement.

Subject to and without waiving the foregoing objections, admit, but aver that the agency's work on the V2V Rulemaking has not yet advanced to a stage where meaningful consideration of E.O. 13771's requirements would be made.



4. *The agency has not applied to OMB for a waiver of Executive Order 13771's repeal and offset requirements in connection with the V2V rulemaking.*

Response to Request No. 4: Admit, but aver that the agency's work on the V2V Rulemaking has not yet advanced to a stage where meaningful consideration of E.O. 13771's requirements would be made.

5. *The agency has not received a waiver of Executive Order 13771's repeal and offset requirements from OMB in connection with the V2V rulemaking.*

Response to Request No. 5: Admit, but aver that the agency's work on the V2V Rulemaking has not yet advanced to a stage where meaningful consideration of E.O. 13771's requirements would be made.

6. *The agency has not applied to OMB for a transfer of deregulatory action credits (as that term is used in the OMB Guidance Implementing Executive Order 13771 dated April 7, 2017) from another agency to offset the costs associated with the V2V rulemaking.*

Response to Request No. 6: Admit, but aver that the agency's work on the V2V Rulemaking has not yet advanced to a stage where meaningful consideration of E.O. 13771's requirements would be made.

7. *The agency has not received a transfer of deregulatory action credits from another agency to offset the costs associated with the V2V rulemaking.*

Response to Request No. 7: Admit, but aver that the agency's work on the V2V Rulemaking has not yet advanced to a stage where meaningful consideration of E.O. 13771's requirements would be made.

8. *Executive Order 13771 has been one factor affecting the agency's consideration of when or whether to promulgate a V2V safety standard.*

Response to Request No. 8: DOT objects to this interrogatory to the extent that it calls for the disclosure of information protected by the deliberative process, attorney work product, and attorney-client privileges by seeking information about DOT's internal "consideration,"

including the work product of attorneys or communications with attorneys for the purpose of seeking legal advice. DOT further objects to this interrogatory on the grounds that the phrase “one factor affecting the agency’s consideration” is vague and ambiguous. In light of these objections, DOT construes this request for admission as inquiring whether E.O.13771 has been one factor affecting any agency decision about when or whether to promulgate a V2V safety standard.

Subject to and without waiving the foregoing objections, deny.

9. *Absent a waiver from OMB of the offset requirement of Executive Order 13771 or withdrawal of that Executive Order, issuance of a final rule on Transparency of Airline Ancillary Service Fees, RIN 2105-AE56, would have required an offset of the costs associated with the final rule and repeal of two or more existing rules.*

Response to Request No. 9: Admit only that if DOT had issued a Final Rule with respect to the referenced rulemaking, and that Final Rule had been a significant regulatory action, then: (1) any new incremental costs of the Final Rule would have, to the extent permitted by law, been required to have been offset by the elimination of existing costs associated with prior regulations to the extent it otherwise exceeded the agency’s annual cost allowance, unless DOT had received a waiver from OMB; and (2) DOT would have, unless prohibited by law, been required to identify at least two existing regulations to be repealed, unless it had received a waiver from OMB.

10. *The agency did not receive from OMB a waiver of the repeal and offset requirements of Executive Order 13771 in connection with a final rule in the Transparency of Airline Ancillary Service Fees rulemaking, RIN 2105-AE56.*

Response to Request No. 10: Admit.

11. *The agency did not receive from OMB a transfer of deregulatory action credits from another agency to offset the costs associated with a final rule in the Transparency of Airline Ancillary Service Fees rulemaking, RIN 2105-AE56.*

Response to Request No. 11: Admit.

12. *The agency did not identify existing regulations to be repealed that would have offset fully the costs of a final rule on Transparency of Airline Ancillary Service Fees, RIN 2105-AE56.*

Response to Request No. 12: Admit.

13. *Executive Order 13771 was one consideration in the agency's decision to withdraw the Transparency of Airline Ancillary Service Fees rulemaking, RIN 2105-AE56.*

Response to Request No. 13: DOT objects to this interrogatory to the extent that it calls for the disclosure of information protected by the deliberative process, attorney work product, and attorney-client privileges by seeking information about DOT's internal "consideration," including the work product of attorneys or communications with attorneys for the purpose of seeking legal advice. DOT further objects to this interrogatory on the grounds that the phrase "one consideration in the agency's decision" is vague and ambiguous. In light of these objections, DOT construes this request for admission as inquiring whether E.O.13771 has been one factor affecting the agency's decision to withdraw the referenced rulemaking.

Subject to and without waiving the foregoing objections, deny.

DATED: May 7, 2019

Respectfully submitted,

JOSEPH H. HUNT  
Assistant Attorney General

JESSE K. LIU  
United States Attorney

ERIC R. WOMACK

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/s/ Daniel Bensing

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*Counsel for Defendants*

**EXHIBIT B**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

PUBLIC CITIZEN, INC., *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, in his official  
capacity as President of the United States,  
*et al.*,

Defendants.

Civil Action No. 1:17-cv-00253-RDM

**DEFENDANT SECRETARY OF TRANSPORTATION  
ELAINE L. CHAO'S RESPONSES TO PLAINTIFFS'  
FIRST AND SECOND SETS OF INTERROGATORIES**

Pursuant to Federal Rule of Civil Procedure 33 and Local Civil Rules 26.2(d) and 30.4, defendant Elaine L. Chao, in her official capacity as United States Secretary of Transportation (hereinafter, "DOT"), by and through undersigned counsel, hereby objects and responds to Plaintiffs' First and Second Sets of Interrogatories as follows:

**I. PRELIMINARY STATEMENT**

1. DOT's investigation and development of all facts and circumstances relating to this action is ongoing. DOT's responses and objections contained herein are based solely upon such information as is presently available and known to DOT upon information and belief at this time. Further discovery, investigation, research, and analysis may supply additional facts, and meaning to currently known information. DOT expressly reserves the right to supplement, clarify, revise, or correct any or all of the responses and objections herein in one or more subsequent supplemental response(s).

2. These responses and objections are made without prejudice to, and are not a waiver of, DOT's right to rely on other information or documents in any further proceeding.

3. By making the accompanying responses and objections to Plaintiffs' First and Second Set of Interrogatories, DOT does not waive, and hereby expressly reserves, its right to assert any and all objections as to the admissibility of such responses into evidence in this action, or in any other proceedings, on any and all grounds. Further, DOT makes the responses and objections herein without in any way implying that it considers Plaintiffs' First and Second Set of Interrogatories, and DOT's responses to such interrogatories, to be relevant or material to the subject matter of this action.

## **II. DEFINITIONS**

1. "Ancillary Service Fees Rulemaking" means the rulemaking entitled Transparency of Airline Ancillary Service Fees, RIN 2105-AE56.

2. "Rear Seat Belt Reminder Rulemaking" means the rulemaking entitled "Rear Seat Belt Reminder System," RIN 2127-AL37.

3. "V2V Rulemaking" has the meaning assigned to it in Plaintiffs' First Set of Interrogatories to Defendant Elaine Chao.

## **III. RESPONSES**

### **INTERROGATORY NO. 1:**

Describe in detail any consideration of Executive Order 13771 in the agency's discussions of or decisions as to the V2V rulemaking.

### **RESPONSE TO INTERROGATORY NO. 1:**

DOT objects to this interrogatory to the extent that it calls for the disclosure of information protected by the deliberative process, attorney work product, and attorney-client

privileges by seeking information about DOT's internal "discussions" or "considerations," including the work product of attorneys or communications with attorneys for the purpose of seeking legal advice about the rulemaking. DOT further objects to this interrogatory as being overly broad, unduly burdensome, and not proportional to the needs of the case in that it seeks a detailed description of "any consideration" by any personnel of the U.S. Department of Transportation, even though those discussions are irrelevant to the subject matter of the limited discovery permitted by the Court.

Subject to and without waiving the foregoing objections, DOT states that, with respect to the V2V Rulemaking, DOT has considered Executive Order 13771 (hereinafter "E.O. 13771") in connection with the procedural steps that E.O. 13771 requires agencies to take, such as DOT's designation of the V2V Rulemaking as a "Regulatory" action under E.O. 13771 in the Unified Agenda.

But E.O. 13771 has not been a factor affecting any DOT decisions about when or whether to issue a Final Rule with respect to the V2V Rulemaking. DOT continues to engage in an evaluation of the substance and merits of the rulemaking. In December 2018, DOT requested public comments on several technical questions related to vehicle-to-vehicle, vehicle-to-infrastructure, and vehicle-to-pedestrian communications. 83 Fed. Reg. 66,338 (Dec. 26, 2018). DOT's request for comments noted that the proposed rule issued in the V2V Rulemaking identified Dedicated Short-Range Communications ("DSRC") as the primary communication medium, stated that there has been progress in two other technologies, "both of which may, or may not, offer both advantages and disadvantages over DSRC," and asked for public comments on this and several other technical matters. As it continues to evaluate the substance and merits of the V2V Rulemaking, DOT is reviewing and considering the 166



comments received in response to this request, the 460 comments received with respect to the proposed rule, and other information. This evaluation, review, and consideration has not been prompted by, or connected with, E.O. 13771.

**INTERROGATORY NO. 2:**

If the agency has identified specific regulations to repeal that would offset the costs associated with a final safety standard for V2V, identify each such regulation. As used in this interrogatory, “identify” means to provide the topic or title, the Code of Federal Regulations citation, and the subagency or component within the Department of Transportation or other federal agency under whose purview the regulation falls.

**RESPONSE TO INTERROGATORY NO. 2:**

DOT objects to this interrogatory to the extent that it calls for the disclosure of information protected by the deliberative process, attorney work product, and attorney-client privileges by seeking the identification of regulations potentially contained in deliberative, pre-decisional documents, the work product of attorneys, or communications with attorneys for the purpose of seeking legal advice about rulemakings.

DOT further objects to this interrogatory to the extent that it reflects an erroneous understanding of the operation of E.O. 13771. Compliance with the numerical requirement and the cost offset requirement in E.O. 13771 is not assessed on a rule-by-rule basis. Instead, OMB assesses compliance with those requirements Department-wide on an annual basis only at the end of each fiscal year. For example, the cost savings from one deregulatory action could support the agency’s compliance with the cost offset requirement for several new regulations. OMB’s E.O. 13771 guidance thus does not require an agency to identify specific

regulations, prior to issuing a rule, that would satisfy both the E.O. 13771 numerical requirement and the cost offset requirement.

Subject to and without waiving the foregoing objections, DOT states that it has not yet identified specific regulations to repeal that would contribute to satisfying either the numerical requirement or cost offset requirement of E.O. 13771 (were the agency's annual allowance not sufficient) as applied to the V2V Rulemaking. Any such identification likely would be premature until DOT has made its determinations on the substance of the V2V Rulemaking, as described in part by DOT's response to Interrogatory No. 1.

**INTERROGATORY NO. 3:**

Describe in detail any consideration of Executive Order 13771 in the agency's discussions of or decision to withdraw the rulemaking entitled Transparency of Airline Ancillary Service Fees, RIN 2105-AE56.

**RESPONSE TO INTERROGATORY NO. 3:**

DOT objects to this interrogatory to the extent that it calls for the disclosure of information protected by the deliberative process, attorney work product, and attorney-client privileges by seeking information about DOT's internal "discussions" or "considerations," including the work product of attorneys or communications with attorneys for the purpose of seeking legal advice about the rulemaking. DOT further objects to this interrogatory as being overly broad, unduly burdensome, and not proportional to the needs of the case in that it seeks a detailed description of "any consideration" by any personnel of the U.S. Department of Transportation, even though those discussions are irrelevant to the subject matter of the limited discovery permitted by the Court.

Subject to and without waiving the foregoing objections, DOT states that, with respect to the Ancillary Service Fees Rulemaking, DOT considered E.O. 13771 in connection with the procedural steps that E.O. 13771 requires agencies to take, such as DOT's designation of the Ancillary Service Fees Rulemaking as a "Regulatory" action under E.O. 13771 in the Unified Agenda.

But E.O. 13771 was not a factor affecting DOT's decision to withdraw the Ancillary Service Fees Rulemaking. While DOT is committed to protecting consumers from hidden fees and to ensuring transparency, it determined that DOT action was not necessary to meet this objective at this time, as DOT's existing regulations already provide consumers some information regarding fees for ancillary services.

**INTERROGATORY NO. 4:**

Identify each regulatory action that was planned before January 30, 2017, and that, since January 30, 2017, the agency has withdrawn or decided not to proceed with, and as to which Executive Order 13771 was a factor or consideration in the decision to withdraw or not proceed.

**RESPONSE TO INTERROGATORY NO. 4:**

DOT objects to this interrogatory to the extent that it calls for the disclosure of information protected by the deliberative process, attorney work product, and attorney-client privileges by seeking information about DOT's internal "considerations," including the work product of attorneys or communications with attorneys for the purpose of seeking legal advice. DOT further objects to this interrogatory on the grounds that the phrase "factor or consideration" is vague and ambiguous. DOT further objects to this interrogatory on the grounds that it is overbroad, unduly burdensome and not proportional to the needs of the case

in that it seeks information about all DOT rulemaking activity, rather than the specific rulemakings identified in the declarations submitted by Plaintiffs in support of their motion for partial summary judgment and in Plaintiffs' second round of written discovery (the V2V Rulemaking, the Ancillary Service Fees Rulemaking, and the Rear Seat Belt Reminder Rulemaking). In light of these objections and the Court's decision on March 25, 2019 about the breadth of this request, DOT construes this interrogatory as applying only to the V2V Rulemaking, the Ancillary Service Fees Rulemaking, and the Rear Seat Belt Reminder Rulemaking.

Subject to and without waiving the foregoing objections, DOT states that E.O. 13771 was not a factor affecting DOT's decision to withdraw and not proceed with the Ancillary Service Fees Rulemaking. DOT further states that it has neither withdrawn nor "decided not to proceed with" the V2V Rulemaking or the Rear Seat Belt Reminder Rulemaking.

**INTERROGATORY NO. 5:**

Identify each regulatory action that, since January 30, 2017, the agency has delayed, postponed, or made inactive, at least in part because of the requirements of Executive Order 13771.

**RESPONSE TO INTERROGATORY NO. 5:**

DOT objects to this interrogatory to the extent that it calls for the disclosure of privileged deliberative process, attorney work product, and attorney-client communication information by seeking information about the agency's pre-decisional reasoning or reasoning reflected in the work product of attorneys or communications with attorneys for the purpose of seeking legal advice. DOT further objects to this interrogatory on the grounds that the phrase "at least in part because of" is vague and ambiguous. DOT further objects to this

interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case in that it seeks information about all DOT rulemaking activity, rather than the specific rulemakings identified in the declarations submitted by Plaintiffs in support of their motion for partial summary judgment and in Plaintiffs' second round of written discovery (the V2V Rulemaking, the Ancillary Service Fees Rulemaking, and the Rear Seat Belt Reminder Rulemaking). In light of these objections and the Court's decision on March 25, 2019 about the breadth of this request, DOT construes this interrogatory as applying only to the V2V Rulemaking, the Ancillary Service Fees Rulemaking, and the Rear Seat Belt Reminder Rulemaking.

Subject to and without waiving the foregoing objections, DOT states that E.O. 13771 has not been a factor affecting any DOT decisions to delay, postpone, or make inactive the V2V Rulemaking, the Ancillary Service Fees Rulemaking, or the Rear Seat Belt Reminder Rulemaking.

**INTERROGATORY NO. 6:**

For the months February through July 2017, the agency's website stated: "As DOT rulemakings are being evaluated in accordance with Executive Orders 13771 and 13777, the schedules for many ongoing rulemakings are still to be determined, so we will not post an Internet Report for the month of February." DOT, Significant Rulemaking Report Archive, <https://cms.dot.gov/regulations/significant-rulemaking-report-archive>. Describe in detail the effect of Executive Order 13771 in the agency's consideration of the schedules for each "ongoing rulemaking" that was "evaluated in accordance with Executive Order 13771" during the months February through July of 2017.

**RESPONSE TO INTERROGATORY NO. 6:**

DOT objects to this interrogatory to the extent that it calls for the disclosure of information protected by the deliberative process, attorney work product, and attorney-client privileges by seeking information about DOT's internal "considerations," including the work product of attorneys or communications with attorneys for the purpose of seeking legal advice. DOT further objects to this interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case in that it seeks information about all DOT rulemaking activity, rather than the specific rulemakings identified in the declarations submitted by Plaintiffs in support of their motion for partial summary judgment and in Plaintiffs' second round of written discovery (the V2V Rulemaking, the Ancillary Service Fees Rulemaking, and the Rear Seat Belt Reminder Rulemaking). In light of these objections and the Court's decision on March 25, 2019 about the breadth of this request, DOT construes this interrogatory as applying only to the V2V Rulemaking, the Ancillary Service Fees Rulemaking, and the Rear Seat Belt Reminder Rulemaking.

Subject to and without waiving the foregoing objections, DOT states that in early 2017, DOT's Regulatory Reform Task Force ("RRTF") began a comprehensive review of all current and projected regulatory actions. As a part of this extensive, Department-wide review, the RRTF directed the DOT Operating Administrations ("OAs"), as well as those components of the Office of the Secretary of Transportation ("OST") that have regulatory authority, to provide background information for each regulatory and deregulatory action. Following review of these materials, the RRTF conducted a series of meetings with career and non-career OST and OA staff to discuss, among other things, regulatory priorities, the implementation of E.O. 13771, and the preparation of regulatory budgets for Fiscal Years

2017 and 2018. After considerable deliberation, the RRTF prepared a regulatory agenda that reflected the President's regulatory reform objectives, which was approved by the Secretary of Transportation and submitted to OMB. In connection with this process, DOT assigned E.O. 13771 designations to rulemakings (i.e., Regulatory, Deregulatory, etc.), prepared regulatory budgets that accorded with E.O. 13771, and analyzed DOT's ability to comply with the requirements of E.O. 13771. But both during this process and at all times before and after, E.O. 13771 has not been a factor affecting any DOT decisions about when or whether to issue a Final Rule with respect to the V2V Rulemaking, the Ancillary Service Fees Rulemaking, or the Rear Seat Belt Reminder Rulemaking.

**INTERROGATORY NO. 7:**

Describe in detail each request, if any, by the agency to OMB to waive the requirements of Executive Order 13771 as to any regulatory action by the agency, including OMB's response to each such request.

**RESPONSE TO INTERROGATORY NO. 7:**

DOT objects to this interrogatory to the extent that it calls for the disclosure of information protected by the deliberative process, attorney work product, and attorney-client privileges by seeking information about pre-decisional "request[s]," including information reflected in the work product of attorneys or communications with attorneys for the purpose of seeking legal advice. DOT further objects to this interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case in that it seeks information about all DOT rulemaking activity, rather than the specific rulemakings identified in the declarations submitted by Plaintiffs in support of their motion for partial summary

judgment and in Plaintiffs' second round of written discovery (the V2V Rulemaking, the Ancillary Service Fees Rulemaking, and the Rear Seat Belt Reminder Rulemaking).

Subject to and without waiving the foregoing objections, DOT states that it has not requested that OMB waive the requirements of E.O. 13771 as to any DOT rulemaking.

**INTERROGATORY NO. 8:**

Describe in detail each request, if any, by the agency to OMB to obtain a transfer of deregulatory action credits from another agency to offset the costs associated with any regulatory action by the agency, including OMB's response to each such request.

**RESPONSE TO INTERROGATORY NO. 8:**

DOT objects to this interrogatory to the extent that it calls for the disclosure of information protected by the deliberative process, attorney work product, and attorney-client privileges by seeking information about pre-decisional "request[s]," including information reflected in the work product of attorneys or communications with attorneys for the purpose of seeking legal advice. DOT further objects to this interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case in that it seeks information about all DOT rulemaking activity, rather than the specific rulemakings identified in the declarations submitted by Plaintiffs in support of their motion for partial summary judgment and in Plaintiffs' second round of written discovery (the V2V Rulemaking, the Ancillary Service Fees Rulemaking, and the Rear Seat Belt Reminder Rulemaking).

Subject to and without waiving the foregoing objections, DOT states that it has not requested from OMB a transfer of deregulatory action credits from any other agency to offset the costs associated with any DOT rulemaking.



**INTERROGATORY NO. 9:**

Identify all persons who provided information, were consulted, or participated in the preparation of the responses to these Interrogatories and specify the particular response(s) for which each identified person was consulted, furnished information, or participated in answering.

**RESPONSE TO INTERROGATORY NO. 9:**

DOT objects to this interrogatory to the extent that it calls for the disclosure of information protected by the attorney-client privilege, by seeking information about consultations that could include communications with attorneys for the purpose of seeking legal advice, or communications protected by the deliberative process privilege. Moreover, because this interrogatory is identical to Interrogatory No. 14, DOT is interpreting this interrogatory as applying to all fifteen of these Interrogatories.

Subject to and without waiving the foregoing objections, DOT identifies: (1) Deborah Aiken, Director of Regulatory Analysis, Office of the Secretary of Transportation, DOT (Interrogatories 1-15); (2) Steven Bradbury, General Counsel, DOT (Interrogatories 1-15); (3) James Owens, Deputy General Counsel, DOT (Interrogatories 1-15); (4) Judith Kaleta, Deputy General Counsel, DOT (Interrogatories 1-15); (5) Jonathan Moss, Assistant General Counsel for Regulation, DOT (Interrogatories 1-15); (6) Jonathan Dols, Deputy Assistant General Counsel for Regulation, DOT (Interrogatories 1-15); (7) Timothy Mullins, Office of Regulation, Office of the General Counsel, DOT (Interrogatories 1-2, 4-15); (8) Jill Laptosky, Office of Regulation, Office of the General Counsel, DOT (Interrogatories 3-11, 14-15); (9) Blane Workie, Assistant General Counsel, Office of Aviation Enforcement and Proceedings, DOT (Interrogatories 3-11, 14-15); (10) Kimberly Graber, Deputy Assistant

General Counsel, Office of Aviation Enforcement and Proceedings, DOT (Interrogatories 3-11, 14-15); (11) Livaughn Chapman, Deputy Assistant General Counsel, Office of Aviation Enforcement and Proceedings, DOT (Interrogatories 3-11, 14-15); (12) Paul Geier, Assistant General Counsel for Litigation and Enforcement, DOT (Interrogatories 1-15); (13) Peter Plocki, Deputy Assistant General Counsel for Litigation and Enforcement, DOT (Interrogatories 1-15); (14) Charles Enloe, Office of Litigation and Enforcement, Office of the General Counsel, DOT (Interrogatories 1-15); (15) Joy Park, Office of Litigation and Enforcement, Office of the General Counsel, DOT (Interrogatories 4-15); (16) Ryan Posten, Associate Administrator for Rulemaking, National Highway Traffic Safety Administration (“NHTSA”) (Interrogatories 1-2, 4-15); (17) Jonathan Morrison, Chief Counsel, NHTSA (Interrogatories 1-2, 4-15); (18) Christopher Perry, Acting Assistant Chief Counsel for Litigation and Enforcement, NHTSA (Interrogatories 1-2, 4-15); (19) Kerry Kolodziej, Office of the Chief Counsel, NHTSA (Interrogatories 1-2, 4-15); (20) Rebecca Schade, Office of the Chief Counsel, NHTSA (Interrogatories 1-2, 4-11, 14-15); (21) Michael Kuppersmith, Office of the Chief Counsel, NHTSA (Interrogatories 4-15); and (22) John Piazza, Office of the Chief Counsel, NHTSA (Interrogatories 4-15). The current business address for each identified individual is 1200 New Jersey Avenue SE, Washington, D.C. 20590. The current business phone number for each identified individual is (202) 366-4000.

**INTERROGATORY NO. 10:**

Identify all documents considered in preparing responses to these Interrogatories, unless the document did not inform any response.

**RESPONSE TO INTERROGATORY NO. 10:**

Because this interrogatory is identical to Interrogatory No. 15, DOT is interpreting this interrogatory as applying to all fifteen of these Interrogatories. DOT identifies the following documents: (1) V2V Statement, <https://www.nhtsa.gov/press-releases/v2v-statement> (Nov. 8, 2017); (2) Department of Transportation, Notice of Request for Comments: V2X Communications, 83 Fed. Reg. 66338 (Dec. 26, 2018); (3) Department of Transportation, Transparency of Airline Ancillary Service Fees, Notice of withdrawal of proposed rulemaking, 82 Fed. Reg. 58778 (Dec. 14, 2017); (4) Response in Opposition to Petition for a Writ of Mandamus, filed on February 2, 2018 in *In re Kids and Cars, Inc.*, No. 17-1229 (D.C. Cir.); (5) Report of the Regulatory Reform Task Force, DOT (May 25, 2017); and (6) OMB's Unified Agenda of Federal Regulatory and Deregulatory Actions.

**INTERROGATORY NO. 11:**

Identify each rule that the agency has not finalized and that it would have finalized in or before 2019 but for Executive Order 13771. As used in this interrogatory, "identify" means to provide the topic or title, the current and any previous RIN numbers, and the subagency or component within the Department of Transportation under whose purview the regulation falls.

**RESPONSE TO INTERROGATORY NO. 11:**

DOT objects to this interrogatory to the extent that it calls for the disclosure of information protected by the deliberative process, attorney work product, and attorney-client privileges by seeking information about the reasoning underlying pre-decisional agency considerations, including information reflected in the work product of attorneys or communications with attorneys for the purpose of seeking legal advice. DOT further objects to this interrogatory on the grounds that it is overbroad, unduly burdensome, and not

proportional to the needs of the case in that it seeks information about all DOT rulemaking activity, rather than the specific rulemakings identified in the declarations submitted by Plaintiffs in support of their motion for partial summary judgment and in Plaintiffs' second round of written discovery (the V2V Rulemaking, the Ancillary Service Fees Rulemaking, and the Rear Seat Belt Reminder Rulemaking).

Subject to and without waiving the foregoing objections, DOT states that there are no rules that it has not finalized and that it would have finalized in or before 2019 but for E.O. 13771.

**INTERROGATORY NO. 12:**

Describe in detail any consideration of Executive Order 13771 in the agency's discussions of or decisions as to the Rear Seat Belt Reminder System rulemaking, RIN 2127-AL37.

**RESPONSE TO INTERROGATORY NO 12:**

DOT objects to this interrogatory to the extent that it calls for the disclosure of information protected by the deliberative process, attorney work product, and attorney-client privileges by seeking information about DOT's internal "discussions" or "considerations," including the work product of attorneys or communications with attorneys for the purpose of seeking legal advice about the rulemaking. DOT further objects to this interrogatory as being overly broad, unduly burdensome, and not proportional to the needs of the case in that it seeks a detailed description of "any consideration" by any personnel of the U.S. Department of Transportation, even though those discussions are irrelevant to the subject matter of the limited discovery permitted by the Court.

Subject to and without waiving the foregoing objections, DOT states that, with respect to the Rear Seat Belt Reminder System Rulemaking, DOT has considered E.O. 13771 in connection with the procedural steps that E.O. 13771 requires agencies to take, such as DOT's designation of the Rear Seat Belt Reminder System Rulemaking as a "Regulatory" action under E.O. 13771 in the Unified Agenda.

But E.O. 13771 has not been a factor affecting any DOT decisions about when or whether to issue a proposed rule with respect to the Rear Seat Belt Reminder System Rulemaking. DOT has taken significant actions over several years in connection with this rulemaking, including by: (1) initiating a rulemaking proceeding by early 2013, when it submitted for public comment a proposal to undertake a study regarding the effectiveness of existing rear seat belt reminder systems; (2) conducting the study in 2014, assessing the effectiveness and consumer acceptance of rear seat belt reminder systems in the market; (3) publishing in 2015 preliminary estimates of the anticipated costs and benefits of a reminder standard for rear and front passenger seats in 2015, which estimated that a rule would cost between \$164 million and \$325 million and result in the equivalent of 43.7 to 65.4 lives saved; and (4) describing alternative rules that it was considering in 2015. For substantive reasons not connected to E.O. 13771, DOT has changed its target date for a proposed rule on several occasions and has continued to update that target date in the Unified Agenda and its Significant Rulemaking Reports; for example, in the fall of 2015, DOT changed the target date from December 2015 to October 2016. DOT continues to evaluate the merits and substance of the rulemaking.

**INTERROGATORY NO. 13:**

If the agency has identified specific regulations to repeal that would offset the costs associated with a final rule in the Rear Seat Belt Reminder System rulemaking, RIN 2127-AL37, identify each such regulation. As used in this interrogatory, “identify” means to provide the topic or title, the Code of Federal Regulations citation, and the subagency or component within the Department of Transportation or other federal agency under whose purview the regulation falls.

**RESPONSE TO INTERROGATORY NO. 13:**

DOT objects to this interrogatory to the extent that it calls for the disclosure of information protected by the deliberative process, attorney work product, and attorney-client privileges by seeking the identification of regulations potentially contained in deliberative, pre-decisional documents, the work product of attorneys, or communications with attorneys for the purpose of seeking legal advice about rulemakings.

DOT further objects to this interrogatory to the extent that it reflects an erroneous understanding of the operation of E.O. 13771. Compliance with the numerical requirement and the cost offset requirement in E.O. 13771 is not assessed on a rule-by-rule basis. Instead, OMB assesses compliance with those requirements Department-wide on an annual basis only at the end of each fiscal year. For example, the cost savings from one deregulatory action could support the agency’s compliance with the cost offset requirement for several new regulations. OMB’s E.O. 13771 guidance thus does not require an agency to identify specific regulations, prior to issuing a rule, that would satisfy both the E.O. 13771 numerical requirement and the cost offset requirement.

Subject to and without waiving the foregoing objections, DOT states that it has not yet identified specific regulations to repeal that would contribute to satisfying either the numerical requirement or cost offset requirement of E.O. 13771 (to the extent the agency's annual cost allowance were not sufficient) as applied to the Rear Seat Belt Reminder System Rulemaking. Any such identification likely would be premature until DOT has made its determinations on the substance of the Rear Seat Belt Reminder System Rulemaking.

**INTERROGATORY NO. 14:**

Identify all persons who provided information, were consulted, or participated in the preparation of the responses to these Interrogatories and specify the particular response(s) for which each identified person was consulted, furnished information, or participated in answering.

**RESPONSE TO INTERROGATORY NO. 14:**

DOT incorporates by references its objections and responses to Interrogatory No. 9.

**INTERROGATORY NO. 15:**

Identify all documents considered in preparing responses to these Interrogatories, unless the document did not inform any response.

**RESPONSE TO INTERROGATORY NO. 15:**

DOT incorporates by references its objections and responses to Interrogatory No. 10.

**VERIFICATION**

I, Deborah Aiken, declare under penalty of perjury:

I am currently employed by the U.S. Department of Transportation (“DOT”) as Director of Regulatory Analysis in the Office of the Secretary of Transportation. As such, I am authorized to make this verification on behalf of DOT.

I have read and know the contents of the foregoing responses to Plaintiffs’ First and Second Sets of Interrogatories. These responses were prepared based on information obtained from DOT employees and from DOT records. These responses, subject to any inadvertent and undiscovered errors, are based upon, and necessarily limited by, the information still in existence, able to be located, presently recollected, and thus far discovered in the course of preparing these responses. These responses regarding DOT are true and correct to the best of my knowledge, information, and belief.

Executed this 7th day of May, 2019, in Washington, DC.

---

Deborah Aiken, PhD  
Director of Regulatory Analysis  
Office of the Secretary of Transportation  
U.S. Department of Transportation



Dated: May 7, 2019

Respectfully submitted,

JOSEPH H. HUNT  
Assistant Attorney General

JESSE K. LIU  
United States Attorney

ERIC R. WOMACK  
Assistant Branch Director

*/s/ Daniel Bensing*  
DANIEL BENSING (D.C. Bar No.  
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Email: [Daniel.Bensing@usdoj.gov](mailto:Daniel.Bensing@usdoj.gov)

*Counsel for Defendants*


**VERIFICATION**

I, Deborah Aiken, declare under penalty of perjury:

I am currently employed by the U.S. Department of Transportation ("DOT") as Director of Regulatory Analysis in the Office of the Secretary of Transportation. As such, I am authorized to make this verification on behalf of DOT.

I have read and know the contents of the foregoing responses to Plaintiffs' First and Second Sets of Interrogatories. These responses were prepared based on information obtained from DOT employees and from DOT records. These responses, subject to any inadvertent and undiscovered errors, are based upon, and necessarily limited by, the information still in existence, able to be located, presently recollected, and thus far discovered in the course of preparing these responses. These responses regarding DOT are true and correct to the best of my knowledge, information, and belief.

Executed this 7th day of May, 2019, in Washington, DC.

  
\_\_\_\_\_  
Deborah Aiken, PhD  
Director of Regulatory Analysis  
Office of the Secretary of Transportation  
U.S. Department of Transportation

**EXHIBIT C**



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

September 7, 2017

ADMINISTRATOR  
OFFICE OF  
INFORMATION AND  
REGULATORY AFFAIRS

M-17-31

MEMORANDUM FOR: REGULATORY REFORM OFFICERS AT EXECUTIVE  
DEPARTMENTS AND AGENCIES

FROM: Neomi Rao, Administrator  
Office of Information and Regulatory Affairs

A handwritten signature in blue ink, reading "Neomi Rao".

SUBJECT: FY 2018 Regulatory Cost Allowances

Section 3(d) of Executive Order 13771 "Reducing Regulation and Controlling Regulatory Costs" (82 FR 9339) provides that the Director of the Office of Management and Budget (OMB) shall identify a regulatory cost allowance for each agency for FY 2018. 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."

This memorandum directs executive departments and agencies to prepare a proposed total incremental cost allowance for FY 2018 to inform the Director's determinations under Section 3(d) of EO 13771. Each agency's proposed FY 2018 cost allowance should be informed by its submissions for the Fall 2017 Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions, which are due on September 18, 2017. Each agency should include along with its proposed FY 2018 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 Executive Order 13771, as well as Executive Order 13777 "Enforcing the Regulatory Reform Agenda" (82 FR 12285).

OMB, through the Office of Information and Regulatory Affairs (OIRA), will review each agency's proposed FY 2018 cost allowance for consistency with the regulatory policies and priorities set forth in Executive Orders 13771 and 13777, including the goal "to lower regulatory burdens on the American People by implementing and enforcing regulatory reform." Executive Order 13777 also explains that "[i]t is the policy of the United States to alleviate unnecessary regulatory burdens placed on the American people." Finally, Executive Order 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, OMB expects that each agency will propose a net reduction in total incremental regulatory costs for FY 2018. OMB expects to publish each agency's final total incremental cost allowances in conjunction with the 2017 Fall Regulatory Plan and Agenda.

Please submit your department or agency's proposed total incremental cost allowance for FY 2018 to your OIRA Desk Officer, along with any supporting explanation, at the time you make your submissions for the Fall 2017 Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions.

**EXHIBIT D**

## Regulatory Reform: Cost Caps Fiscal Year 2018

This chart presents each agency's regulatory cost cap under Executive Order 13771 for Fiscal Year 2018.

- **Projected savings \$9.8 billion, or \$687 million per year.**

EXECUTIVE DEPARTMENTS AND AGENCIES	Fiscal Year 2018 Caps	
	Annualized Costs/Cost Savings \$millions	Present Value Costs/Cost Savings \$millions
Department of Agriculture	-56.0	-800.0
Department of Commerce	-0.7	-10.0
Department of Defense	-70.9	-1012.9
Department of Education	-3.0	-42.9
Department of Energy	-80.0	-1142.9
Department of Health and Human Services	-28.7	-410.0
Department of Homeland Security	0.0	0.0
Department of Housing and Urban Development	-29.0	-414.3
Department of Interior	-196.0	-2800.0
Department of Justice	-2.0	-28.6
Department of Labor	-137.0	-1957.1
Department of State	-1.1	-15.7
Department of the Treasury	0.0	0.0
Department of Transportation	-35.0	-500.0
Department of Veterans Affairs	-2.4	-34.3
Environmental Protection Agency	-40.0	-571.4
Equal Employment Opportunity Commission	0.0	0.0
Federal Acquisition Regulation	0.0	0.0
General Services Administration	0.0	0.0
National Aeronautics and Space Administration	0.0	0.0

EXECUTIVE DEPARTMENTS AND AGENCIES	Fiscal Year 2018 Caps	
	Annualized Costs/Cost Savings \$millions	Present Value Costs/Cost Savings \$millions
Office of Management and Budget	0.0	0.0
Small Business Administration	-3.6	-51.4
Social Security Administration	0.0	0.0
United States Agency for International Development	-1.2	-17.1
<b><i>TOTAL</i></b>	<b>-686.6</b>	<b>-9808.6</b>

**The following small agencies have set cost allowances of zero in Fiscal Year 2018.**

American Battle Monuments Commission; Access Board; African Development Foundation; Commission on Civil Rights; Corporation for National and Community Service; Committee for Purchase from People Who Are Blind or Severely Disabled; Court Services and Offender Supervision Agency; Institute of Museum and Library Services; National Archives and Records Administration; National Endowment for the Arts; National Endowment for the Humanities; National Mediation Board; National Science Foundation; Office of Government Ethics; Office of Personnel Management; Pension Benefit Guaranty Corporation; Privacy and Civil Liberties Oversight Board; Peace Corps; Presidio Trust; Railroad Retirement Board; Special Inspector General for Afghanistan Reconstruction; Tennessee Valley Authority

**Accounting Methods under EO 13771.** The following provides a brief explanation of the methodology used in EO 13771 accounting. Further explanation of technical details is in "[Accounting Methods for Calculating Costs under Executive Order 13771](#)."

- *Accounting Requirements*. In order to ensure consistent and comparable accounting of costs and cost savings, the Office of Information and Regulatory Affairs (OIRA) has worked with agencies to apply the same analytical assumptions to all regulatory actions. Because EO 13771 requires a regulatory cost cap, agencies need an accounting method that allows for a comparison of the costs of regulatory actions to the cost savings of deregulatory actions. To allow for cost comparisons, agencies have applied the same time horizon to all regulatory actions, and assumed that the impacts of regulations continue in perpetuity. Agencies have also applied a 7 percent discount rate and used 2016 dollars.
- *Why Use a Perpetual Time Horizon?* A perpetual time horizon reflects a general presumption, for the purposes of this accounting, that regulatory and deregulatory actions are permanent. Agencies will use a perpetual time horizon unless they offer a specific and credible reason why a particular regulation's analysis requires a unique time horizon.
- *Annualized Value v. Present Value*. Annualized value and present value are different forms of the same summary numbers. Present value is akin to the full value of a loan while annualized value is akin to equal periodic loan payments that occur once per year.
- *EO 12866 and EO 13771*. Accounting under each executive order serves different purposes, which means the values reported under each executive order may differ. More specifically, EO 12866 analysis focuses on particular rules, whereas EO 13771 considers costs and cost savings across all qualifying rules. In all cases, agencies will clearly explain the underlying assumptions that may lead to the presentation of different reported values.
- *EO 13771 Regulatory Actions*. EO 13771 regulatory actions are defined as those final actions that both impose costs greater than zero and qualify as "significant" under Section 3(f) of EO 12866 (see M-17-21, Q2). Accordingly, the regulatory actions listed in this table represent a subset of an agency's total regulatory actions.



**EXHIBIT E**

## Regulatory Reform: Regulatory Budget for Fiscal Year 2019

This chart presents each agency's projected regulatory cost cap or regulatory budget under Executive Order 13771 for fiscal year 2019. All projections below use the present value, as of 2018, of the potential costs or cost savings to be achieved.

**Projected savings: \$18 billion.**

EXECUTIVE DEPARTMENTS AND AGENCIES	Fiscal Year 2019 Caps Projected Cost/Cost Savings Present Value in \$millions
Department of Agriculture	-981.3
Department of Commerce	-51.2
Department of Defense	0.0
Department of Education	-3,173.0
Department of Energy	0.0
Department of Health and Human Services	-8,995.6
Department of Homeland Security	0.0
Department of Housing and Urban Development	-490.7
Department of the Interior	-793.6
Department of Justice	0.0
Department of Labor	-723.2
Department of State	0.0
Department of Transportation*	-1,869.5
Department of the Treasury	0.0
Department of Veterans Affairs	0.0
Environmental Protection Agency*	-817.8
Equal Employment Opportunity Commission	0.0
DOD/GSA/NASA (Federal Acquisition Regulation)	0.0

<b>EXECUTIVE DEPARTMENTS AND AGENCIES</b>	<b>Fiscal Year 2019 Caps</b> Projected Cost/Cost Savings Present Value in \$millions
General Services Administration	0.0
National Aeronautics and Space Administration	0.0
Office of Management and Budget	0.0
Office of Personnel Management	0.0
Small Business Administration	-8.8
Social Security Administration	0.0
United States Agency for International Development	0.0
<b><i>TOTAL</i></b>	<b>-17,904.8</b>

\*While DOT's and EPA's proposed rule regarding corporate average fuel economy (The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks, 83 FR 42817) is expected to be finalized in fiscal year 2019, it is not included in next year's cost allowances for these agencies. *The SAFE proposed rule has a wide range of potential savings of between \$120-\$340 billion.* This represents a one-time deregulatory action an order of magnitude larger than all other planned deregulatory actions. In order to properly highlight ongoing reform across the government, the Administration has chosen to note the impacts of the SAFE rule separately.

**The following small agencies have set cost allowances of zero in fiscal year 2019:** American Battle Monuments Commission; Access Board; African Development Foundation; Commission on Civil Rights; Corporation for National and Community Service; Committee for Purchase from People Who Are Blind or Severely Disabled; Court Services and Offender Supervision Agency; Institute of Museum and Library Services; National Archives and Records Administration; National Endowment for the Arts; National Endowment for the Humanities; National Science Foundation; Office of Government Ethics; Office of Personnel Management; Pension Benefit Guaranty Corporation; Privacy and Civil Liberties Oversight Board; Peace Corps; Presidio Trust; Railroad Retirement Board; Special Inspector General for Afghanistan Reconstruction; and the Tennessee Valley Authority.

**EXHIBIT F**

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The Trump Administration's Unified Agenda of Regulatory and Deregulatory Actions provides an updated report on the actions administrative agencies plan to issue in the near and long term. Released by the Office of Information and Regulatory Affairs, this Agenda represents the beginning of fundamental regulatory reform and a reorientation toward reducing unnecessary regulatory burden on the American people.

By amending and eliminating regulations that are ineffective, duplicative, and obsolete, the Administration can promote economic growth and innovation and protect individual liberty.

Fulfilling longstanding principles to review and assess existing regulations, the Agenda includes the withdrawal and reconsideration of numerous regulatory actions. Agencies have committed to careful assessment of the costs and benefits of each regulatory and deregulatory action, and to prioritizing the maximization of net benefits of regulations. The Agenda recognizes that reform will take time and require rigorous analysis, public input, and careful consideration of a variety of important legal and social values. To this end, the Agenda provides greater information and transparency about regulatory actions proposed by agencies.

Executive Orders 13771 and 13777 require agencies to reduce unnecessary regulatory burden and to enforce regulatory reform initiatives. As a step in the right direction, the first five months of this Administration produced quantifiable annualized cost savings estimated at \$22 million, compared to \$6.8 billion in annualized costs due to rules finalized during last five months of fiscal year 2016.

The Agenda represents ongoing progress toward the goals of more effective and less burdensome regulation and includes the following developments:

- Agencies withdrew 469 actions proposed in the Fall 2016 Agenda;
- Agencies reconsidered 391 active actions by reclassifying them as long-term (282) and inactive (109), allowing for further careful review;
- Economically significant regulations fell to 58, or about 50 percent less than Fall 2016;
- For the first time, agencies will post and make public their list of "inactive" rules-providing notice to the public of regulations still being reviewed or considered.

[Current Agenda Agency Preambles](#)

[Current Long Term Actions](#)

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#### Current Agenda Agency Regulatory Entries for Active Actions

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(Only agencies with information relevant to this report appear in the list.)

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#### Current 2017 Inactive Actions List

[2017 Inactive Actions](#)

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RegInfo.gov displays editions of the Unified Agenda of Federal Regulatory and Deregulatory Actions beginning with fall 1995.

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**EXHIBIT G**

## Regulatory Reform: Two-for-One Status Report and Regulatory Cost Caps

Executive Order 13771: Final Accounting for Fiscal Year 2017  
and Cost Caps for Fiscal Year 2018

This chart summarizes government-wide compliance with [Executive Order \(EO\) 13771](#), which requires federal departments and agencies to: (1) eliminate, on average, two regulatory actions for each new regulatory action implemented by the end of each fiscal year; and (2) not exceed a regulatory cost allowance or cap, set at zero net costs for Fiscal Year 2017. In the first eight months of the Administration, agencies have far exceeded the two-for-one and regulatory cap requirements.

- **22-1:** Agencies issued 67 deregulatory actions and only 3 regulatory actions.
- **Saved \$8.1 billion:** Agencies saved \$8.1 billion in regulatory costs, or \$570 million per year.

For a detailed list of regulatory and deregulatory actions completed in Fiscal Year 2017 see this [chart](#). EO 13771 implementation is further explained in the Office of Management and Budget Guidance [M-17-21](#). For questions about specific regulatory actions, please contact the relevant agency.

DEPARTMENTS AND AGENCIES	Fiscal Year 2017-Final Accounting				Fiscal Year 2018 Caps	
	Final Deregulatory Actions	Final Regulatory Actions	Annualized Costs/Cost Savings \$millions	Present Value Costs/Cost Savings \$millions	Annualized Costs/Cost Savings \$millions	Present Value Costs/Cost Savings \$millions
Department of Agriculture	5	0	-12.9	-183.6	-56.0	-800.0
Department of Commerce	7	0	-1.1	-15.7	-0.7	-10.0
Department of Defense	0	0	0.0	0.0	-70.9	-1012.9
Department of Education	0	0	0.0	0.0	-3.0	-42.9
Department of Energy	0	1	36.0	514.3	-80.0	-1142.9
Department of Health and Human Services	7	1	-0.4	-5.3	-28.7	-410.0
Department of Homeland Security	4	0	-37.9	-540.7	0.0	0.0
Department of Housing and Urban Development	0	0	0.0	0.0	-29.0	-414.3
Department of Interior	12	0	-80.5	-1150.3	-196.0	-2800.0
Department of Justice	0	0	0.0	0.0	-2.0	-28.6



DEPARTMENTS AND AGENCIES	Fiscal Year 2017-Final Accounting				Fiscal Year 2018 Caps	
	Final Deregulatory Actions	Final Regulatory Actions	Annualized Costs/Cost Savings \$millions	Present Value Costs/Cost Savings \$millions	Annualized Costs/Cost Savings \$millions	Present Value Costs/Cost Savings \$millions
Department of Labor	7	0	-7.9	-112.9	-137.0	-1957.1
Department of State	0	0	0.0	0.0	-1.1	-15.7
Department of the Treasury	4	0	0.0	0.0	0.0	0.0
Department of Transportation	2	0	-21.8	-312.0	-35.0	-500.0
Department of Veterans Affairs	1	0	-1.9	-26.7	-2.4	-34.3
Environmental Protection Agency	16	1	-21.5	-306.9	-40.0	-571.4
Equal Employment Opportunity Commission	0	0	0.0	0.0	0.0	0.0
Federal Acquisition Regulation	1	0	-417.0	-5957.1	0.0	0.0
General Services Administration	0	0	0.0	0.0	0.0	0.0
National Aeronautics and Space Administration	0	0	0.0	0.0	0.0	0.0
Office of Management and Budget	0	0	0.0	0.0	0.0	0.0
Small Business Administration	1	0	-3.6	-51.4	-3.6	-51.4
Social Security Administration	0	0	0.0	0.0	0.0	0.0
United States Agency for International Development	0	0	0.0	0.0	-1.2	-17.1
<b>TOTAL</b>	<b>67</b>	<b>3</b>	<b>-570.4</b>	<b>-8148.3</b>	<b>-686.6</b>	<b>-9808.6</b>

The following small agencies did not issue either EO 13771 regulatory or deregulatory actions in Fiscal Year 2017 and set cost allowances of zero in Fiscal Year 2018.

American Battle Monuments Commission; Access Board; African Development Foundation; Commission on Civil Rights; Corporation for National and Community Service; Committee for Purchase from People Who Are Blind or Severely Disabled; Court Services and Offender Supervision Agency; Institute of Museum and Library Services; National Archives and Records Administration; National Endowment for the Arts; National Endowment for the Humanities; National Mediation Board; National Science Foundation; Office of Government Ethics; Office of Personnel Management; Pension Benefit Guaranty Corporation; Privacy and Civil Liberties Oversight Board; Peace Corps; Presidio Trust; Railroad Retirement Board; Special Inspector General for Afghanistan Reconstruction; Tennessee Valley Authority

**Accounting Methods under EO 13771.** The following provides a brief explanation of the methodology used in EO 13771 accounting. Further explanation of technical details is in "[Accounting Methods for Calculating Costs under Executive Order 13771](#)."

- *Accounting Requirements*. In order to ensure consistent and comparable accounting of costs and cost savings, the Office of Information and Regulatory Affairs (OIRA) has worked with agencies to apply the same analytical assumptions to all regulatory actions. Because EO 13771 requires a regulatory cost cap, agencies need an accounting method that allows for a comparison of the costs of regulatory actions to the cost savings of deregulatory actions. To allow for cost comparisons, agencies have applied the same time horizon to all regulatory actions, and assumed that the impacts of regulations continue in perpetuity. Agencies have also applied a 7 percent discount rate and used 2016 dollars.
- *Why Use a Perpetual Time Horizon?* A perpetual time horizon reflects a general presumption, for the purposes of this accounting, that regulatory and deregulatory actions are permanent. Agencies will use a perpetual time horizon unless they offer a specific and credible reason why a particular regulation's analysis requires a unique time horizon.
- *Annualized Value v. Present Value*. Annualized value and present value are different forms of the same summary numbers. Present value is akin to the full value of a loan while annualized value is akin to equal periodic loan payments that occur once per year.
- *EO 12866 and EO 13771*. Accounting under each executive order serves different purposes, which means the values reported under each executive order may differ. More specifically, EO 12866 analysis focuses on particular rules, whereas EO 13771 considers costs and cost savings across all qualifying rules. In all cases, agencies will clearly explain the underlying assumptions that may lead to the presentation of different reported values.
- *EO 13771 Regulatory Actions*. EO 13771 regulatory actions are defined as those final actions that both impose costs greater than zero and qualify as "significant" under Section 3(f) of EO 12866 (see M-17-21, Q2). Accordingly, the regulatory actions listed in this table represent a subset of an agency's total regulatory actions.

**EXHIBIT H**

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## Regulatory Reform Results for Fiscal Year 2018

In [Regulatory Reform under Executive Order 13771: Final Accounting for Fiscal Year 2018](#), the Office of Information and Regulatory Affairs compiles the regulatory reform results from fiscal year 2018. President Trump emphasized the importance of reducing regulatory burdens and directed agencies to eliminate two regulations for each new one and to cap their total incremental costs in [Executive Order 13771 \("Reducing Regulation and Controlling Regulatory Costs," January 30, 2017\)](#). Agencies have focused on comprehensive and common-sense regulatory reform, protecting health and safety while eliminating unnecessary costs. These reforms adhere to the longstanding principles and good regulatory practices in [Executive Order 12866 \("Regulatory Planning and Review," September 30, 1993\)](#), which highlights that "the private sector and private markets are the best engine for economic growth."

### Results

Agencies accelerated the pace of regulatory reform in fiscal year 2018.

- **Eliminated \$23 billion** in overall regulatory costs across the government.
- **12-to-1:** Agencies issued [176 deregulatory actions and 14 significant regulatory actions](#).
- **57 deregulatory actions were significant.** Comparing significant deregulatory to significant regulatory actions yields a ratio of **4 to 1**.
- For a full statement of these results see [Regulatory Reform under Executive Order 13771: Final Accounting for Fiscal Year 2018](#).

### Projected Cost Savings for Fiscal Year 2019

As part of the effort to continue reducing unnecessary and ineffective regulatory burdens, agencies have worked with OIRA to identify a regulatory cost allowance or budget for fiscal year 2019. These cost allowances are informed by each agency's submissions for the [Fall 2018 Regulatory Plan and Unified Agenda](#) of Regulatory and Deregulatory Actions and incorporate regulatory actions required by law.

**In fiscal year 2019, agencies anticipate saving a total of \$18 billion in regulatory costs** from final rulemakings. This does not include one of the most significant deregulatory rules anticipated in fiscal year 2019, "The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks," which the proposed rule estimates will save between \$120 and \$340 billion in regulatory costs.

[Regulatory Reform: Regulatory Budget for Fiscal Year 2019](#) provides a list of cost caps by agency.

### Methodology

In order to calculate regulatory costs and cost savings for purposes of EO 13771, OIRA and the agencies have established consistent accounting standards, explained in further detail in [Accounting Methods under Executive Order 13771](#).

## Regulatory Reform Reports from Previous Fiscal Years

### Fiscal Year 2017

See [Regulatory Reform: Two-for-One Status Report and Regulatory Cost Caps](#) for fiscal year 2017 and [Regulatory Reform: Completed Actions for Fiscal Year 2017](#)

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## View Rule

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DOT/NHTSA

RIN: 2127-AL55

Publication ID: Spring 2017

**Title:** \*Federal Motor Vehicle Safety Standard (FMVSS) 150--Vehicle to Vehicle (V2V) Communication**Abstract:**

V2V communications uses on-board dedicated short-range radio communication (DSRC) devices or other advanced communication technologies to broadcast messages about a vehicle's speed, heading, brake status, and other information to other vehicles and receive the same information from the messages, with extended range and line-of-sight capabilities. V2V's enhanced detection distance and ability to see around corners or through other vehicles helps V2V-equipped vehicles uniquely perceive some threats and warn their drivers accordingly. V2V technology can also be fused with vehicle-resident technologies to potentially provide greater benefits than either approach alone. V2V can augment vehicle-resident systems by acting as a complete system, extending the ability of the overall safety system to address other crash scenarios not covered by V2V communications, such as lane and road departure. Additionally, V2V communication is currently perceived to become a foundational aspect of vehicle automation.

**Agency:** Department of Transportation(DOT)**RIN Status:** Previously published in the Unified Agenda**Major:** Yes**EO 13771 Designation:** uncollected**CFR Citation:** [49 CFR 571.150](#)**Legal Authority:** [49 U.S.C. 30101](#)**Legal Deadline:** None**Timetable:**

Action	Date	FR Cite
ANPRM	08/20/2014	<a href="#">79 FR 49270</a>
ANPRM Comment Period End	10/20/2014	
NPRM	01/12/2017	<a href="#">82 FR 3854</a>
Next Action Undetermined	To Be Determined	

**Regulatory Flexibility Analysis Required:** No**Small Entities Affected:** No**Included in the Regulatory Plan:** No**RIN Information URL:** [www.regulations.gov](http://www.regulations.gov)**RIN Data Printed in the FR:** No**Agency Contact:**

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1200 New Jersey Avenue, SE,  
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Phone:202 366-5206  
Email: [gregory.powell@dot.gov](mailto:gregory.powell@dot.gov)

**Priority:** Economically Significant**Agenda Stage of Rulemaking:** Long-Term Actions**Unfunded Mandates:** No**Government Levels Affected:** None**Federalism:** No**Public Comment URL:** [www.regulations.gov](http://www.regulations.gov)[About Us](#) | [Related Resources](#) | [Disclosure](#) | [Accessibility](#) | [Privacy Policy](#) | [Contact Us](#)

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## View Rule

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DOT/NHTSA

RIN: 2127-AL55

Publication ID: Spring 2019

**Title:** \*Federal Motor Vehicle Safety Standard (FMVSS) 150--Vehicle to Vehicle (V2V) Communication**Abstract:**

This rulemaking would require that all light vehicles be capable of V2V communication by use of on-board dedicated short-range radio communication (DSRC) devices, which would broadcast messages about a vehicle's speed, heading, brake status, and other information to other vehicles and receive the same information from the messages, with extended range and 'line-of-sight' capabilities.

**Agency:** Department of Transportation(DOT)**RIN Status:** Previously published in the Unified Agenda**Major:** Yes**EO 13771 Designation:** Regulatory**CFR Citation:** [49 CFR 571](#)**Legal Authority:** [49 U.S.C. 30101](#)**Legal Deadline:** None**Timetable:**

Action	Date	FR Cite
ANPRM	08/20/2014	<a href="#">79 FR 49270</a>
ANPRM Comment Period End	10/20/2014	
NPRM	01/12/2017	<a href="#">82 FR 3854</a>
NPRM Comment Period End	04/12/2017	
Next Action Undetermined	To Be Determined	

**Regulatory Flexibility Analysis Required:** No**Small Entities Affected:** No**Included in the Regulatory Plan:** No**RIN Information URL:** [www.regulations.gov](http://www.regulations.gov)**RIN Data Printed in the FR:** No**Agency Contact:**

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Program Analyst  
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Phone:202 366-5206  
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**Priority:** Economically Significant**Agenda Stage of Rulemaking:** Long-Term Actions**Unfunded Mandates:** No**Government Levels Affected:** None**Federalism:** No**Public Comment URL:** [www.regulations.gov](http://www.regulations.gov)[About Us](#) | [Related Resources](#) | [Disclosure](#) | [Accessibility](#) | [Privacy Policy](#) | [Contact Us](#)



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## View Rule

[View EO 12866 Meetings](#)[Printer-Friendly Version](#)[Download RIN Data in XML](#)**DOE/EE****RIN:** 1904-AD34**Publication ID:** Fall 2017**Title:** Energy Conservation Standards for Commercial Water Heating Equipment**Abstract:**

Once completed, this rulemaking will fulfill DOE's statutory obligation under EPCA to either propose amended energy conservation standards for commercial water heaters and hot water supply boilers, or determine that the existing standards do not need to be amended. (Unfired hot water storage tanks and commercial heat pump water heaters are being considered in a separate rulemaking.) DOE must determine whether national standards more stringent than those that are currently in place would result in a significant additional amount of energy savings and whether such amended national standards would be technologically feasible and economically justified.

**Agency:** Department of Energy(DOE)**RIN Status:** Previously published in the Unified Agenda**Major:** Yes**EO 13771 Designation:** Regulatory**CFR Citation:** [10 CFR 429](#) [10 CFR 431](#)**Legal Authority:** [42 U.S.C. 6313\(a\)\(6\)\(C\)\(i\) and \(vi\)](#)**Legal Deadline:**

Action	Source	Description	Date
Other	Statutory	Subject to 6-year-look-back requirement in 42 U.S.C. 6313(a)(6)(C).	

**Timetable:**

Action	Date	FR Cite
Request for Information (RFI)	10/21/2014	<a href="#">79 FR 62899</a>
RFI Comment Period End	11/20/2014	
NPRM	05/31/2016	<a href="#">81 FR 34440</a>
NPRM Comment Period End	08/01/2016	
NPRM Comment Period Reopened	08/05/2016	<a href="#">81 FR 51812</a>
NPRM Comment Period Reopened End	08/30/2016	
Notice of Data Availability (NODA)	12/23/2016	<a href="#">81 FR 94234</a>
NODA Comment Period End	01/09/2017	
Next Action Undetermined	To Be Determined	

**Regulatory Flexibility Analysis Required:** Yes**Small Entities Affected:** Businesses**Included in the Regulatory Plan:** No**RIN Information URL:** [www1.eere.energy.gov/buildings/appliance\\_standards/product.aspx/productid/51](http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/51)**RIN Data Printed in the FR:** Yes**Agency Contact:**

Catherine Rivest  
General Engineer  
Department of Energy  
Energy Efficiency and Renewable Energy  
1000 Independence Avenue SW., Buildings Technologies Office, EE-5B,  
Washington, DC 20585  
Phone:202 586-7335  
Email: catherine.rivest@ee.doe.gov

**Priority:** Economically Significant**Agenda Stage of Rulemaking:** Long-Term Actions**Unfunded Mandates:** Private Sector**Government Levels Affected:** None**Federalism:** No**Public Comment URL:** [www.regulations.gov/#!docketDetail;D=EERE-2014-BT-STD-0042](http://www.regulations.gov/#!docketDetail;D=EERE-2014-BT-STD-0042)[About Us](#) | [Related Resources](#) | [Disclosure](#) | [Accessibility](#) | [Privacy Policy](#) | [Contact Us](#)

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**DOE/EE** **RIN:** 1904-AD34 **Publication ID:** Spring 2018  
**Title:** Energy Conservation Standards for Commercial Water Heating Equipment  
**Abstract:**

Once completed, this rulemaking will fulfill DOE's statutory obligation under EPCA to either propose amended energy conservation standards for commercial water heaters and hot water supply boilers, or determine that the existing standards do not need to be amended. (Unfired hot water storage tanks and commercial heat pump water heaters are being considered in a separate rulemaking.) DOE must determine whether national standards more stringent than those that are currently in place would result in a significant additional amount of energy savings and whether such amended national standards would be technologically feasible and economically justified.

**Agency:** Department of Energy(DOE) **Priority:** Economically Significant  
**RIN Status:** Previously published in the Unified Agenda **Agenda Stage of Rulemaking:** Final Rule Stage  
**Major:** Yes **Unfunded Mandates:** Private Sector  
**EO 13771 Designation:** Regulatory  
**CFR Citation:** [10 CFR 429](#) [10 CFR 431](#)  
**Legal Authority:** [42 U.S.C. 6313\(a\)\(6\)\(C\)\(i\) and \(vi\)](#)

Legal Deadline:		Description	Date
Action	Source		
Other	Statutory	Subject to 6-year-look-back requirement in 42 U.S.C. 6313(a)(6)(C).	

Timetable:		Date	FR Cite
Action			
Request for Information (RFI)		10/21/2014	<a href="#">79 FR 62899</a>
RFI Comment Period End		11/20/2014	
NPRM		05/31/2016	<a href="#">81 FR 34440</a>
NPRM Comment Period End		08/01/2016	
NPRM Comment Period Reopened		08/05/2016	<a href="#">81 FR 51812</a>
NPRM Comment Period Reopened End		08/30/2016	
Notice of Data Availability (NODA)		12/23/2016	<a href="#">81 FR 94234</a>
NODA Comment Period End		01/09/2017	
Final Action		10/00/2018	

**Regulatory Flexibility Analysis Required:** Yes **Government Levels Affected:** None  
**Small Entities Affected:** Businesses **Federalism:** No  
**Included in the Regulatory Plan:** No  
**RIN Information URL:** [www1.eere.energy.gov/buildings/appliance\\_standards/product.aspx/productid/51](#) **Public Comment URL:** [www.regulations.gov/#!docketDetail;D=EERE-2014-BT-STD-0042](#)  
**RIN Data Printed in the FR:** Yes  
**Agency Contact:**  
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**DOE/EE**  
**Title:** Energy Conservation Standards for Commercial Water Heating Equipment  
**Abstract:**  
Once completed, this rulemaking will fulfill DOE's statutory obligation under EPCA to either propose amended energy conservation standards for commercial water heaters and hot water supply boilers, or determine that the existing standards do not need to be amended. (Unfired hot water storage tanks and commercial heat pump water heaters are being considered in a separate rulemaking.) DOE must determine whether national standards more stringent than those that are currently in place would result in a significant additional amount of energy savings and whether such amended national standards would be technologically feasible and economically justified.  
  
**Agency:** Department of Energy(DOE)  
**RIN Status:** Previously published in the Unified Agenda  
**Major:** Yes  
**EO 13771 Designation:** Regulatory  
**CFR Citation:** [10 CFR 429](#) [10 CFR 431](#)  
**Legal Authority:** [42 U.S.C. 6313\(a\)\(6\)\(C\)\(i\) and \(vi\)](#)  
**Legal Deadline:**

Action	Source	Description	Date
Other	Statutory	Subject to 6-year-look-back requirement in 42 U.S.C. 6313(a)(6)(C)	

**Timetable:**

Action	Date	FR Cite
Request for Information (RFI)	10/21/2014	<a href="#">79 FR 62899</a>
RFI Comment Period End	11/20/2014	
NPRM	05/31/2016	<a href="#">81 FR 34440</a>
NPRM Comment Period End	08/01/2016	
NPRM Comment Period Reopened	08/05/2016	<a href="#">81 FR 51812</a>
NPRM Comment Period Reopened End	08/30/2016	
Notice of Data Availability (NODA)	12/23/2016	<a href="#">81 FR 94234</a>
NODA Comment Period End	01/09/2017	
Final Action	01/00/2019	

**Regulatory Flexibility Analysis Required:** Yes  
**Small Entities Affected:** Businesses  
**Included in the Regulatory Plan:** No  
**RIN Information URL:** [www1.eere.energy.gov/buildings/appliance\\_standards/product.aspx/productid/51](#)  
**RIN Data Printed in the FR:** Yes  
**Agency Contact:**  
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**RIN:** 1904-AD34  
**Publication ID:** Fall 2018  
**Priority:** Economically Significant  
**Agenda Stage of Rulemaking:** Final Rule Stage  
**Unfunded Mandates:** Private Sector  
**Government Levels Affected:** None  
**Federalism:** No  
**Public Comment URL:** [www.regulations.gov/#!docketDetail;D=EERE-2014-BT-STD-0042](#)

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DOE/EE

RIN: 1904-AD34

Publication ID: Spring 2019

Title: Energy Conservation Standards for Commercial Water Heating Equipment

## Abstract:

Once completed, this rulemaking will fulfill DOE's statutory obligation under EPCA to either propose amended energy conservation standards for commercial water heaters and hot water supply boilers, or determine that the existing standards do not need to be amended. (Unfired hot water storage tanks and commercial heat pump water heaters are being considered in a separate rulemaking.) DOE must determine whether national standards more stringent than those that are currently in place would result in a significant additional amount of energy savings and whether such amended national standards would be technologically feasible and economically justified.

Agency: Department of Energy(DOE)

RIN Status: Previously published in the Unified Agenda

Major: Yes

EO 13771 Designation: Regulatory

CFR Citation: [10 CFR 429](#) [10 CFR 431](#)Legal Authority: [42 U.S.C. 6313\(a\)\(6\)\(C\)\(i\) and \(vi\)](#)

Priority: Economically Significant

Agenda Stage of Rulemaking: Final Rule Stage

Unfunded Mandates: Private Sector

## Legal Deadline:

Action	Source	Description	Date
Other	Statutory	Subject to 6-year-look-back requirement in 42 U.S.C. 6313(a)(6)(C)	

## Timetable:

Action	Date	FR Cite
Request for Information (RFI)	10/21/2014	<a href="#">79 FR 62899</a>
RFI Comment Period End	11/20/2014	
NPRM	05/31/2016	<a href="#">81 FR 34440</a>
NPRM Comment Period End	08/01/2016	
NPRM Comment Period Reopened	08/05/2016	<a href="#">81 FR 51812</a>
NPRM Comment Period Reopened End	08/30/2016	
Notice of Data Availability (NODA)	12/23/2016	<a href="#">81 FR 94234</a>
NODA Comment Period End	01/09/2017	
Final Action	12/00/2019	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Included in the Regulatory Plan: No

RIN Information URL: [www1.eere.energy.gov/buildings/appliance\\_standards/product.aspx/productid/51](http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/51)

RIN Data Printed in the FR: Yes

Government Levels Affected: None

Federalism: No

Public Comment URL: [www.regulations.gov/#!docketDetail;D=EERE-2014-BT-STD-0042](http://www.regulations.gov/#!docketDetail;D=EERE-2014-BT-STD-0042)

## Agency Contact:

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**EXHIBIT L**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

PUBLIC CITIZEN, INC., *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, in his official  
capacity as President of the United States,  
*et al.*,

Defendants.

Civil Action No. 1:17-cv-00253-RDM

**DEFENDANT SECRETARY OF ENERGY RICK PERRY'S RESPONSES  
TO PLAINTIFFS' FIRST SET OF REQUESTS FOR ADMISSION**

Pursuant to Federal Rule of Civil Procedure 36 and Local Civil Rules 26.2(d) and 30.4, Defendant Secretary of Energy Rick Perry (hereinafter, "DOE"), by and through undersigned counsel, hereby objects and responds to Plaintiffs' First Set of Requests for Admission as follows:

**I. PRELIMINARY STATEMENT**

1. DOE's investigation and development of all facts and circumstances relating to this action is ongoing. DOE's responses and objections contained herein are based solely upon such information as is presently available and known to DOE upon information and belief at this time. Further discovery, investigation, research, and analysis may supply additional facts, and meaning to currently known information. DOE expressly reserves the right to supplement, clarify, revise, or correct any or all of the responses and objections herein in one or more subsequent supplemental response(s).

2. These responses and objections are made without prejudice to, and are not a waiver of, DOE's right to rely on other information or documents in any further proceeding.

3. By making the accompanying responses and objections to Plaintiffs' First Set of Requests for Admission, DOE does not waive, and hereby expressly reserves, its right to assert any and all objections as to the admissibility of such responses into evidence in this action, or in any other proceedings, on any and all grounds. Further, DOE makes the responses and objections herein without in any way implying that it considers Plaintiffs' First Set of Requests for Admission, and DOE's responses to such requests, to be relevant or material to the subject matter of this action.

## **II. RESPONSES**

### **REQUEST FOR ADMISSION NO. 1:**

The rulemaking on Energy Conservation Standards for Residential Conventional Cooking Products, RIN 1904-AD15, has been categorized as "major" and has an "EO 13771 designation" of "regulatory."

### **RESPONSE TO REQUEST FOR ADMISSION NO. 1:**

Admit.

### **REQUEST FOR ADMISSION NO. 2:**

In undertaking the Energy Conservation Standards for Residential Conventional Cooking Products rulemaking, RIN 1904-AD15, the agency intends to comply with Executive Order 13771 as long as it remains in force.



**RESPONSE TO REQUEST FOR ADMISSION NO. 2:**

Admit that DOE intends to comply with Executive Order (“E.O.”) 13771 as long as it remains in force, as well as all applicable statutes and other applicable Executive Orders, in undertaking the rulemaking in RIN 1904-AD15 (hereinafter, “Cooking Products Rulemaking”).

**REQUEST FOR ADMISSION NO. 3:**

Absent a waiver from OMB of the offset requirement of Executive Order 13771 or withdrawal of that Executive Order, promulgating as a final rule the standards proposed in the notice of proposed rulemaking on Energy Conservation Standards for Residential Conventional Cooking Products, RIN 1904-AD15, will require offsets of more than \$42.6 million, according to the agency’s published estimate of the costs of the proposed standard.

**RESPONSE TO REQUEST FOR ADMISSION NO. 3:**

DOE objects to this request to the extent that the request presupposes that DOE already has made a determination to promulgate as a final rule the standards proposed in the supplemental notice of proposed rulemaking published in the Federal Register on September 2, 2016 (81 Fed. Reg. 60,784), on the ground that such presupposition is counterfactual.

Subject to and without waiving the foregoing objection, admit that Request for Admission No. 3 reflects the amount of cost offsets that would be required under E.O. 13771 based on DOE’s cost estimate as published in the supplemental notice of proposed rulemaking in the Cooking Products Rulemaking, 81 Fed. Reg. 60,784 (Sept. 2, 2016), if the agency’s annual cost allowance is not sufficient for the agency to promulgate the Cooking Products Rulemaking. However, the cost estimate is not final and is subject to change.

**REQUEST FOR ADMISSION NO. 4:**

The agency has not identified two or more existing regulations to be repealed that would offset fully the costs of promulgating as a final rule the standards proposed in the notice of proposed rulemaking on Energy Conservation Standards for Residential Conventional Cooking Products, RIN 1904-AD15.

**RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

DOE objects to this request to the extent that it calls for the disclosure of privileged deliberative process, attorney work product, and attorney-client communication information by seeking information about the agency's pre-decisional reasoning or reasoning reflected in the work product of attorneys or communications with attorneys for the purposes of seeking legal advice.

DOE further objects to this request to the extent that it reflects an erroneous understanding of the operation of E.O. 13771. Compliance with the numerical requirement and the cost offset requirement in E.O. 13771 is not assessed on a rule-by-rule basis. Instead, the U.S. Office of Management and Budget ("OMB") assesses compliance with those requirements Department-wide on an annual basis only at the end of each fiscal year. For example, the cost savings from one deregulatory action could support the agency's compliance with the cost offset requirement for several new regulations. OMB's E.O. 13771 guidance thus does not require an agency to identify specific regulations, prior to issuing a rule, that would satisfy both the E.O. 13771 numerical requirement and the cost offset requirement.

Subject to and without waiving the foregoing objections, admit, but aver that DOE's work on the Cooking Products Rulemaking has not yet advanced to a stage where meaningful consideration of E.O. 13771's requirements would be made.

**REQUEST FOR ADMISSION NO. 5:**

The agency has not applied to OMB for a waiver of Executive Order 13771's repeal and offset requirements in connection with the Energy Conservation Standards for Residential Conventional Cooking Products rulemaking, RIN 1904-AD15.

**RESPONSE TO REQUEST FOR ADMISSION NO. 5:**

Admit, but aver that DOE's work on the Cooking Products Rulemaking has not yet advanced to a stage where meaningful consideration of E.O. 13771's requirements would be made.

**REQUEST FOR ADMISSION NO. 6:**

The agency has not received a waiver from OMB of Executive Order 13771's repeal and offset requirements in connection with the Energy Conservation Standards for Residential Conventional Cooking Products rulemaking, RIN 1904-AD15.

**RESPONSE TO REQUEST FOR ADMISSION NO. 6:**

Admit, but aver that DOE's work on the Cooking Products Rulemaking has not yet advanced to a stage where meaningful consideration of E.O. 13771's requirements would be made.

**REQUEST FOR ADMISSION NO. 7:**

The agency has not applied to OMB for a transfer of deregulatory action credits (as that term is used in the OMB Guidance Implementing Executive Order 13771 dated April 7, 2017) from another agency to offset the costs associated with a final rule in the Energy Conservation Standards for Residential Conventional Cooking Products rulemaking, RIN 1904-AD15.

**RESPONSE TO REQUEST FOR ADMISSION NO. 7:**

Admit, but aver that DOE's work on the Cooking Products Rulemaking has not yet advanced to a stage where meaningful consideration of E.O. 13771's requirements would be made.

**REQUEST FOR ADMISSION NO. 8:**

The agency has not received from OMB a transfer of deregulatory action credits from another agency to offset the costs associated with a final rule in the Energy Conservation Standards for Residential Conventional Cooking Products rulemaking, RIN 1904-AD15.

**RESPONSE TO REQUEST FOR ADMISSION NO. 8:**

Admit, but aver that DOE's work on the Cooking Products Rulemaking has not yet advanced to a stage where meaningful consideration of E.O. 13771's requirements would be made.

**REQUEST FOR ADMISSION NO. 9:**

Executive Order 13771 has been one factor affecting the agency's consideration of when or whether to finalize the proposed Energy Conservation Standards for Residential Conventional Cooking Products rulemaking, RIN 1904-AD15.

**RESPONSE TO REQUEST FOR ADMISSION NO. 9:**

DOE objects to this request to the extent that it calls for the disclosure of information protected by the deliberative process, attorney work product, and attorney-client privileges by seeking information about DOE's internal "consideration," including the work product of attorneys or communications with attorneys for the purposes of seeking legal advice. DOE further objects to this request on the grounds that the phrase "one factor affecting the agency's consideration" is vague and ambiguous. In light of these objections, DOE construes this request

for admission as inquiring whether E.O. 13771 has been one factor affecting any agency decision about when or whether to finalize the standards proposed for the Cooking Products Rulemaking in the supplemental notice of proposed rulemaking published in the Federal Register on September 2, 2016 (81 Fed. Reg. 60,784).

Subject to and without waiving the foregoing objections, deny.

**REQUEST FOR ADMISSION NO. 10:**

The rulemaking on Energy Conservation Standards for Commercial Water Heating Equipment, RIN 1904-AD34, has been categorized as “major” and has an “EO 13771 designation” of “regulatory.”

**RESPONSE TO REQUEST FOR ADMISSION NO. 10:**

Admit.

**REQUEST FOR ADMISSION NO. 11:**

In undertaking the rulemaking on Energy Conservation Standards for Commercial Water Heating Equipment, RIN 1904-AD34, the agency intends to comply with Executive Order 13771.

**RESPONSE TO REQUEST FOR ADMISSION NO. 11:**

Admit that DOE intends to comply with E.O. 13771 as long as it remains in force, as well as all applicable statutes and other applicable Executive Orders, in undertaking the rulemaking in RIN 1904-AD34 (hereinafter, “Commercial Water Heating Equipment Rulemaking”).

**REQUEST FOR ADMISSION NO. 12:**

Absent a waiver from OMB of the offset requirement of Executive Order 13771 or withdrawal of that Executive Order, promulgating as a final rule the standards proposed in the notice of proposed rulemaking on Energy Conservation Standards for Commercial Water

Heating Equipment, RIN 1904-AD34, will require offsets of more than \$144 million, according to the agency's published estimate of the costs of the proposed standard.

**RESPONSE TO REQUEST FOR ADMISSION NO. 12:**

DOE objects to this request to the extent that the request presupposes that DOE already has made a determination to promulgate as a final rule the standards proposed in the notice of proposed rulemaking published in the Federal Register on May 31, 2016 (81 Fed. Reg. 34,440), on the ground that such presupposition is counterfactual.

Subject to and without waiving the foregoing objections, admit that Request for Admission No. 12 reflects the amount of cost offsets that would be required under E.O. 13771 based on DOE's cost estimate as published in the notice of proposed rulemaking in the Commercial Water Heating Equipment Rulemaking, 81 Fed. Reg. 34,440 (May 31, 2016), if the agency's annual cost allowance is not sufficient for the agency to promulgate the Commercial Water Heating Equipment Rulemaking. However, the cost estimate is not final and is subject to change.

**REQUEST FOR ADMISSION NO. 13:**

The agency has not identified two or more existing regulations to be repealed that would offset fully the costs of promulgating as a final rule the standards proposed in the notice of proposed rulemaking on Energy Conservation Standards for Commercial Water Heating Equipment, RIN 1904-AD34.

**RESPONSE TO REQUEST FOR ADMISSION NO. 13:**

DOE objects to this request to the extent that it calls for the disclosure of privileged deliberative process, attorney work product, and attorney-client communication information by seeking information about the agency's pre-decisional reasoning or reasoning reflected in the

work product of attorneys or communications with attorneys for the purposes of seeking legal advice.

DOE further objects to this request to the extent that it reflects an erroneous understanding of the operation of E.O. 13771. Compliance with the numerical requirement and the cost offset requirement in E.O. 13771 is not assessed on a rule-by-rule basis. Instead, OMB assesses compliance with those requirements Department-wide on an annual basis only at the end of each fiscal year. For example, the cost savings from one deregulatory action could support the agency's compliance with the cost offset requirement for several new regulations. OMB's E.O. 13771 guidance thus does not require an agency to identify specific regulations, prior to issuing a rule, that would satisfy both the E.O. 13771 numerical requirement and the cost offset requirement.

Subject to and without waiving the foregoing objections, admit, but aver DOE's work on the Commercial Water Heating Equipment Rulemaking has not yet advanced to a stage where meaningful consideration of E.O. 13771's requirements would be made.

**REQUEST FOR ADMISSION NO. 14:**

The agency has not received from OMB a waiver of Executive Order 13771's repeal and offset requirements in connection with a final rule in the Energy Conservation Standards for Commercial Water Heating Equipment rulemaking, RIN 1904-AD34.

**RESPONSE TO REQUEST FOR ADMISSION NO. 14:**

Admit, but aver that DOE's work on the Commercial Water Heating Equipment Rulemaking has not yet advanced to a stage where meaningful consideration of E.O. 13771's requirements would be made.

**REQUEST FOR ADMISSION NO. 15:**

The agency has not applied to OMB for a transfer of deregulatory action credits (as that term is used in the OMB Guidance Implementing Executive Order 13771 dated April 7, 2017) from another agency to offset the costs associated with a final rule in the Energy Conservation Standards for Commercial Water Heating Equipment rulemaking, RIN 1904-AD34.

**RESPONSE TO REQUEST FOR ADMISSION NO. 15:**

Admit, but aver that DOE's work on the Commercial Water Heating Equipment Rulemaking has not yet advanced to a stage where meaningful consideration of E.O. 13771's requirements would be made.

**REQUEST FOR ADMISSION NO. 16:**

The agency has not received from OMB a transfer of deregulatory action credits from another agency to offset the costs associated with a final rule in the Energy Conservation Standards for Commercial Water Heating Equipment rulemaking, RIN 1904-AD34.

**RESPONSE TO REQUEST FOR ADMISSION NO. 16:**

Admit, but aver that DOE's work on the Commercial Water Heating Equipment Rulemaking has not yet advanced to a stage where meaningful consideration of E.O. 13771's requirements would be made.

**REQUEST FOR ADMISSION NO. 17:**

Executive Order 13771 has been one factor affecting the agency's consideration of when or whether to finalize the Energy Conservation Standards for Commercial Water Heating Equipment rulemaking, RIN 1904-AD34.



**RESPONSE TO REQUEST FOR ADMISSION NO. 17:**

DOE objects to this request to the extent that it calls for the disclosure of information protected by the deliberative process, attorney work product, and attorney-client privileges by seeking information about DOE's internal "consideration," including the work product of attorneys or communications with attorneys for the purposes of seeking legal advice. DOE further objects to this request on the grounds that the phrase "one factor affecting the agency's consideration" is vague and ambiguous. In light of these objections, DOE construes this request for admission as inquiring whether E.O. 13771 has been one factor affecting any agency decision about when or whether to finalize the standards proposed in the notice of proposed rulemaking for the Commercial Water Heating Equipment Rulemaking published in the Federal Register on May 31, 2016 (81 Fed. Reg. 34,440).

Subject to and without waiving the foregoing objections, deny.

Dated: May 7, 2019

Respectfully submitted,

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Assistant Attorney General

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*/s/ Daniel Bensing*  
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**EXHIBIT M**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

PUBLIC CITIZEN, INC., *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, in his official  
capacity as President of the United States,  
*et al.*,

Defendants.

Civil Action No. 1:17-cv-00253-RDM

**DEFENDANT DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET MICK  
MULVANEY'S RESPONSES TO PLAINTIFFS'  
FIRST SET OF INTERROGATORIES**

Pursuant to Federal Rule of Civil Procedure 33 and Local Civil Rules 26.2(d) and 30.4, defendant Mick Mulvaney, in his official capacity as Director of the Office of Management and Budget (hereinafter, "OMB"), by and through undersigned counsel, hereby objects and responds to Plaintiffs' First Set of Interrogatories as follows:

**I. PRELIMINARY STATEMENT**

1. OMB's investigation and development of all facts and circumstances relating to this action is ongoing. OMB's responses and objections contained herein are based solely upon such information as is presently available and known to OMB upon information and belief at this time. Further discovery, investigation, research, and analysis may supply additional facts, and meaning to currently known information. OMB expressly reserves the right to supplement, clarify, revise, or correct any or all of the responses and objections herein in one or more subsequent supplemental response(s).

2. These responses and objections are made without prejudice to, and are not a waiver of, OMB's right to rely on other information or documents in any further proceeding.

3. By making the accompanying responses and objections to Plaintiffs' First Set of Interrogatories, OMB does not waive, and hereby expressly reserves, its right to assert any and all objections as to the admissibility of such responses into evidence in this action, or in any other proceedings, on any and all grounds. Further, OMB makes the responses and objections herein without in any way implying that it considers Plaintiffs' First Set of Interrogatories, and OMB's responses to such interrogatories, to be relevant or material to the subject matter of the action.

## **II. RESPONSES**

### **INTERROGATORY NO. 1**

When it issued the December 2017 Unified Agenda, OMB stated that "1579 Withdrawn or Delayed Actions - Agencies continue to eliminate, delay, or streamline regulatory actions in the pipeline. In this Administration, agencies withdrew or delayed 1579 planned regulatory actions, reflecting all such changes from Fall 2016 to Fall 2017." OMB, Current Regulatory Plan and the Unified Agenda of Regulatory and Deregulatory Actions (Dec. 14, 2017). Identify each "planned regulatory action" (as the term was used by OMB in the above-quoted statement) that, as of December 2017, agencies had withdrawn or delayed and as to which Executive Order 13771 was a consideration in the decision to withdraw or the delay. As used in this interrogatory, "identify" means to provide the topic or title, the RIN number (if any), and the agency under whose purview the regulatory action fell or falls.

### **RESPONSE TO INTERROGATORY NO. 1**

OMB objects to this interrogatory to the extent that it calls for the disclosure of information protected by the deliberative process, attorney work product, and attorney-client privileges by

seeking information about OMB's internal "consideration[s]," including the work product of attorneys or communications with attorneys for the purpose of seeking legal advice. OMB further objects to this interrogatory as being overly broad, unduly burdensome, and not proportional to the needs of the case in that it seeks information about "any consideration" by any member of the Executive Branch regarding 1579 planned regulatory actions and E.O. 13771, even though those discussions are not relevant to the eight rulemakings identified in Plaintiffs' Motion for Partial Summary Judgment (ECF No. 71) and Plaintiffs' second round of discovery propounded on April 5, 2019. In light of these objections, OMB construes this interrogatory as applying only to the eight rulemakings identified in Plaintiffs' Motion for Partial Summary Judgment (ECF No. 71) and Plaintiffs' second round of discovery propounded on April 5, 2019.

Subject to the objections above, OMB is not aware of the implementation of Executive Order 13771 being the cause of or a material cause of a decision to withdraw or postpone, if applicable, any of the eight identified rules.

There are numerous factors agencies consider as they determine their regulatory approaches. In light of OMB's oversight and management responsibilities across the Executive Branch, it would not be possible for OMB to have actual knowledge about every factor an agency considers as it continuously performs a complicated assessment of regulatory priorities. OMB assumes that those factors include some consideration of countless constitutional, statutory, regulatory, and other constraints, including Executive Orders that apply to all regulatory actions in addition to EO 13771. *See, e.g. EO 13132 (Federalism)*

## **INTERROGATORY NO. 2**

Excluding regulatory actions identified in response to Interrogatory No. 1, identify each regulatory action that, since January 30, 2017, has been withdrawn, and as to which Executive Order

13771 was a factor or consideration in the decision to withdraw. As used in this interrogatory, “identify” means to provide the topic or title, the RIN number (if any), and the agency under whose purview the regulatory action fell or falls.

**RESPONSE TO INTERROGATORY NO. 2**

OMB objects to this interrogatory to the extent that it calls for the disclosure of information protected by the deliberative process, attorney work product, and attorney-client privileges by seeking information about OMB’s internal “consideration[s],” including the work product of attorneys or communications with attorneys for the purpose of seeking legal advice about the rulemaking. OMB further objects to this interrogatory as being overly broad, unduly burdensome, and not proportional to the needs of the case in that it seeks information about “any consideration” by any member of the Executive Branch regarding E.O. 13771 and regulatory actions that, since January 30, 2017, have been withdrawn, even though those discussions are not relevant to the eight rulemakings identified in Plaintiffs’ Motion for Partial Summary Judgment (ECF No. 71) and Plaintiffs’ second round of discovery propounded on April 5, 2019. In light of these objections, OMB construes this interrogatory as applying only to the eight rulemakings identified in Plaintiffs’ Motion for Partial Summary Judgment (ECF No. 71) and Plaintiffs’ second round of discovery propounded on April 5, 2019.

Subject to the objections above, OMB is not aware of the implementation of Executive Order 13771 being the cause or a material cause of decisions to withdraw, if applicable, any of the eight identified rules.

There are numerous factors agencies consider as they determine their regulatory approaches. In light of OMB’s oversight and management responsibilities across the Executive Branch, it would not be possible for OMB to have actual knowledge about every factor an agency considers as it

continuously performs a complicated assessment of regulatory priorities. OMB assumes that those factors include some consideration of countless constitutional, statutory, regulatory, and other constraints, including Executive Orders that apply to all regulatory actions in addition to EO 13771. *See, e.g. EO 13132 (Federalism)*

### **INTERROGATORY NO. 3**

Excluding regulatory actions identified in response to Interrogatory No. 1, identify each regulatory action that, since January 30, 2017, has been delayed, postponed, or made inactive, at least in part because of the requirements of Executive Order 13771. As used in this interrogatory, “identify” means to provide the topic or title, the RIN number (if any), and the agency under whose purview the regulatory action falls.

### **RESPONSE TO INTERROGATORY NO. 3**

OMB objects to this interrogatory to the extent that it calls for the disclosure of information protected by the deliberative process, attorney work product, and attorney-client privileges, including the work product of attorneys or communications with attorneys for the purpose of seeking legal advice about the rulemaking. OMB further objects to this interrogatory as being overly broad, unduly burdensome, and not proportional to the needs of the case in that it seeks information about “each regulatory action” that “has been delayed, postponed, or made inactive, at least in part because of the requirements of Executive Order 13771,” even though that information not relevant to the eight rulemakings identified in Plaintiffs’ Motion for Partial Summary Judgment (ECF No. 71) and Plaintiffs’ second round of discovery propounded on April 5, 2019. In light of these objections, OMB construes this interrogatory as applying only to the eight rulemakings identified in Plaintiffs’ Motion for Partial Summary Judgment (ECF No. 71) and Plaintiffs’ second



round of discovery propounded on April 5, 2019.

Subject to the objections above, OMB is not aware of the implementation of Executive Order 13771 being the cause of or a material cause of decisions to delay, postpone, or make inactive, if applicable, the eight identified rules.

#### **INTERROGATORY NUMBER 4**

For each regulatory action identified in response to Interrogatory Nos. 1, 2 or 3, describe in detail how consideration of Executive Order 13771 affected the decision to withdraw the rulemaking or the timing of the rulemaking, including any estimate of the amount of the cost- offset that would have been or would be required to finalize the regulatory action if no waiver of the offset requirement were granted.

#### **RESPONSE TO INTERROGATORY NO. 4**

This question seeks additional information regarding the regulatory actions identified above in response to Interrogatory Nos. 1, 2, and 3. No such regulatory actions were identified.

#### **INTERROGATORY NO. 5**

Identify each rulemaking and the corresponding offset amount, if any, listed or referred to in the email from Ross Rutledge to Chad Whiteman and others, dated August 29, 2017, 14:28:08, concerning “Rules Requiring Offsets” (a redacted copy of which is attached hereto as Exhibit A). As used in this interrogatory, “identify” means to provide the topic or title, the RIN number (if any), and the agency under whose purview the rulemaking fell or falls.

#### **RESPONSE TO INTERROGATORY NO. 5**

OMB objects to this interrogatory to the extent that it requests information about cost offsets, as such information is protected by the deliberative process privilege. Notwithstanding that objection OMB identifies the rules listed in the email:

1. DOL rule, “Examinations of Working Places in Metal and Nonmetal Mines.” *See* 82 Fed. Reg. 7680 (Jan. 23, 2017).
2. EPA rule, “Effluent Limitations Guidelines and Standards for the Dental Category.” *See* 82 Fed. Reg. 27154 (June 14, 2017).
3. DOE rule, “Energy Conservation Standards for Walk-In Coolers and Freezer Refrigeration Systems.” *See* 82 Fed. Reg. 31808 (July 10, 2017).

#### **INTERROGATORY NO. 6**

Identify each rulemaking and corresponding offset amount, if any, listed or referred to in the email from Ross Rutledge to Rich Theroux, dated August 29, 2017, 16:57:52, concerning “Status of Agency Efforts to Offset Final Regulatory Actions” (a redacted copy of which is attached hereto as Exhibit B). As used in this interrogatory, “identify” means to provide the topic or title, the RIN number (if any), and the agency under whose purview the rulemaking fell or falls.

#### **RESPONSE TO INTERROGATORY NO. 6**

OMB objects to this interrogatory to the extent that it requests information about cost offsets, as such information is protected by the deliberative process privilege. Notwithstanding that objection OMB identifies the rules listed in the email:

1. DOL rule, “Examinations of Working Places in Metal and Nonmetal Mines.” *See* 82 Fed. Reg. 7680 (Jan. 23, 2017).

2. EPA rule, “Effluent Limitations Guidelines and Standards for the Dental Category.” *See* 82 Fed. Reg. 27154 (June 14, 2017).
3. DOE rule, “Energy Conservation Standards for Walk-In Coolers and Freezer Refrigeration Systems.” *See* 82 Fed. Reg. 31808 (July 10, 2017).
4. HHS rule, “FY 2018 Prospective Payment System and Consolidated Filling for Skilled Nursing Facilities (SNFs).”
5. HHS rule, “Hospital Inpatient Prospective Payment System for Acute Care Hospitals and the Long Term Care Hospital Prospective Payment System and FY 2018 Rates.”

#### **INTERROGATORY NO. 7**

Describe in detail each request, if any, received by the agency to waive the requirements of Executive Order 13771 as to any regulatory action, or to transfer deregulatory action credits between agencies to offset the costs of any regulatory action, including the agency’s response to such requests.

#### **RESPONSE TO INTERROGATORY NO. 7**

OMB objects to this interrogatory to the extent that it calls for the disclosure of information protected by the deliberative process, attorney work product, and attorney-client privileges, including the work product of attorneys or communications with attorneys for the purpose of seeking legal advice about any rulemaking. OMB further objects to this interrogatory as being overly broad, unduly burdensome, and not proportional to the needs of the case in that it seeks information about requests for waivers to the requirements of EO 13771 or the transfer of credits to offset the costs of regulatory actions, even though that information not relevant to the eight

rulemakings identified in Plaintiffs’ Motion for Partial Summary Judgment (ECF No. 71) and Plaintiffs’ second round of discovery propounded on April 8, 2019.

Subject to those objections, OMB has received two types of requests to waive the requirements of Executive Order 13771: (1) requests to waive the applicability of section 3(c), which specifies that “Unless otherwise required by law, no regulation shall be issued by an agency if it was not included on the most recent version or update of the published Unified Regulatory Agenda as required under Executive Order 12866 . . . unless the issuance of such regulation was approved in advance in writing by the Director;” and (2) more general requests to waive the overall requirements of the Executive Order.

OMB considers such waiver requests to be different than questions about the applicability of EO 13771 to a given regulatory action, such as a question about whether a regulation qualifies for the exemption under section 4 of EO 13771 regarding regulations issued with respect to a military, national security, or foreign affairs function of the United States. A waiver request could arise in situations where a determination is first made that EO 13771 is applicable to a given regulatory action, but an agency is nonetheless seeking to waive some aspect of the Order’s requirements. Potential reasons that the Executive Order may not apply are discussed as “exemptions” in OMB’s implementing guidance, issued on April 5, 2017.<sup>1</sup>

OMB has received and approved requests to waive the requirements of section 3(c) of Executive Order 13771 for the following regulatory actions:

1. “Minimum Wage for Contractors; Updating Regulations To Reflect Executive Order 13838,” Department of Labor final rule (83 FR 48537, RIN: 1235-AA27);
2. “Strengthening Transparency in Regulatory Science,” Environmental Protection Agency proposed rule (83 FR 18768, RIN: 2080-AA14);

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<sup>1</sup> Available at <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/M-17-21-OMB.pdf>

3. “Amendments to Federal Implementation Plan for Managing Air Emissions From True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector,” Environmental Protection Agency proposed rule (83 FR 20775, RIN: 2060-AT96);

4. “Protecting Statutory Conscience Rights in Health Care; Delegations of Authority,” Department of Health and Human Services proposed rule (83 FR 3880, RIN: 0945-ZA03);

5. “Compliance With Statutory Program Integrity Requirements,” Department of Health and Human Services proposed rule (83 FR 25502, RIN: 0937-ZA00);

6. “Adoption of the Methodology for the HHS-Operated Permanent Risk Adjustment Program Under the Patient Protection and Affordable Care Act for the 2017 Benefit Year,” Department of Health and Human Services final rule (83 FR 36456, RIN: 0938-AT65);

7. “Patient Protection and Affordable Care Act; Adoption of the Methodology for the HHS-Operated Permanent Risk Adjustment Program for the 2018 Benefit Year Proposed Rule,” Department of Health and Human Services proposed rule (83 FR 39644, RIN: 0938-AT66);

8. “Medicare and Medicaid Programs; Regulation To Require Drug Pricing Transparency,” Department of Health and Human Services proposed rule (83 FR 52789, RIN: 0938-AT87); and

9. ‘340B Drug Pricing Program Ceiling Price and Manufacturer Civil Monetary Penalties Regulation,” Department of Health and Human Services final rule (83 FR 61563, RIN: 0906-AB19).

OMB also received a request from the Department of Veterans Affairs in December 2018 to categorically waive the requirements of Executive Order 13771 for all VA rulemaking. OMB has

not acted on this request.

Finally, OMB has not received a request regarding the transfer of credits from one agency to another agency.

#### **INTERROGATORY NO. 8**

Identify all persons who provided information, were consulted, or participated in the preparation of the responses to these Interrogatories and specify the particular response(s) for which each identified person was consulted, furnished information, or participated in answering.

#### **RESPONSE TO INTERROGATORY NO. 8**

OMB objects to this interrogatory to the extent that it calls for the disclosure of information protected by the attorney-client privilege, by seeking information about consultations that could include communications with attorneys for the purposes of seeking legal advice, or communications protected by the deliberative process privilege. Subject to and without waiving the foregoing objections, OMB identifies the following persons:

1. Dominic Mancini, Deputy Administrator of OIRA,
2. Rich Theroux, OIRA Branch Chief,
3. Christine Kymn, OIRA Policy Analyst,
4. Josh Brammer, OIRA Policy Analyst,
5. Chad Whiteman, OIRA Policy Analyst,
6. Nicholas Matich, Deputy General Counsel, OMB Office of General Counsel,
7. Varun Jain, Assistant General Counsel, OMB Office of General Counsel.

#### **INTERROGATORY NO. 9**

Identify all documents considered in preparing responses to these Interrogatories, unless the document did not inform any response.

## **RESPONSE TO INTERROGATORY NO. 9**

OMB objects to this interrogatory to the extent that it calls for the disclosure of information protected by the deliberative process, attorney work product, and attorney-client privileges by seeking information about OMB's internal "consideration[s]," including the work product of attorneys or communications with attorneys for the purpose of seeking legal advice about the rulemaking. OMB further objects to this interrogatory as being overly broad, unduly burdensome, and not proportional to the needs of the case.

Notwithstanding those objections, OIRA identifies the following documents:

1. *Reducing Regulation and Controlling Regulatory Costs*, Exec. Order No. 13,771, 82 Fed. Reg. 9339 (Jan. 30, 2017).
2. *Federalism*, Exec. Order No. 13,132, 64 Fed. Reg. 43255 (Aug. 4, 1999).
3. Office of Mgmt. & Budget, *Guidance Implementing Executive Order 13771, Titled "Reducing Regulation and Controlling Regulatory Costs"*, M-17-31 (Apr. 5, 2017).
4. Office of Mgmt. & Budget, *The Regulatory Plan and the Unified Agenda of Regulatory and Deregulatory Actions* (Oct. 15, 2018).
5. Office of Mgmt. & Budget, *The Regulatory Plan and the Unified Agenda of Regulatory and Deregulatory Actions* (Nov. 29, 2017).
6. Published documents (*e.g.*, Federal Register notices) associated with eight rulemakings identified in Plaintiffs' Motion for Partial Summary Judgment (ECF No. 71) and Plaintiffs' second round of discovery propounded on April 8, 2019.
7. E-mail from Ross Rutledge to Chad Whiteman and others, dated August 29, 2017, 14:28:08, concerning "Rules Requiring Offsets."
8. E-mail from Ross Rutledge to Rich Theroux, dated August 29, 2017, 16:57:52, concerning "Status of Agency Efforts to Offset Final Regulatory Actions."
9. Section 3(c) waiver requests for, approvals for, and Federal Register notices associated with the following regulatory actions:
  - a. "Minimum Wage for Contractors; Updating Regulations To Reflect Executive Order 13838," Department of Labor final rule (83 FR 48537, RIN: 1235-AA27);
  - b. "Strengthening Transparency in Regulatory Science," Environmental Protection Agency proposed rule (83 FR 18768, RIN: 2080-AA14);
  - c. "Amendments to Federal Implementation Plan for Managing Air Emissions From True Minor Sources in Indian Country in the Oil and Natural Gas Production and

- Natural Gas Processing Segments of the Oil and Natural Gas Sector,” Environmental Protection Agency proposed rule (83 FR 20775, RIN: 2060-AT96);
- d. “Protecting Statutory Conscience Rights in Health Care; Delegations of Authority,” Department of Health and Human Services proposed rule (83 FR 3880, RIN: 0945-ZA03);
  - e. “Compliance With Statutory Program Integrity Requirements,” Department of Health and Human Services proposed rule (83 FR 25502, RIN: 0937-ZA00);
  - f. “Adoption of the Methodology for the HHS-Operated Permanent Risk Adjustment Program Under the Patient Protection and Affordable Care Act for the 2017 Benefit Year,” Department of Health and Human Services final rule (83 FR 36456, RIN: 0938-AT65);
  - g. “Patient Protection and Affordable Care Act; Adoption of the Methodology for the HHS-Operated Permanent Risk Adjustment Program for the 2018 Benefit Year Proposed Rule,” Department of Health and Human Services proposed rule (83 FR 39644, RIN: 0938-AT66);
  - h. “Medicare and Medicaid Programs; Regulation To Require Drug Pricing Transparency,” Department of Health and Human Services proposed rule (83 FR 52789, RIN: 0938-AT87); and
  - i. “340B Drug Pricing Program Ceiling Price and Manufacturer Civil Monetary Penalties Regulation,” Department of Health and Human Services final rule (83 FR 61563, RIN: 0906-AB19).
10. Exec. Order No. 13,771 Categorical Waiver Request from the Department of Veterans Affairs.
11. “DOE Rules Caught in Transition” (OMB spreadsheet).



**VERIFICATION**

I, Dominic J. Mancini, declare under penalty of perjury:

I am currently employed by the Office of Management and Budget (“OMB”) as the Deputy Administrator of the Office of Information and Regulatory Affairs. As such, I am authorized to make this verification on behalf of OMB. These responses regarding OMB are true and correct to the best of my knowledge, information, and belief.

Executed this \_\_\_\_\_ day of May, 2019, in Washington, DC.

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Dominic J. Mancini, PhD  
Deputy Administrator  
Office of Information and Regulatory Affairs  
U.S. Office of Management and Budget

Dated: May 7, 2019

Respectfully submitted,

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Assistant Attorney General

JESSE K. LIU  
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ERIC R. WOMACK  
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/s/ Daniel Bensing  
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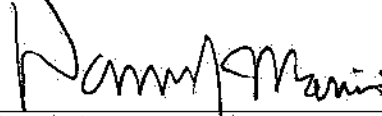
*Counsel for Defendants*

**VERIFICATION**

I, Dominic J. Mancini, declare under penalty of perjury:

I am currently employed by the Office of Management and Budget ("OMB") as the Deputy Administrator of the Office of Information and Regulatory Affairs. As such, I am authorized to make this verification on behalf of OMB. These responses regarding OMB are true and correct to the best of my knowledge, information, and belief.

Executed this 7<sup>th</sup> day of May, 2019, in Washington, DC.

A handwritten signature in black ink, appearing to read "Dom Mancini", is written over a horizontal line.

Dominic J. Mancini, PhD  
Deputy Administrator  
Office of Information and Regulatory Affairs  
U.S. Office of Management and Budget

**EXHIBIT N**

# Saving Energy and Money with Appliance and Equipment Standards in the United States

## Overview

Appliance and equipment efficiency standards have served as one of the nation's most effective policies to improve energy efficiency and to save consumers energy and money. The Program was initially authorized to develop, revise, and implement minimum energy efficiency standards by the Energy Policy and Conservation Act (EPCA) in 1975. Several subsequent legislative amendments have required regular updates to amend these standards and expanded the list of products subject to standards. DOE is currently required to periodically review standards and test procedures for more than 60 products, representing about 90% of home energy use, 60% of commercial building energy use, and 30% of industrial energy use.

The Program's core components include the following activities:

- *Developing and updating test procedures to ensure they remain technologically relevant and provide manufacturers with a level playing field and a platform to bring to market new product innovations:* For consumers, the Program's periodic review of test procedures lays the foundation for reliable and comparable operating cost information for the most common household and business appliances.
- *Establishing national minimum energy efficiency standards based on DOE's prescribed test procedures:* While saving consumers and businesses on their utility bills, the Program's Federal standards preempt product efficiency regulations at the state and local level, reducing regulatory burden for manufacturers and providing them with a larger national marketplace.
- *Enforcing the energy conservation standards:* The Program's enforcement against inferior-quality products prevents any manufacturer from undercutting those playing by the rules.



Photo credit iStock/4855212.

- *Supporting the Federal Trade Commission's (FTC's) EnergyGuide labeling program with test procedure calculations, which leads to reliable, product performance data for consumers.*
- *Developing test procedures and conducting verification testing for the ENERGY STAR program, in coordination with EPA.*

## Program Benefits

Program benefits extend to the Nation, individual consumers and businesses and to the manufacturing industry.

## National Benefits

The Program is highly effective — achieving high bang-for-the-buck energy savings. The national energy efficiency standards completed through 2016 are expected to save 71 quadrillion British thermal units (quads) of energy by 2020 and nearly 142 quads through 2030—more energy than the entire nation consumes in one year. The cumulative utility bill savings to consumers are estimated to be more than \$1 trillion by 2020 and more than \$2 trillion by 2030.

These savings create jobs when they are redeployed into sectors of the economy that are more labor-intensive than the utility sector. The Program's enforcement efforts protect industry competitiveness by lowering the risk of investing in energy efficient technologies and ensuring

importers of foreign-made products play by the same rules as domestic manufacturers.

## Consumer Benefits

The Standards Program has driven remarkable efficiency gains in household appliances and equipment, resulting in large energy bill savings for consumers. For example, today, the typical new refrigerator uses one-quarter the energy than in 1973—despite offering 20% more storage capacity and being available at half the retail cost. Since 1990, additional efficiency gains in household appliances include the following:

- New clothes washers use 70% less energy
- New dishwashers use more than 40% less energy
- New air conditioners use about 50% less energy
- New furnaces use about 10% less energy

All told, these efficiency gains translate into large dollar savings. Today, a typical household saves about \$321 per year off their energy bills as a result of standards. As consumers replace their appliances with newer models, they can expect to save over \$529 annually by 2030.

Beyond the costs and energy savings, the Program's test procedures ensure consumers receive accurate energy

performance information on the products they purchase. DOE's statutory obligation to update test procedures at least every seven years enables the Program to keep pace with rapid technological change. Manufacturers must use DOE's test procedures to rate and certify the efficiency of their products, so consumers—meaning households, businesses, and even factories and utilities—have reliable and comparable information to make the choices that best fit their household or business needs.

In addition to governing representations of product performance, DOE's test procedures are used for the FTC's EnergyGuide labeling program and the ENERGY STAR program, ensuring consumers have the best possible information to support their purchase decisions.

## Manufacturer Benefits

The Program works closely with manufacturers of covered products to reduce regulatory burden. DOE's statutory rulemaking obligations are rooted in Congress' intent to lower regulatory burden by instituting one uniform Federal standard, thereby preempting a costly patchwork of conflicting state and local standards. This doctrine of "Federal preemption" is a cornerstone of—and a primary rationale for—DOE's Appliance Standards Program: No state or local authority may regulate the products already covered by DOE efficiency standards unless DOE specifically grants a waiver exempting the state's regulation from preemption.

A uniform national standard assures manufacturers—and their distributors and retailers—a larger market, lower compliance costs, and better economies of scale.

## Benefits Resulting from Appliance and Equipment Standards

The Appliance Standards Program provides benefits for the nation, individual consumers and businesses, and manufacturers.



- Saves billions of dollars on energy costs to put back into the economy
- Reduces energy waste by increasing energy efficiency
- Creates and protects manufacturing jobs in the U.S.
- Spurs innovation and competition in the marketplace



- Generates significant utility bill savings for households and businesses
- Increases the availability and affordability of energy efficient products
- Disseminates reliable and comparable product operating cost information
- Provides access to improved products with new features and comfort attributes



- Reduces regulatory burden by pre-empting a potential patchwork of state standards with a single Federal standard
- Protects manufacturers of quality products from those manufacturing inferior products, including imports
- Creates economies of scale which decrease costs to develop and produce innovative energy efficient technologies
- Facilitates market introduction of energy efficient technologies by validating product performance

Beyond underpinning product standards, test procedures help facilitate manufacturers' introduction of higher-value energy efficient technologies into the marketplace. Test procedures lower testing costs and provide a neutral platform upon which manufacturers can compete to differentiate and market the performance of their products. But manufacturers are in no way constrained by what the test procedure can test: the Program's flexible waiver system accommodates product innovations that lie outside the test procedures' parameters. Utility rebate and other 'market pull' programs that incentivize efficient products are critical to achieving economies of scale, and driving cost down, for advanced technologies. These programs typically require energy ratings that are based on DOE test procedures.

## Rulemaking Schedule and Process

The program's predictable rulemaking schedule is almost entirely driven by statutory deadlines DOE must meet to comply with EPCA, as amended by subsequent energy legislation, and

reflects the program's obligation to review all standards and test procedures at intervals of 6 and 7 years, respectively.

DOE considers transparency and stakeholder participation to be essential and encourages all stakeholders to participate in the rulemaking process. Stakeholders include consumers, manufacturers, trade associations, utilities, energy efficiency advocates, and the general public. The Program has established the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC) as means of facilitating deeper stakeholder engagement by allowing for negotiated rulemakings under the guidelines set forth in the Federal Advisory Committee Act.

The process culminates in a Final Rule in which DOE is required to set efficiency standards that maximize energy savings while being technologically feasible and economically justified. DOE must consider the impact on consumers, manufacturers, and small businesses in determining whether any new or amended standard is economically justified. ■

**EXHIBIT O**

# Berkeley Energy & Resources Collaborative (/)

Home (/home) » DOE Appliance Standards Program

## DOE Appliance Standards Program

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Danny Broberg

November 8, 2017

*This is the second of a multi-post blog series by the BERC-Action community (<https://berc.berkeley.edu/programs/berc-communities/berc-action/>) on President Trump's proposed budget. The first piece was on the [Importance of the EPA](https://berc.berkeley.edu/the-importance-of-the-epa/) (<https://berc.berkeley.edu/the-importance-of-the-epa/>). The opinions expressed here do not necessarily represent the opinions of the entire BERC organization.*

Energy efficiency standards for appliances are the reason why your household energy use has decreased over time rather than increase, despite a growing number of electronic devices in homes across the country [1]. The Department of Energy's (DOE's) Appliance and Equipment Standards Program covers more than 60 products, representing about 90% of home energy use, 60% of commercial building energy use, and 30% of industrial energy use. The Program establishes test procedures for measuring the energy efficiency, establishes mandatory standard levels for energy efficiency, and enforces the standard to ensure that manufacturers are complying. As a result of DOE standards, a typical U.S. household today saves about \$321 per year off their energy bills. As consumers replace their appliances with newer models, they can expect to save over \$529 annually by 2030 [2].

The Department of Energy's mission is to ensure America's security and prosperity by addressing its energy, environmental and nuclear challenges through transformative science and technology solutions [3]. Defunding DOE would waste untold amounts of energy, hamper innovation, and kill job. Trump's budget calls for an overall cut of 5.7%, down to \$28 billion. Much of the reductions would be from clean energy and efficiency programs, whereas spending for nuclear weapons programs would be increased. Aside from the increase to the nuclear weapon program, Trump's budget would decrease DOE's budget by about 16% of [2016 levels].

What, specifically, is in the proposed 2018 Trump DOE budget

- 5.7% cut (to \$28.0 billion) to overall DOE budget
- 70% cut to the Energy Efficiency and Renewable Energy (EERE) office [4]
- 74% cut to EERE's solar, wind, water and geothermal programs [4]
- 73% cut to the vehicle technologies program [4]
- 55% cut to the Appliance Standards Program [5]
- \$1.4 billion increase to National Nuclear Security Administration (NNSA), a semi-autonomous agency responsible for enhancing national security through the military application of nuclear science [6]



Why you should be opposed to these proposed cuts to DOE

*1. Appliance standards promote the health and safety of individuals and combat climate change*

Standards implemented by the Appliance Standards Program since 1987 have avoided 2.6 billion tons of carbon dioxide (CO<sub>2</sub>) emissions, which is roughly equivalent to the annual emissions from 550 million automobiles [7,8]. The impacts of carbon dioxide emissions on decreased agricultural production, harm to human health, and other impacts are monetized with the social cost of carbon, which is currently estimated to be about \$220 per ton of carbon [9]. Applying this to the tons of CO<sub>2</sub> that the program has already achieved, the monetized savings go through the roof. Over the last few decades, increases in pollutants in the air due to human activity have led to an increase in the rates of asthma and other respiratory illnesses, and even deaths. Allowing more emissions will only exacerbate this already known issue [10].

*2. Appliance standards are not a political issue*

The attack on the Appliance Standards Program is unprecedented. Appliance Standards have historically received bipartisan support. National equipment standards were started in 1987 by President Reagan and the program has steadily grown since. In addition to energy and cost savings, the appliance standards program has also helped force product innovation, which has greatly benefited consumers. The efficiency standards have pushed manufacturers to develop high-efficiency equipment for cost-competitive prices.

The appliance standards process is typically a collaboration between DOE, industry/manufacturers, and efficiency advocates. While DOE drives the process, stakeholders provide valuable input and feedback which are vital to the process. Each party has their own focus, but in the end all three sides are generally able to come to consensus that saves consumers money and reduces harmful pollution

*3. Appliance standards save consumers billions on their electricity and heating bills*

The Appliance Standards Program saved consumers \$60 billion on their utility bills in 2014 [11]. Energy savings from refrigerator, clothes washer & clothes dryer, dishwasher, central air conditioner, and toilets efficiency standards the average household saved \$360 (~40%) in utility bills in 2012 compared to just twenty years before that [12]. Standards have also helped to drive down the cost of energy-efficient products, leading to savings while purchasing equipment as well. In addition to the energy and cost savings, such high quality products have also been seen to improve comfort (provide better thermal comfort, reduce noise, etc) and even have additional features.

The energy efficiency of a number of household appliances has increased over the years since, with energy improvements as [2]:

- New clothes washers use 70% less energy.
- New dishwashers use more than 40% less energy.
- New air conditioners use about 50% less energy.
- New furnaces use about 10% less energy.

*4. Appliance standards keep America competitive and create jobs*

The American Council for an Energy-Efficient Economy (ACEEE) estimates that 340,000 jobs could be

attributed to existing appliance standards in 2010. By 2030, that number is expected to reach 380,000 jobs in the United States [13].

Benefits to the nation [2]:

- Saves billions of dollars on energy costs to put back into the economy
- Reduces energy waste by increasing energy efficiency
- Creates and protects manufacturing jobs in the U.S.
- Spurs innovation and competition in the marketplace

Where does the budget proposal stand as of today?

As of today, the proposed 2018 Trump budget has not yet been implemented. The House Appropriations Committee largely rejected Trump's proposed cuts to deep science, but still had significant cuts to renewable energy programs (46%), including eliminating Advanced Research Project Agency-Energy (ARPA-E) [14]. However, the Senate committee has been more supportive of science, and the Senate Appropriations Subcommittee voted to keep ARPA-E (even giving it an 8% increase), and cuts EERE by 7%. Now the House and Senate have to work together to reconcile their budgets and get something to Trump to sign.

Even the best-case scenario of the Senate bill would cause significant job losses and program losses.

What can you do?

We need to save the Appliance Standards Program and all of the other great energy innovations programs going on at DOE. For now, there are two things you can do: 1) share this information to help educate your fellow citizens on what is at stake, and 2) stay tuned for a coordinated effort to contact specific members of Congress to make your voice heard.

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**EXHIBIT P**

UNITED STATES DISTRICT  
COURT FOR THE DISTRICT OF  
COLUMBIA

PUBLIC CITIZEN, INC., *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as  
President of the United States, *et al.*,

Defendants.

Civil Action No. 1:17-cv-00253-RDM

**DEFENDANT SECRETARY OF LABOR ALEXANDER ACOSTA'S RESPONSE  
TO PLAINTIFFS' FIRST SET OF REQUESTS FOR ADMISSION**

Pursuant to Federal Rule of Civil Procedure 36, Defendant Secretary of Labor Alexander Acosta, by and through undersigned counsel, herby responds to Plaintiffs' first requests for admissions as follows:

**I. PRELIMINARY STATEMENT**

1. The U.S. Department of Labor's (hereafter "DOL" or "the agency") investigation and development of all facts and circumstances relating to this action is ongoing. DOL's responses and objections contained herein are based solely upon such information as is presently available and known to DOL upon information and belief at this time. Further discovery, investigation, research, and analysis may supply additional facts, and meaning to currently known information. DOL expressly reserves the right to supplement, clarify, revise, or correct any or all of the responses and objections herein in one or more subsequent supplemental response(s).

2. These responses and objections are made without prejudice to, and are not a waiver of, DOL's right to rely on other information or documents in any further proceeding.

3. By making the accompanying responses and objections to Plaintiffs' First Set of Requests for Admission, DOL does not waive, and hereby expressly reserves, its right to assert any

and all objections as to the admissibility of such responses into evidence in this action, or in any other proceedings, on any and all grounds. Further, DOL makes the responses and objections herein without in any way implying that it considers Plaintiffs' First Set of Requests for Admission, and DOL's responses to such requests, to be relevant or material to the subject matter of this action.

## II. REQUESTS FOR ADMISSION

1. The agency has categorized the rulemaking on Prevention of Workplace Violence in Health Care and Social Assistance, RIN 1218-AD08, as "regulatory" for purposes of Executive Order 13771.

**Response:** Admit.

2. The agency has a "regulatory cost cap or regulatory budget under Executive Order 13771 for fiscal year 2019" of *negative* \$723.2 million.

**Response:** Admit only to the extent that this is the "projected regulatory cost cap or regulatory budget."

3. The agency had a "regulatory cost cap under Executive Order 13771 for Fiscal Year 2018" of *negative* \$1957.1 million.

**Response:** Admit.

4. The agency's "regulatory cost cap" takes into account all regulatory actions, not only actions designated as "major" for purposes of Executive Order 12866 or Executive Order 13771.

**Response:** Deny. Defendant avers that the agency's "projected regulatory cost cap" only accounts for EO 13771 regulatory actions and EO 13771 deregulatory actions, as those terms are defined in OMB's April 5<sup>th</sup>, 2017 guidance (M-17-21, *Guidance Implementing Executive Order 13771, Titled "Reducing Regulation and Controlling Regulatory Costs"*). M-17-21 explains that

EO 13771 regulatory action can only be a significant regulatory action or significant guidance. Q2.A (defining “EO 13771 regulatory action”). Thus, not all regulatory actions fall within the accounting framework of EO 13771.

5. In undertaking the Prevention of Workplace Violence in Health Care and Social Assistance rulemaking, RIN 1218-AD08, the agency intends to comply with Executive Order 13771 as long as it remains in force.

**Response:** Admit that the agency intends to comply with E.O. 13771 as long as it remains in force, as well as all applicable statutes and other applicable Executive Orders, in undertaking the Prevention of Workplace Violence in Health Care and Social Assistance rulemaking, RIN 1218-AD08 (hereinafter “Workplace Violence Rulemaking”).

6. Under Executive Order 13771, finalization of a rule incorporating the features described in the agency’s Request for Information on Prevention of Workplace Violence in Health Care and Social Assistance, RIN 1218-AD08, would impose regulatory costs that would be required to fall within the agency’s regulatory budget, absent a waiver from OMB.

**Response:** Admit but aver that the agency is not yet at a point where it can make determinations about the content or costs of a proposed rule with any specificity.

7. The agency has not applied to OMB for a waiver of Executive Order 13771’s repeal and offset requirements in connection with the Prevention of Workplace Violence in Health Care and Social Assistance rulemaking.

**Response:** Admit that the agency has not yet applied for a waiver, but aver that the agency’s work on the Workplace Violence Rulemaking has not yet advanced to a stage where meaningful consideration of E.O. 13771’s requirements may be made.

8. The agency has not received a waiver of Executive Order 13771’s regulatory budget requirements from OMB in connection with the Prevention of Workplace Violence in Health Care

and Social Assistance rulemaking.

**Response:** Admit, but aver that the agency's work on the Workplace Violence Rulemaking has not yet advanced to a stage where meaningful consideration of E.O. 13771's requirements may be made.

9. The agency did not identify existing regulations to be repealed that would have allowed it to issue a proposed rule on Prevention of Workplace Violence in Health Care and Social Assistance while simultaneously achieving its negative regulatory budget requirement for Fiscal Year 2018.

**Response:** Admit, but aver that the agency's work on the Workplace Violence Rulemaking has not yet advanced to a stage where meaningful consideration of E.O. 13771's requirements may be made and further aver that the agency has identified and finalized deregulatory actions in Fiscal Year 2018.

10. The agency has not identified existing regulations to be repealed that would allow it to issue a rule on Prevention of Workplace Violence in Health Care and Social Assistance while simultaneously achieving its negative regulatory budget requirement for Fiscal Year 2019.

**Response:** Admit, but aver that the agency's work on the Workplace Violence Rulemaking has not yet advanced to a stage where meaningful consideration of E.O. 13771's requirements may be made and further aver that the agency has identified and finalized deregulatory actions in Fiscal Year 2019.

11. The agency has not applied to OMB for a transfer of deregulatory action credits (as that term is used in the OMB Guidance Implementing Executive Order 13771 dated April 7, 2017 from another agency to offset the costs associated with issuing a rule in the Prevention of Workplace Violence in Health Care and Social Assistance rulemaking.



**Response:** Admit that the agency has not yet applied for a transfer, but aver that the agency's work on the Workplace Violence Rulemaking has not yet advanced to a stage where meaningful consideration of E.O. 13771's requirements may be made.

12. The agency has not received a transfer of deregulatory action credits from another agency to offset the costs associated with issuing a rule in the Prevention of Workplace Violence in Health Care and Social Assistance rulemaking.

**Response:** Admit, but aver that the agency's work on the Workplace Violence Rulemaking has not yet advanced to a stage where meaningful consideration of E.O. 13771's requirements may be made.

13. Executive Order 13771 has been one factor affecting the agency's consideration of when or whether to promulgate a standard on prevention of workplace violence in health care and social assistance.

**Response:** Deny. Defendant avers that OSHA has not yet given consideration to E.O. 13771 in discussions or decisions about its Workplace Violence Rulemaking because the rulemaking has not yet advanced to a stage where meaningful consideration of E.O. 13771's requirements may be made.

Dated: May 7, 2019

Respectfully submitted,

JOSEPH H. HUNT  
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