Guidelines and Procedures for the 2020 Spring Update of the 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 each agency's regulatory agenda. A central goal of the *Agenda* is to promote transparency and open government.

In addition, the *Agenda* furthers the purposes of the Regulatory Flexibility Act (5 U.S.C. § 601 et seq.) (RFA); EO 13771; 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 are excluded 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 Agency agendas also should include actions or reviews completed or withdrawn since the last *Agenda*.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 Spring 2019 Unified *Agenda* Be Published?

The Unified Agenda will be available online, in its entirety, at www.reginfo.gov in a format that offers 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 RFA, and therefore it will continue. 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 substantial number of small entities;

- Any rules that the agency has identified for periodic review under Section 610 of the RFA;
- The agency's preliminary EO 13771 designation for each listed rule.

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 Spring 2020 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, and the action's preliminary EO 13771 designation. 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; the Federal 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 that part. 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 in their *Agenda* preambles a statement indicating that the agency's complete regulatory agenda is available online at www.reginfo.gov. RISC provides some suggested language for this purpose in the "Unified Agenda News" section of RISC's website. 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 next step 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 interim final 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 easier for 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* for the 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 this update. 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 in the 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 in its 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 to one of the following five categories of significance:
- *Economically Significant* - as defined in EO 12866, a rulemaking action that will have an 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 does not 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 in or 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 regulatory agencies) 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 laws in 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 date of 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 date for 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 place but 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. In the alternate, the agency should indicate "Next Action Undetermined."
- *EO 13771 Designation* - the preliminary EO 13771 designation as defined by Guidance: "deregulatory," "regulatory," "exempt," "waived," "other." A similar menu will accompany Information Collection Request (ICR) submissions (see below for more detail).
- *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 impact as 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 does not 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 which there 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) codes to 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 have indicated 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 the public 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 Can an Agency Preliminarily Designate an Action As an EO 13771 Action?

Beginning with the Fall 2017 *Agenda*, EO 13771 requirements apply to agencies. This section explains recent changes in the ROCIS system. Agencies must provide preliminary designations in ROCIS as part of their *Agenda* submission by the **March 5, 2020** deadline.

Agencies will be required to provide or update preliminary EO 13771 designation for each action submitted in the *Agenda*. These designations, defined by Guidance, will be made via a new drop

down menu in the ROCIS system. Designations follow:

- *Deregulatory* - when finalized, a the action is expected to have total costs less than zero;
- *Regulatory* – the action is either a significant regulatory action as defined in Section 3(f) of EO 12866, or a significant guidance document (e.g., significant interpretive guidance) reviewed by OIRA under the procedures of EO 12866 that, when finalized, is expected to impose total costs greater than zero;
- *Fully or Partially Exempt* - the action has been granted, or is expected to be granted, a full or partial waiver under one or more of the following circumstances: (i) it is expressly exempt (issued with respect to a "military, national security, or foreign affairs function of the United States"; or related to "agency organization, management, or personnel"); or (ii) it addresses an emergency such as critical health, safety, financial, or non-exempt national security matters (offset requirements may be exempted or delayed); or (iii) it is required to meet a statutory or judicial deadline (offset requirements may be exempted or delayed); or (iv) it is expected to generate de minimis costs;
- *Not subject to, not significant* - is a NPRM or final rule AND is neither an EO 13771 regulatory action nor an EO 13771 deregulatory action. PLEASE NOTE: this menu option does NOT appear in the EO 13771 Primary Worksheet.
- *Other* - at the time of designation, either the available information is too preliminary to determine EO 13771 status or other circumstances reasonably preclude a preliminary EO 13771 designation. This category can also be used for actions that do not fall within the other categories (e.g. ANPRM or RFI).
- *Independent agency* - is an action an independent agency anticipates issuing and thus is not subject to EO 13771. Independent agencies are not subject to EO 13771, though they may volunteer to participate. PLEASE NOTE: this menu option does NOT appear in the EO 13771 Primary Worksheet since independent agencies are not required to submit worksheets.
- Please note that OIRA has developed a similar process for ICR requests, which will allow the agencies and us to track potential deregulatory actions that take the form of paperwork burden reductions. Although not part of the *Agenda*, agencies will now be able to provide an EO 13771 designation for ICRs submitted in ROCIS. This designation, defined by Guidance, will be made via a new drop down menu in the ROCIS system.

In ROCIS, the new dropdown menu will be preceded by the following text: Is this ICR an EO 13771 deregulatory action (as defined by M-17-21)? "Deregulatory" generally means the ICR has been finalized and has total costs less than zero due to a substantive change, not a simple burden adjustment.

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

Agencies participating in the Unified *Agenda* should submit their respective portions in the 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 on individual 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 is especially important to submit data files prior to the deadline. If you are interested in data file submission, contact RISC for further information.
- *Paper Forms* - Agencies that cannot use direct entry or submit a data file may choose to submit their Unified *Agenda* entries on paper forms. The RISC staff will key the data into ROCIS. For entries that will appear for the first time, please use only the Spring 2020 version of the Regulatory Information Data Form. You can print copies of this form from http://reginfo.gov/public/jsp/regform/download.jsp. To update entries that appeared in the 2019 *Agenda*, you should submit redlined marked-up copy of the *Agenda Review Reports* that you have obtained from RISC.
- *Reports* - ROCIS provides agencies with two main reports: *The Agenda Review Report*, which is a printout of the agency's entries, and the *Error Report*, which lists inaccurate or missing data. 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. For each agency that prepares its agenda by direct entry or data file, ROCIS provides the agency's agenda contact staff the ability to generate and print out these reports on the agency's own printers. Please use the *Agenda Review Report* to review the content of your submission; you should use the *Error Report* to help you correct any errors and supply any missing data.
- *Preambles* - If you are designating Section 610 reviews in the *Agenda*, your preamble should include a reference to Section 610 reviews. Each direct entry or data file agency must save from ROCIS to its own computer system a copy of its preamble from the preceding Unified *Agenda*. Please make changes in that file to update the preamble for the previous *Agenda* and then upload the file to ROCIS. Do not cut and paste into ROCIS. Print the preamble file you are uploading for the required, signed copies of preambles (see below). For further information about these procedures, please contact RISC.

What Documents and Information Should an Agency Submit?

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

- One signed original and two certified copies of the preamble to its Unified Agenda entry. (Please note that the signature is required to be that of the person whose name and title typed is in the document's signature block. One person may not sign for another person.) The preamble must meet the normal requirements for printing in the Federal Register, including a list of CFR chapters pertaining to the agency.
- (For agencies that use direct entry or data file) 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 electronically through ROCIS.
- (Only for agencies that choose to submit their data on paper forms) A paper copy of the agency's agenda entries. New entries should be on Regulatory Information Data Forms. Repeating entries should be on marked copies of *Agenda* Review Reports that the agency has obtained from RISC.
- **New procedures regarding your agency's Preamble submission.** RISC is no longer

accepting paper signed original copies of your agency's Preamble. Your Preamble will be signed and submitted by your official using Digital Signature. Detailed INSTRUCTIONS on the Digital Signing procedures will be sent to all in a separate email.

- **New procedures regarding your agency's Billing Letter.** We require a "Billing Code Email" from you to RISC (see sample below). Indicating your agency's Billing Code. This is for RISC internal use only and will be required every cycle when you lock ROCIS. (See sample 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 or identify as a long-term action. 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 www.reginfo.gov.

When and How Should Agencies Submit Their *Agendas*?

The deadline for submission of all completed agenda materials is **March 5, 2020**. This is a firm deadline.

Agencies should submit the applicable forms and other required documents 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 portions of the *Agenda* that appear in the *Federal Register*. Because RISC submits the *Agenda* to GPO for publication in a fully coded format, agencies receive the maximum discount from GPO's regular charges.

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, Room 2121A, Washington, DC 20405-0001; or your agency's RISC analyst:

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SAMPLE "Billing Code" EMAIL to RISC

This is for RISC internal use only.
Note: We (RISC) require this billing code every cycle when you lock ROCIS.

From: <you>

To: <your RISC analyst>

Subject: Billing Code Request

I authorize the Government Publishing Office to bill <**insert name of your department or agency**> for printing our agenda using billing code <**insert your agency's billing code(s)**>.