

**STATEMENT OF
JAMES OWENS
ACTING GENERAL COUNSEL
U. S. DEPARTMENT OF TRANSPORTATION**

BEFORE THE

**COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON GOVERNMENT OPERATIONS
AND
SUBCOMMITTEE ON HEALTH CARE, BENEFITS, AND ADMINISTRATIVE RULES
U.S. HOUSE OF REPRESENTATIVES**

Regulatory Reform Task Forces Check-In

OCTOBER 24, 2017

Good morning Chairman Meadows, Chairman Jordan, Ranking Member Connolly, Ranking Member Krishnamoorthi, and members of the Subcommittees. I am James Owens, Acting General Counsel of the U.S. Department of Transportation (DOT or the Department). Thank you for inviting me to testify today on the subject of our agency's progress implementing President Trump's Executive Order (EO) 13771, *Reducing Regulation and Controlling Regulatory Costs*, and EO 13777, *Enforcing the Regulatory Reform Agenda*. I am grateful for the opportunity to present the work of the Department, under the leadership of Secretary Chao, in the area of regulatory reform and to describe what our Agency is doing to reduce regulatory burdens and costs of compliance consistent with our safety mission.

Background

DOT has one of the largest rulemaking portfolios in the Federal Government. The various components of the Department of Transportation—nine operating administrations and the Office of the Secretary—have important statutory responsibilities for a wide range of regulations. For example, DOT regulates safety in these transportation sectors: aviation, motor

carrier, railroad, motor vehicle, transit, pipeline safety, and commercial space. The Department also regulates aviation consumer protection and economic issues, and manages a huge grant-making apparatus for highways, airports, mass transit, the maritime industry, railroads, motor transportation, and vehicle safety. Additionally, the Department assists in crisis management and relief efforts. The Department does this by providing regulatory relief (such as waivers) and transportation services (such as air traffic control) to crisis-affected areas to ensure that personnel and supplies can quickly access those areas to provide the appropriate crisis response. Finally, DOT has to handle its own internal management as a major employer and property owner - developing policies that implement a wide range of regulations that govern programs such as acquisition and grants management, access for people with disabilities, environmental review, energy conservation, information technology, occupational safety and health, property asset management, seismic safety, security, and the use of Department aircraft and vehicles.

To carry out its responsibilities in accordance with principles of good governance, the Department embraces a regulatory philosophy that emphasizes transparency, stakeholder engagement, and regulatory restraint. Our goal is to allow the public to understand how we make decisions, which necessarily includes being transparent in the way we measure the risks, costs, and benefits of engaging in—or deciding not to engage in—a particular regulatory action. It is our policy to provide an opportunity for public comment on such actions to all interested stakeholders.

The Department also embraces the notion that there should be no more regulation than necessary. We emphasize consideration of non-regulatory solutions and have rigorous processes in place for continual reassessment of existing regulations. These longstanding processes provide that regulations and other agency actions are periodically reviewed and, if appropriate,

are revised to ensure that they continue to meet the needs for which they were originally designed, and that they remain cost-effective and cost-justified.

Regulatory Reform Task Force

EO 13771 and EO 13777, which were issued by President Trump at the beginning of this Administration, are instrumental in helping the Department achieve these goals. Under EO 13771, unless prohibited by law, beginning with fiscal year 2017, and by the end of each fiscal year thereafter, for each new significant regulation we finalize, we must finalize at least two “deregulatory actions” as defined in guidance issued by the Office of Management and Budget. In addition, unless prohibited by law, each agency must meet its regulatory cost allowance by sufficiently offsetting the incremental costs of new significant regulations with cost savings from deregulatory actions. EO 13777 institutionalizes this process by directing each federal agency to establish a Regulatory Reform Task Force to evaluate existing regulations and make recommendations for their repeal, replacement, or modification.

It is important to note that, as OMB guidance makes clear, EO 12866 remains the primary governing EO regarding regulatory planning and review. Accordingly, among other requirements, except where prohibited by law, agencies must continue to assess and consider both the benefits and costs of regulatory and deregulatory actions when making regulatory decisions and issue regulations only upon a reasoned determination that the benefits justify costs.

In response to EO 13771 and EO 13777, the Department formed a Regulatory Reform Task Force (RRTF), consisting of senior career and non-career DOT leaders, and quickly began work to further the President’s regulatory reform agenda. The Department’s RRTF consists of two components: a working group and a leadership council. The working group coordinates

with leadership in the Office of the Secretary and DOT operating administrations to conduct reviews and develop recommendations for deregulatory action. The working group meets once a month with each of the Department's operating administrations and presents recommendations to the leadership council. The leadership council meets approximately every six weeks to act on the working group's recommendations, and ultimately submits final RRTF recommendations to the Secretary. This system allows the RRTF to quickly and effectively implement the President's regulatory reform agenda.

In carrying out its work, the RRTF is guided by three principles: (1) to reduce the regulatory burden on the public without compromising safety; (2) to streamline permitting; and (3) to enable innovation.

Reduction in Regulatory Burden

Through our ongoing review and revision of DOT rules and regulations under EO 13771 and EO 13777, we have been able to save the American public significant time and money over the last nine months without reducing the safety of our nation's transportation system. DOT rules issued in fiscal year 2016, under the previous Administration, imposed an estimated \$3.2 billion in annualized costs on the public. In contrast, rules issued under this Administration in fiscal year 2017 resulted in \$21.9 million in annualized cost savings. In addition, rules anticipated to be issued in 2018 are currently projected to yield substantially increased annualized cost savings. In effect, we hope not only to continue to save the American taxpayers money, but to save them more money, faster—all while advancing the agency's mission.

This reduction in regulatory costs was not only due to decisions to halt costly and inefficient rules from going forward, but also a result of a significant increase in deregulatory

actions undertaken by the Department, as reflected in the *Unified Agenda of Federal Regulatory and Deregulatory Actions* (Unified Agenda). The Unified Agenda, which the Office of Management and Budget (OMB) compiles twice annually, synthesizes the regulatory agenda of each Federal entity into one Government-wide plan.¹ Approximately 12% of DOT rulemaking actions contained in the last Unified Agenda issued in the previous Administration (the Fall 2016 Unified Agenda) were anticipated to be deregulatory. In this Administration, the number of deregulatory actions anticipated in the Spring 2017 Unified Agenda increased to about 18% of the total DOT rulemakings. We anticipate additional deregulatory progress for Fiscal Year 2018 with the Fall 2017 Unified Agenda expected to further increase the number of deregulatory actions to approximately half of all DOT rulemakings.

Measures Used to Achieve Reduction in Regulatory Burden

This progress in advancing regulatory reform was accomplished through several measures, including: (1) reviewing regulatory actions planned during the last Administration; (2) identifying deregulatory actions and instituting new procedures to vet new rulemaking proposals; and (3) working with stakeholders.

First, shortly after it was formed, the RRTF scrutinized more than 130 then-planned regulatory actions to determine whether the regulatory burden imposed by those actions could be reduced or eliminated without compromising DOT's safety mission or DOT's other statutory goals. As a result of this review, seven rules were withdrawn and six rules were revised to reduce their burden. An additional five rules are currently in the process of being withdrawn and an additional three rules are in the process of being revised.

¹ For more information on the Unified Agenda, see: www.reginfo.gov/public/jsp/eAgenda/StaticContent/UA_About.jsp.

Second, the RRTF continues to review rulemakings and is taking an aggressive approach to reducing burdens and costs consistent with our safety mission. As part of this approach, the RRTF has instituted new procedures under which it thoroughly vets any new rulemaking proposal (including both significant and non-significant rules) to ensure that no unnecessary burdens are created and all feasible non-regulatory alternatives have been considered. The RRTF has also directed the Department's operating administrations and offices with regulatory authority to identify existing regulations and policies that impose unnecessary regulatory burdens on stakeholders and that could be repealed, replaced, or modified without compromising safety. This has resulted in the identification of at least 80 deregulatory actions, which are currently being evaluated by the Department.

Third, the Department has been proactive in seeking stakeholder input to assist in eliminating regulatory burdens. The Department published a Federal Register notice on October 2 asking for public input to identify additional deregulatory actions.² This notice also asks for public input to identify actions that the Department may take to alleviate or eliminate regulatory burdens or burdens on domestically produced energy resources, in accordance with EO 13783 (*Promoting Energy Independence and Economic Growth*). The Department anticipates that the ideas provided by the public in response to this notice will be extremely helpful in implementing the Administration's regulatory reform agenda.

Additionally, the Department recently received a letter from the U.S. Small Business Administration Office of Advocacy. This letter, which is a result of roundtable meetings that the Office of Advocacy hosted with small businesses all over the country, identifies small business' concerns with DOT regulations in the areas of aviation, commercial trucking, and railroads. The

² *Notification of Regulatory Review*, 82 FR 45750 (Oct. 2, 2017).

RRTF is currently evaluating these concerns to determine how the Department can decrease the regulatory burden on small businesses consistent with our safety mission.

Permit Streamlining

One of the Department's goals in reducing regulatory burden is to streamline the permitting process to further stretch taxpayer dollars by enabling faster, better, and more efficient infrastructure development. Infrastructure affects every aspect of our nation's transportation system from the airports that allow aircraft passengers to fly between our country's cities to the roads, bridges, tunnels, and railroads that enable surface transportation. Just like it has been proactive in seeking stakeholder input in eliminating regulatory burdens, the Department has also sought stakeholder input to assist in its effort to streamline the permitting process. In June 2017, the Department published a request for public comment asking for input to help identify obstacles to infrastructure projects.³ In response, the Department received over 200 comments containing over 1,000 ideas. The Department is currently reviewing these comments.

In addition to its public outreach efforts, the Department is taking other steps to expedite project delivery. For example, in late July, the Federal Transit Administration (FTA) proposed experimental procedures to encourage flexibility in public-private partnerships constructing transit projects. Along the lines of the Federal Highway Administration's (FHWA) pilot program to evaluate new public-private partnership approaches to project delivery – known as SEP-15 – FTA invoked its own statutory authority to permit recipients of FTA funding to seek relief from certain FTA requirements or practices. The practice is designed not only to

³ *Transportation Infrastructure: Notice of Review of Policy, Guidance, and Regulation*, 82 FR 26734 (June 8, 2017).

encourage public-private partnerships and expedite project delivery, but also to yield lessons learned that may prove beneficial throughout FTA's program.

We also issued updated guidance to implement a provision of the FAST Act that allows a DOT operating administration to apply the categorical exclusions (CEs) of another Departmental operating administration for certain multimodal projects. A CE is a category of actions that does not usually have significant environmental impacts, and thus does not require an environmental assessment or impact statement under the National Environmental Policy Act. Each operating administration establishes its own CEs, but sometimes one operating administration is implementing a multimodal project and another operating administration's CE would be more appropriate. Our updated guidance enhances DOT's ability to take advantage of the FAST Act's authority to apply CEs across the Department.

The Department also makes robust use of pre-existing structures, with a renewed emphasis on project delivery. We continue to participate on the Federal Permitting Improvement Steering Council, and we continue to lead the Infrastructure Permitting Improvement Center (IPIC). Through IPIC, DOT tracks priority projects that require the most complex environmental reviews, provides transparency through an online permitting dashboard, and assists project sponsors throughout the process. We also collaborate with agency partners through the Transportation Rapid Response Team, a forum for agencies with approval authority over the same project to address permitting issues early during the process, and keep things moving. Therefore, even as it charts new territory, the Administration continues to make robust use of existing processes as well.

Enabling Innovation

Another of the Department's goals in reducing regulatory burden is to enable innovations that will transform transportation. We believe that transportation of tomorrow will be safer, faster, and cheaper than today. Every mode of transportation is affected by transformative technology. Whether we are talking about drones, automation generally, unmanned vehicles, commercial space, supersonic travel, or other emerging technologies, we are looking forward to new and promising frontiers that will change the way we move on the ground, in water, through the air, and into space. This Administration is committed to fostering innovation by lifting barriers to entry and enabling innovative and exciting new uses of transportation technology. The Department is also committed to enabling the safe testing and experimentation of new technologies to gather data necessary to further support rulemakings that will allow widespread use of transformative technologies.

The Department has a number of pending deregulatory or enabling regulatory actions that will further enable innovation in the transportation sector. For example, the National Highway Traffic Safety Administration (NHTSA) is working on reducing regulatory barriers to technology innovation, including the development of autonomous vehicles. Autonomous vehicles are expected to significantly increase safety by reducing the likelihood of human error when driving, which today accounts for the overwhelming majority of accidents on our nation's roadways.

Similarly, the Federal Aviation Administration (FAA) is working to enable, safely and efficiently, the integration of unmanned aircraft systems (UAS) into the National Airspace System. UAS are expected to continue to increase safety by performing a range of activities including the provision of information that is difficult or even impossible for a human to obtain,

as well as other dangerous tasks that today are performed by human beings. In both cases, the Department hopes to be proactive in providing innovators the guidance they need to make long-term investments, while avoiding creating a regulatory thicket which becomes a barrier to new entrants into the transportation space.

Next Steps

Although we have made significant strides in implementing the Administration's regulatory reform agenda, our work is ongoing. The Department remains focused on alleviating unnecessary regulatory burdens to spur economic activity and foster innovation. The Department is currently working to complete its portion of the Fall 2017 Unified Agenda, and as discussed earlier, the RRTF anticipates that the Unified Agenda will show additional deregulatory progress for Fiscal Year 2018. The RRTF also plans to monitor progress on existing deregulatory initiatives and to continue developing recommendations for future action.

In addition, the RRTF plans to consider potential burdens caused by agency guidance documents. Guidance documents are issued by the Department's operating administrations and offices with regulatory authority to provide advice to the public regarding how best to comply with a particular law or regulation. While this advice is not legally binding, the Department's operating administrations and regulatory offices often have significant expertise and extensive relationships in the areas that they regulate. Consequently, even non-binding guidance that is promulgated by the Department may result in action by the regulated entities.

Conclusion

Thank you again for the opportunity to discuss with you the Department's regulatory reform program. As I know you appreciate, it would be inappropriate for me to discuss specific actions we might take concerning ongoing rulemakings, but I would be pleased to answer any questions you have about our overall regulatory program or the many positive steps we have taken to reduce regulatory burdens and costs of compliance consistent with our safety mission.