Guidelines and Procedures for the Fall 2022 Unified Agenda of Federal Regulatory and Deregulatory Actions

Why Publish the Unified *Agenda* for Regulatory and Deregulatory Actions?

Section 4(b) of EO 12866 requires agencies to publish a regulatory and deregulatory agenda. The *Unified Agenda of Federal Regulatory and Deregulatory Actions* is a compilation of eachagency's regulatory agenda. A central goal of the *Agenda* is to promote transparency and opengovernment.

In addition, the *Agenda* furthers the purposes of the Regulatory Flexibility Act (5 U.S.C. § 601et seq.) (RFA); EO 13563; EO 13132, "Federalism," 64 FR 43255 (August 4, 1999); the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1501–04, 1531–38, 1551–56 (UMRA); and the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. § 601 note (SBREFA).

What Regulations Should Agencies Include in Their *Agendas*?

Regulatory agendas should describe all regulations (regulatory and deregulatory) under development or review during the 12 months following publication. Agencies should include,at a minimum, any plans to publish or otherwise implement an advance notice of proposed rulemaking (ANPRM), a notice of proposed rulemaking (NPRM), or a final rule. Agencies may include any plans to conduct a review pursuant to 5 U.S.C. § 610(c) or Section 5 of EO 12866. An agency need not include in its regulatory agenda those rulemaking actions that areexcluded by Section 3(d)(1)–(4) of EO 12866.

Agencies have the option of including activities that will result in action beyond 12 months. However, such entries should be limited to rulemakings for which listing in the Unified *Agenda*will provide a benefit to users. Agency agendas also should include actions or reviews completed or withdrawn since the last *Agenda*.

In What Format Will the Fall 2022 Unified *Agenda* Be Published?

The Unified *Agenda* will be available online, in its entirety, at www.reginfo.gov, in a format thatoffers users the ability to obtain information easily from the Unified *Agenda* database.

- Publication in the *Federal Register* is mandated for the regulatory flexibility agendas required by the Regulatory Flexibility Act (RFA), and will therefore continue to be published in the Federal Register. Agency agendas printed in the *Federal Register* will consist of the following:
    - The agency's agenda preamble;
    - Rules that are in the agency's regulatory flexibility agenda, in accordance with the RFA, because they are likely to have a significant economic impact on a substantialnumber of small entities;
    - Any rules that the agency has identified for periodic review under Section 610 ofthe RFA;

Printing of these entries will largely be limited to fields that contain information required by the RFA's agenda requirements (5 U.S.C. § 602). Additional information on these entries will be available in the

Agenda published on the Internet. If an agency has no entries in the printed *Federal Register* version of the *Agenda*, its preamble will not be printed. Under *Federal Register*regulations, GPO Access will have the same content as the printed *Federal Register*.

How Will the Printed Edition of the Unified *Agenda* Be Organized?

The portion of the *Agenda* that will be printed in the *Federal Register* for Fall 2022 will, in general, follow the organizational pattern of prior publications of the *Agenda*, displaying primarily the information required in the regulatory flexibility agenda, along with agency preambles. Part II of the *Federal Register* on the day of publication will have RISC's Introduction to the Unified Agenda. The individual agency agendas will then appear in separate parts, organized alphabetically in four groups: Cabinet departments; other Executive agencies; theFederal Acquisition Regulation, a joint authority; and independent regulatory agencies. Departments may be divided into their component agencies. If an agency has no entries in the printed *Federal Register* version of the *Agenda*, its preamble will not be printed, and the agency will not have a separate part in the *Federal Register*.

Each agency's part of the *Agenda* begins with a preamble providing information specific to thatpart. RISC will provide a table of contents for each agency after the agency's preamble. The table of contents will list the agency's printed entries. Agencies should consider including intheir *Agenda* preambles a statement indicating that the agency's complete regulatory agenda is available online at www.reginfo.gov. Each agency presents its entries, divided by sub-agency if applicable, under one of five headings according to the rulemaking stage of the entry. The stages are:

- *Prerule Stage* - actions agencies will undertake to determine whether or how to initiate rulemaking. Such actions occur prior to an NPRM and may include an ANPRM or a review of existing regulations.
- *Proposed Rule Stage* - actions for which agencies plan to publish an NPRM as the nextstep in their rulemaking process or for which the closing date of the NPRM comment period is the next step.
- *Final Rule Stage* - actions for which agencies plan to publish a final rule or an interimfinal rule or to take other final action as the next step.
- *Long-Term Actions* - items under development but for which the agency does not expect to have a regulatory action within the 12 months after publication of this update of the *Agenda*. Some of the entries in this section may contain abbreviated information. Actions with no planned publication for over 24 months should be classified as "Inactive" or be removed.
- *Completed Actions* - actions or reviews the agency has completed or withdrawn since publishing its last *Agenda*. This section also includes items the agency began and completed between issues of the *Agenda*.

Some agencies use Agency Sort Codes to arrange the order of their entries in the printed Unified *Agenda*, with the final sort by RIN. OMB has also asked agencies to include RINs in the headings of their final and NPRM documents published in the Federal Register to make it easierfor the public and agency officials to track the publication history of regulatory actions through their development.

A bullet (•) preceding the title of an entry indicates that the entry is appearing in the *Agenda* forthe first time.

All entries are numbered sequentially from the beginning to the end of the printed publication. The sequence number preceding the title of each entry identifies the location of the entry in thisupdate. The printed *Agenda* will not have any separate indexes.

How Will the Online Unified *Agenda* Be Organized?

The entire *Agenda* will be available online at www.reginfo.gov. The *Agenda* will be presented inthe form of a searchable database rather than as a single document that is ordered according to a prescribed sequence. Users will be able to view an individual agency's complete agenda. Because the online Unified *Agenda* will not utilize sequence numbers, the Subject Matter Index will be linked to individual entries by hyperlinked RINs. Each individual entry may be viewed inits entirety.

What Information Appears for Each Regulation Included in the Agency *Agenda*?

All entries in the online *Agenda* contain uniform data elements including, at a minimum, the following information:

- *Title of the Regulation* - a brief description of the subject of the regulation.
- *Priority* - An indication of the significance of the regulation. Agencies assign each entry toone of the following five categories of significance:
  - *Economically Significant* - as defined in EO 12866, a rulemaking action that will havean annual effect on the economy of $100 million or more or will adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities. The definition of an "economically significant" rule is similar but not identical to the definition of a "major" rule under the Congressional Review Act, 5 U.S.C. § 801 et seq. ("CRA"). (See below.)
  - *Other Significant* - a rulemaking that is not economically significant but is considered significant by the agency according to Section 3(f) of EO 12866. This category includes rules that the agency anticipates will be reviewed under EO 12866 or rules that are a priority of the agency head.
  - *Substantive, Non-significant* - a rulemaking that has substantive impacts but is neither Significant, nor Routine and Frequent, nor Informational/Administrative/Other.
  - *Routine and Frequent* - a rulemaking that is a specific case of a multiple recurring application of a regulatory program in the Code of Federal Regulations and that doesnot alter the body of the regulation.
  - *Informational/Administrative/Other* - a rulemaking that is primarily informational or pertains to agency matters not central to accomplishing the agency's regulatory mandate but that the agency places in the *Agenda* to inform the public of the activity.
- *Major* - an indication that a rule may be "major" under the CRA because it has resulted inor is likely to result in an annual effect on the economy of $100 million or more or meets other criteria specified. The CRA provides that the Administrator of OIRA will make the final determination as to whether a rule is major.
- *Unfunded Mandates* - whether the rule is covered by Section 202 of UMRA. UMRA requires that, before issuing an NPRM likely to result in a mandate that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector of more than $100 million in one year, agencies (other than independent regulatoryagencies) shall prepare a written statement containing an assessment of the anticipated costs and benefits of the Federal mandate. If the agency believes the entry is not subject to UMRA, this data element will not be printed.
- *Legal Authority* - the section(s) of the United States Code or Public Law or the EO that authorize(s) the regulatory action. Agencies may provide popular name references to lawsin addition to these citations.
- *CFR Citation* - the part(s) or section(s) of the Code of Federal Regulations that will be affected by the action.

- *Legal Deadline* - whether the action is subject to a statutory or judicial deadline, the dateof that deadline, and whether the deadline pertains to a NPRM, a final action, or some other action.
- *Abstract* - a brief description of the problem the regulation will address; the need for a Federal solution; to the extent available, alternatives that the agency is considering to address the problem; and potential costs, cost savings, and benefits of the action.
- *Timetable* - the dates and citations (if available) for all past steps and a projected datefor at least the next step for the regulatory action. A date printed in the form **mm/00/yyyy** means the agency predicts the month and year the action will take placebut not the day it will occur. In some instances, agencies may indicate what the next action will be, but the date of that action is "To Be Determined." Agencies indicate this by entering a date in the form **00/00/0000**. "Next Action Undetermined" indicates the agency does not know what action it will take next. For every entry that is not a completion, it is important that the agency provide in the Timetable section an estimated date for the "Next Action", the first action scheduled to occur on or after the listed action.
- *Regulatory Flexibility Analysis Required* - whether the RFA requires an analysis because the rulemaking action is likely to have a significant economic impact on a substantial number of small entities as defined by the Act.
- *Small Entities Affected* - the types of small entities (businesses, governmental jurisdictions, or organizations) on which the rulemaking action is likely to have an impactas defined by the RFA. Agencies have the option of indicating likely effects on small entities even though they believe that a Regulatory Flexibility Analysis will not be required.
- *Government Levels Affected* - whether the action is expected to affect levels of government and, if so, whether the governments are State, local, tribal, or Federal.
- *International Impacts* - whether the regulation is expected to have international trade and investment effects, or otherwise may be of interest to our international trading partners.
- *Federalism* - whether the action has "federalism implications" as defined in EO 13132.This term refers to actions "that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." If the action doesnot have federalism implications, this data element will not be printed. Independent regulatory agencies are not required to supply this information.
- *Agency Contact* - the name and phone number of at least one person in the agency who is knowledgeable about the rulemaking action. The agency may also provide the title, address, fax number, e-mail address, and TDD for each agency contact.

Some agencies have provided the following optional information:

- *Additional Information* - any information that the agency wants to provide for whichthere is not a specific data element.
- *Agency Sort Codes* - alternative or additional criteria for the order in which RINs are published within an agency's agenda, as requested and specified by the agency.
- *Compliance Cost to the Public* - the estimated gross compliance cost of the action.
- *Affected Sectors* - the industrial sectors that the action may most affect, either directly or indirectly. Please use the North American Industry Classification System (NAICS) codesto identify the affected sectors.
- *Energy Effects* - an indication of whether the agency plans to prepare or has prepared a Statement of Energy Effects for significant energy actions, as required by EO 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution,or Use," 66 FR 28355 (May 18, 2001).

- *Related RINs* - one or more past or current RIN(s) associated with activity related to this action, such as merged RINs, split RINs, new activity for previously completed RINs, or duplicate RINs.
- *Related Agencies* - any other agencies participating in this action if it is a joint rulemaking or common rule.
- *RFA Section 610 Review* - an indication that the agency has selected the rule for its periodic review of existing rules under the RFA (5 U.S.C. § 610(c)). Some agencies haveindicated completions of Section 610 reviews or rulemaking actions resulting from completed Section 610 reviews.
- *URLs or Web Address* - if available, please enter a URL for a website to provide the public with more information about the rulemaking and a URL for a website on which thepublic can submit comments on the rulemaking. If the agency does not provide its own specific website for submission of comments, then you should enter the Government- wide e-rulemaking address: http://www.regulations.gov.

How Should an Agency Prepare Its Data for Publication in the Unified *Agenda*?

Agencies participating in the Unified *Agenda* should submit their respective portions inthe uniform format specified in the instructions of RISC. RISC edits and compiles the *Agenda* on behalf of OIRA. Agencies have three alternative methods to prepare data onindividual entries for publication in the *Agenda*:

- *Direct Entry* - The agency establishes a connection to the RISC/OIRA Consolidated Information System (ROCIS) from one or more of its own computer terminals, through an Internet browser. Agency personnel should enter data directly into the ROCIS database.
- *Data File* - An agency that stores its *Agenda* data in its own database may choose to transmit to ROCIS all of its data in electronic files prepared according to the specific file format prescribed by RISC. Please note that to allow sufficient time for editing, it isespecially important to submit data files prior to the deadline. If you are interested in data file submission, contact RISC for further information.
- *Paper Forms* - **The use of the paper form for submitting your Unified Agenda retired last Fall 2021 cycle**. The RISC staff will be available to assist you in retrieving a user id and password for access to ROCIS and to input your Agency's RINs. **A training class is required for new users to gain ROCIS access and to obtain a user id and password for ROCIS**. Contact your RISC Analyst for enrolling in the next training class.
- *Reports* - ROCIS provides agencies with multiple reports to assist you with your data quality check before submitting your final agenda. Three main reports are: The **Agenda Review Report**, which is a printout of the agency's entries; the **Error Report**, which lists inaccurate or missing data; and the **Timetable Report**, which lists the Timetable for each RIN. Please take time and run these **Reports** and review the content of your submission, to correct any errors, supply any missing data, and update your agency's RINs. These reports may be run for all of an agency's entries, for entries updated since a specified date, or for a particular RIN or set of RINs.
- *Preambles* - All agencies are required to submit an updated Preamble. **Paper ink signed copies are no longer required**. If you are designating Section 610 reviews in the Agenda, your preamble should include a reference to Section 610 reviews. You must download/save a copy of your previous Preamble, located in ROCIS, to your agency's computer system for updating. Use

this downloaded/saved Preamble to make any changes, revisions, deletions, or updates prior to uploading to ROCIS for this cycle. If you have questions and for further information about these procedures, please contact your RISC Analyst.

What Documents and Information Should an Agency Submit?

Each agency should submit the following documents and information to RISC:

- When the agency is satisfied that its entries are complete, accurate, and represent what the agency wishes to publish, a designated person at the agency will be able to submit the entries to RISC electronicallythrough ROCIS.
- DIGITAL SIGNATURE: If your agency is submitting **Reg Flex** or **Section 610 Review** RINs, you will be required to ascertain a Digital Signature on the Preamble document. The document will be provided to you by your RISC Analyst after publication on RegInfo.gov. Detailed INSTRUCTIONS on the Digital Signing procedures will be sent in a separate email.

What Are Inactive Actions, and Where Are They Located?

- An agency designates an inactive action as one it does not plan to undertake in the coming calendar year. Inactive actions assist internal agency tracking of past actions and allow an agency to retain the same RIN for an action over its lifetime as they further consider policy. Inactive actions are not published in the Agenda; however, a list of these actions will be published along with the latest Agenda on the Reginfo.gov website (www.reginfo.gov).

When and How Should Agencies Submit Their *Agenda*s?

The deadline for submission of all completed agenda materials date **Friday, September 30, 2022**. This is a firm deadline.

Agencies submission of their agenda is done electronically through ROCIS to RISC. RISC will then assemble the entire *Agenda* and arrange for online publication at www.reginfo.gov. RISC forwards and compiles all agency regulatory flexibility agendas to GPO for printing in a single day's issue of the *Federal Register*. GPO will bill each agency for the cost of printing its portionsof the *Agenda* that appear in the *Federal Register*.

How Can Agencies Obtain Further Information?

For further information concerning the content requirements of agency agendas, contact your agency's OIRA desk officer. For further information concerning automated agenda production, specific data requirements, format, completion, or submission of agency agendas, contact the Regulatory Information Service Center, 1800 F Street NW, Washington, DC 20405-0001; or your agency's RISC Analyst:

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Guidelines and Procedures for the Fall 2022 Regulatory Plan

For use during the Fall Unified Agenda cycle only.

Why Is The Regulatory Plan Published?

The Regulatory Plan serves as a defining statement of the Administration's regulatory and deregulatory policies and priorities. Section 4(c) of EO 12866, supplemented and reaffirmed by EO 13563, requires agencies to publish an annual regulatory plan as part of the Fall Unified Agenda of Federal Regulatory and Deregulatory Actions.

What Regulations Should Agencies Include in Their Regulatory Plans?

Plans should describe the most important significant regulatory and deregulatory actions that the agency reasonably expects to issue in proposed or final form during the upcoming year. By "most important" significant regulatory and deregulatory actions, we mean only those significant rulemakings that embody the core of your regulatory priorities. All-important items relating to any existing regulations under agency review must also be included in this year's Plan. You should not include actions that are likely to be completed by the posting of the Agenda.

How Is The Regulatory Plan Organized?

The Plan is a single Government-wide document that appears in the first section of the Agenda as printed in the Federal Register. The printed edition begins with an introduction to the Plan, followed by a table of contents for all Plan entries, and then the plans of participating Federal departments and agencies. Cabinet department's plans are printed first, followed by plans of other Executive agencies and traditionally independent regulatory agencies.

Each department's or agency's section of the Plan contains a narrative statement of regulatory and deregulatory priorities. This may be followed by a description of the department's or agency's most important significant regulatory and deregulatory actions.

The Plan will also be available online as part of the Agenda at www.reginfo.gov. The Plan will be presented online in the form of a searchable database, rather than as a single document that is ordered according to a prescribed sequence.

What Information Appears for Each Statement of Regulatory and Deregulatory Priorities?

As specified in the data call, each statement or introductory narrative should be sufficiently specific to ensure that policymakers and those affected will understand your regulatory strategy and your long-term priorities. You may want to include a specific reference to the most important significant regulatory and deregulatory actions that will implement these priorities and to any applicable legislative proposals under development or already initiated by you that will further these regulatory priorities. Please also include a list of any existing regulations that are under review and your agency's plan for soliciting public comments during the review.

What Information Appears for Each Regulation Included in The Regulatory Plan?

Each entry in the Plan contains the same data elements that appear in a normal Agenda entry, including a RIN. Each Plan entry must contain **Statement of Need** and **Anticipated Costs and Benefits**. You may also include information for the following three fields: **Summary of the Legal Basis**, **Alternatives**, and **Risks**.

1. **Statement of Need**. This is a description of the need for the regulatory action (Sec. 4(c)(1)(D) of EO 12866).
2. **Summary of the Legal Basis**. This should include a description of the legal basis for 9 the action and whether any aspect of the action is required by statute or court order (Sec. 4(c)(1)(C) of EO 12866).
3. **Alternatives**. This should describe, to the extent possible, the alternatives the agency has considered or will consider for analysis (Sec. 4(c)(1)(B) of EO 12866). Special consideration should be given to flexible approaches that "reduce burdens" and maintain "freedom of choice for the public" (Sec. 4 of EO 13563).
4. **Anticipated Costs and Benefits**. This should include "preliminary estimates of the anticipated costs and benefits" of the regulatory action (Sec. 4(c)(1)(B) of EO 12866). Under EO 13563, agencies are directed to "use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." Consistent with previous guidance we have provided concerning the implementation of EO 12866, the description of costs should include both capital (upfront) costs and annual (recurring) costs. If the benefits are difficult to quantify, we encourage you, to the extent possible, to use nominal units (for example, health effects or injuries avoided) for benefits. Avoid the misclassification of transfer payments as costs or benefits. You should appropriately discount both costs and benefits. To the extent that you cannot quantify costs and benefits, you should describe them in narrative form. (The Unified Agenda format does not permit the use of a columnar format for cost and benefit information. Please provide these data using a narrative format.)
5. **Risks**. This should include, if applicable, a description of "how the magnitude of the risk addressed by the action relates to other risks within the jurisdiction of the agency" (Sec. 4(c)(1)(D) of EO 12866). You should include a description of the magnitude of the risk the action addresses, the amount by which the agency expects the action to reduce this risk, and the relation of the risk reduction effort to other risks and risk reduction efforts within the agency's jurisdiction.

How Should an Agency Prepare Its Data for Publication in The Regulatory Plan?

Each agency participating in the Plan should prepare its portion in the same manner and format that it uses for a normal Agenda entry. As with the Agenda, RISC edits and compiles the Plan on behalf of OIRA.

Agencies have the same three alternative methods to prepare data on individual Plan entries as for Agenda entries: direct entry, data file, and paper forms. Agencies will also receive the same RISC reports that accompany Agenda submissions.

Statement of Regulatory and Deregulatory Priorities. Each agency must save a copy of last year's statement from ROCIS to its own computer system, and make changes in that file to update the statement for the current year, and then upload the file to ROCIS. Print a copy of the statement that you are uploading for the paper copy required with your Plan submission. If you supply your data for the Plan on paper forms and RISC enters all of your data, then you should submit both a printed copy of your statement and an electronic copy, preferably in Microsoft Word.

For further information about these procedures, please contact RISC.

What Documents Should an Agency Submit?

Agencies should submit their portions of the Plan by direct entry or by data file and need only notify RISC via e-mail when their Plan is complete in ROCIS. The use of the paper form for submitting your Unified Agenda Regulatory Plan retired last Fall 2021 cycle.

When and How Should Agencies Submit Their Regulatory Plans?

Please submit electronically directly into ROCIS or email XML submissions (*EPA and DOT*) to your RISC analyst. For further information concerning ROCIS, information requirements, format, or submission of materials, contact your RISC Analyst:

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RISC will upload agency regulatory plans to the MAX Federal Community for OIRA review.

Agencies will have the opportunity to change their initial submissions based on the comments they receive. In addition, the schedule for planned regulatory actions may change, or the agency may complete additional economic analysis or risk assessment that would contribute to a more informative description of the planned regulatory action.