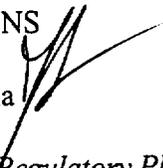


EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

ADMINISTRATOR
OFFICE OF
INFORMATION AND
REGULATORY AFFAIRS

JUN 29 2000

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

FROM: John T. Spotila 

SUBJECT: October 2000 *Regulatory Plan* and *Unified Agenda of Federal Regulatory and Deregulatory Actions*

This memorandum describes guidelines and procedures for publishing the October 2000 *Unified Agenda of Federal Regulatory and Deregulatory Actions* (see Attachment 1) and *The Regulatory Plan* (see Attachment 2). As you know, publication of the Agenda represents a key component of the regulatory planning mechanism prescribed by the President in Executive Order 12866 "Regulatory Planning and Review" of September 30, 1993 (58 FR 51735; October 4, 1993).

As you prepare your Unified Agenda and Regulatory Plan submissions, please remember our underlying objectives. The President's Executive Order emphasized better planning and coordination of the regulatory process. The President also stressed the need to make the regulatory process more accessible and open to the public. The Agenda and the Plan contribute significantly to achieving these objectives.

We also urge you to keep in mind the President's emphasis on better communication with the public. In his June 1, 1998 memorandum on "Plain Language in Government Writing," he directed agencies to use plain language in all proposed and final rulemaking documents published in the *Federal Register*. This is an important requirement. You can find extensive online guidance on improving communication at <http://www.plainlanguage.gov>.

The Regulatory Information Service Center will prepare the October 2000 Agenda from the ROCIS data base system. The Center is continually improving this system. Since the last Agenda, the new security procedure has been enhanced for easier implementation. Agencies that submit data in an electronic form should access ROCIS through the Internet, following the Center's instructions.

Last year, the President issued Executive Order 13132 "Federalism" on August 4, 1999 (64 FR 43255; August 10, 1999). Once again we ask that you indicate whether each regulatory action has "federalism implications" as defined in the order. 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." Independent agencies are encouraged to answer this question, but are not required to do so.

Agencies that use the Agenda to report reviews of existing regulations under section 610(c) of the Regulatory Flexibility Act (5 U.S.C. chapter 6) will again be able to report current reviews, completions of reviews, and actions that are the result of completed reviews. Please read carefully the attached guidelines and procedures for an explanation of how this information will appear in the Unified Agenda. It is important to understand that the information you provide in each Agenda entry should apply to the current activity you are reporting and not to the underlying rule that you are reviewing or amending.

Please update the information that appeared in the April 2000 Agenda and submit the required information for new items, including any actions that both began and ended since then.

The attachments to this memorandum include all the materials you need to prepare your submissions. They explain in detail how to prepare your Agenda and Plan submissions, whether you enter your information directly into the data base, transmit a complete electronic data file, or submit your information on paper forms. Please follow carefully the procedures explained in the attachments and be sure to include all required documents with your submissions.

It is very important that your agency submit all Regulatory Plan materials by August 18, 2000 and all Unified Agenda materials by September 1, 2000. Late submission could jeopardize timely publication. Please be sure that your submissions are accurate and complete as of those dates; we may not be able to make changes submitted later.

You may direct any questions regarding the content of agency plans or agendas to the appropriate desk officer in the Office of Information and Regulatory Affairs, Office of Management and Budget. Please direct your submissions, as well as requests for additional materials and production questions, to the Regulatory Information Service Center, General Services Administration, 1800 F Street NW, Suite 3039, Washington, DC 20405, (202) 482-7340.

Thank you for your cooperation and prompt attention.

Attachments

cc:
Heads of Executive Departments and Certain Agencies
and Commissions
Regulatory Working Group

Guidelines and Procedures for the October 2000 Unified Agenda of Federal Regulatory and Deregulatory Actions

Why Is the Unified Agenda Published?

All executive departments and establishments subject to Executive Order No. 12866 "Regulatory Planning and Review" of September 30, 1993 (58 FR 51735; October 4, 1993) are required by section 4(b) to publish a regulatory agenda every 6 months. The *Unified Agenda of Federal Regulatory and Deregulatory Actions* is a compilation of these agendas. In addition, the Unified Agenda furthers the purposes of the Regulatory Flexibility Act (5 U.S.C. 602 and 605).

What Regulations Should Agencies Include in Their Agendas?

Regulatory agendas should describe all regulations under development or review during the 12 months following publication. This includes, at a minimum, any plans to publish or otherwise implement an Advance Notice of Proposed Rulemaking, a Notice of Proposed Rulemaking, 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 Executive Order 12866. An agency need not include in its regulatory agenda those rulemaking actions that are excluded by section 3(d)(1)-(4) of Executive Order 12866.

How May Agencies Use the Unified Agenda to Comply with the Periodic Review Requirements of the Regulatory Flexibility Act?

Some agencies choose to use the Unified Agenda to publish notices of the rules they have selected for periodic review under section 610(c) of the Regulatory Flexibility Act. For those agencies, note that section 610(c) of the Act states:

"Each year, each agency shall publish in the Federal Register a list of the rules which have a significant economic impact on a substantial number of small entities, which are to be reviewed pursuant to this section during the succeeding twelve months. The list shall include a brief description of each rule and the need for and legal basis of such rule and shall invite public comment upon the rule."

To facilitate this process, recent editions of the Unified Agenda have provided agencies a means of identifying these entries by appending "(Section 610 Review)" to their titles, highlighting this designation in agency tables of contents and existing indexes, and listing these entries in a separate index. The October 2000 edition will again provide additional options that will enable agencies to identify the Section 610 Review status of individual entries with greater clarity. If you choose to respond to the Section 610 Review question, you may select one of the following labels to append to the title and print in the table of contents and indexes.

(Section 610 Review) -- To report a planned or current review in the prerule part of the agency's agenda. If you identify rules for review under section 610(c), we remind you to include in those entries "a brief description of each rule and the need for and legal basis of such rule." Also, you should "invite public comment upon the rule" in your agency's preamble to the Agenda.

(Completion of a Section 610 Review) -- To report the completion of a review in the completed actions part of the agency's agenda.

(Rulemaking Resulting From a Section 610 Review) -- To report a rulemaking that is the result of a review.

The information that you provide in each Agenda entry should apply to the current activity you are reporting and not to the underlying rule that the agency is reviewing or amending. In particular, the question about whether a regulatory flexibility analysis is required refers to the current action, not the original rule.

The General Accounting Office issued a report on agencies' use of the Unified Agenda for complying with section 610(c) and their interpretations of the review requirements (GAO/GGD-99-55; B-282127; April 1999).

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

Agencies participating in the Unified Agenda should publish their respective portions in the uniform format specified in the instructions of the Regulatory Information Service Center (RISC). RISC edits and compiles the Unified Agenda on behalf of OIRA.

Agencies have three alternative methods to prepare data on individual entries for publication in the Unified Agenda:

(1) Direct Entry. The agency establishes a connection through the Internet between one or more of its own computer terminals and the Unified Agenda data base, which is on the RISC-OIRA Combined Information System (ROCIS). Agency personnel should enter data directly into ROCIS. For preparation of the October 2000 Unified Agenda, ROCIS will be protected by a security procedure.

(2) Data File. An agency that stores its Agenda data in its own data base may choose to send the data to RISC in a single electronic transmission. Agency personnel prepare a file according to the specific file format prescribed by RISC for this option. The agency then establishes a connection through the Internet between one of its own computer terminals and the Unified Agenda data base, which is on the RISC-OIRA Combined Information System (ROCIS). The agency personnel then use ROCIS to transmit the prepared file. If you are interested in data file submission, contact RISC for further information.

(3) Paper Forms. The agency chooses to submit its agenda entries on paper forms and the RISC staff arranges for keying the data into ROCIS. For entries that will appear for the first time in the October 2000 Agenda, you should use Regulatory Information Data Forms marked "4/2000 Edition." To update entries that appeared in the April 2000 Unified Agenda, you should submit marked copies of "Agenda Review Reports" which you have printed from ROCIS.

It is important that you provide in the Timetable section of every entry that is not a completion an estimated date for the "Next Action" -- the first action scheduled to occur on or after October 1, 2000.

For each agency that prepares its agenda by (1) Direct Entry or (2) Data File, ROCIS provides to the agency's agenda contact staff the ability to generate and print out on the agency's own printers all of the agency's entries and an error report. You should use the error report to correct any errors and supply any missing data. When the agency is satisfied that its entries are complete and accurate, a designated person at the agency will be able to submit the entries to RISC electronically through ROCIS.

Direct Entry and Data File agencies should enter their preambles directly into ROCIS. The required, signed copies (see below) should be printed by the agency directly from ROCIS.

For further information about these procedures, please contact RISC.

What Documents Should an Agency Submit?

Each agency participating in the Unified Agenda should submit the following documents to RISC.

(1) One signed original and two certified copies of the preamble to its regulatory agenda. (Please note that the signature is required to be that of the person whose name and title are typed 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.

(2) (*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.

(3) A letter addressed to the Office of the Federal Register (see sample letter) authorizing RISC to assemble the agency's agenda and authorizing the Government Printing Office (GPO) to bill the agency for printing its portion of the Unified Agenda. The letter should include the agency's billing code.

When and How Should Agencies Submit Their Agendas?

The deadline for submission of all completed agenda materials is September 1, 2000.

Agencies should submit the applicable forms and other required documents to the Regulatory Information Service Center (MI), General Services Administration, 1800 F Street NW., Suite 3039, Washington, DC 20405; telephone (202) 482-7340.

RISC will then assemble the entire Unified Agenda and ensure that each agency agenda are compiled and forwarded to GPO for printing in a single day's issue of the *Federal Register*. Each agency will be able to obtain reprint copies of its individual agenda through the GPO procurement process.

How Can Agencies Obtain Further Information?

For further information concerning the content requirements of agency agendas, contact your agency's desk officer in the Office of Information and Regulatory Affairs, Office of Management and Budget.

For further information concerning automated agenda production, specific data requirements, format, completion, or submission of agency agendas, contact the Regulatory Information Service Center; telephone (202) 482-7340.

Guidelines and Procedures for the October 2000 Regulatory Plan

Why Is *The Regulatory Plan* Published?

Section 4(c) of Executive Order 12866 "Regulatory Planning and Review" of September 30, 1993 (58 FR 51735; October 4, 1993) requires agencies to publish an annual regulatory plan as part of the October edition of the *Unified Agenda of Federal Regulatory and Deregulatory Actions*. The 2000 Regulatory Plan will describe the Administration's regulatory and deregulatory policies and priorities for fiscal year 2001.

What Information Should Agencies Include in Their Regulatory Plans?

Each agency's regulatory plan contains a statement of its priorities and descriptions of its most important significant actions:

(1) Statement of Regulatory and Deregulatory Priorities. Under E.O. 12866, an agency is to set forth its "regulatory objectives and priorities and how they relate to the President's priorities" (sec. 4(c)(1)(A)). This statement should be sufficiently specific to ensure that policymakers and those affected will understand your regulatory strategy and long-term priorities. You may want to include a specific reference to the most important significant regulatory actions that will implement these regulatory priorities and to any applicable legislative proposals under development or already initiated by you that will further these regulatory priorities. Agencies need not structure their regulatory plans as *Federal Register* documents because the entire Plan will be presented as a single Governmentwide document.

(2) Descriptions of the Most Important Significant Regulatory Actions. Under E.O. 12866, an agency is to provide a description of the most important significant regulatory actions that it reasonably expects to issue in proposed or final form in fiscal year 2001 that will help implement those priorities. By "most important" significant regulatory actions, we mean only those significant rulemakings that embody the core of your regulatory priorities. You should not include actions that are likely to be completed by October 2000.

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

Agencies participating in *The Regulatory Plan* should prepare their respective portions in the uniform format specified in the instructions of the Regulatory Information Service Center (RISC). RISC edits and compiles the *Unified Agenda* and the Plan on behalf of the Office of Information and Regulatory Affairs (OIRA). RISC can supply you with copies of previous information for any Plan entries, either in paper or electronic form.

(1) Statement of Regulatory and Deregulatory Priorities.

If your agency participated in the 1999 Regulatory Plan, RISC will supply you with a copy of your prior year's Statement. If you submit your data for the Unified Agenda either by direct entry into the RISC-OIRA Combined Information System (ROCIS) or by furnishing an electronic data file, you should enter your Statement directly into ROCIS. You will be able to print your Statement directly from ROCIS on your own computer for agency review prior to submitting your regulatory plan.

If you supply your data for the Unified Agenda on paper forms and RISC enters all of your data, then you should submit both a printed copy of your Statement and a copy on disk, preferably in WordPerfect or Microsoft Word.

(2) Descriptions of the Most Important Significant Regulatory Actions.

Each entry in the Plan should contain all of the data elements that appear in a normal Agenda entry, including a Regulation Identifier Number (RIN), plus the following five additional text fields:

(a) *Statement of Need* (sec. 4(c)(1)(D)).

(b) *Summary of the Legal Basis*. This description should include "whether any aspect of the action is required by statute or court order" (sec. 4(c)(1)(C)).

(c) *Alternatives*. This description should include, to the extent possible, the alternatives the agency has considered or will consider for analysis (sec. 4(c)(1)(B)).

(d) *Anticipated Costs and Benefits*. This description should include "preliminary estimates of the anticipated costs and benefits" of the regulatory action (sec. 4(c)(1)(B)). Consistent with previous guidance we have provided concerning the implementation of E.O. 12866, the description of costs should include both capital (up-front) 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. You need to 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.)

(e) *Risks*. This description should include, if applicable, "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)). 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 and this risk reduction effort to other risks and risk reduction efforts within the agency's jurisdiction.

You should prepare each Plan entry in the same manner and format that you use for a normal Agenda entry. Please update all of the data elements that appeared in the previous edition of the Agenda or Plan. In addition, please include the information required for the five Plan data elements described above.

If your agency prepares its data for the Unified Agenda either by direct entry into ROCIS or by furnishing an electronic data file, ROCIS will give you the ability to generate and print out on your agency's own computers all of your Plan entries and an error report. You should use the error report to locate and correct any errors and supply any missing data. When the agency is satisfied that its entries are complete and accurate, a designated person at the agency will be able to submit the entries to RISC electronically through ROCIS.

What Documents Should an Agency Submit?

Agencies that submit their portions of *The Regulatory Plan* by direct entry or by data file do not need to submit anything on paper. For these agencies, when you indicate in ROCIS that your plan is complete and that you are submitting it, ROCIS will automatically notify RISC and will terminate your access to your plan entries and Statement of Priorities. You will still have access to your other agenda entries.

Any agency participating in the Plan that submits its data on paper forms must submit the following documents to RISC:

- (1) A paper copy of the agency's Statement of Regulatory and Deregulatory Priorities, together with a copy on disk, prepared in either WordPerfect or Microsoft Word.
- (2) A paper copy of the agency's Plan entries. New entries should be on Regulatory Information Data Forms (4/2000 Edition). Repeating entries should be on marked copies of "Agenda Review Reports" that the agency has obtained from RISC.
- (3) A cover letter identifying the enclosures as your agency's Plan submission.

When and How Should Agencies Submit Their Regulatory Plans?

The deadline for submission of all completed Plan materials is August 18, 2000.

Agencies should submit the required documents to the Regulatory Information Service Center (MI), General Services Administration, 1800 F Street NW., Suite 3039, Washington, DC 20405; telephone (202) 482-7340.

RISC will forward agency regulatory plans to OIRA. Within 10 days of receipt, OIRA will send a copy of each agency's regulatory plan to other interested agencies, the Regulatory Policy Advisors,

and the Vice President for review. If you wish to receive a copy of another agency's Plan submission, please notify RISC.

Agencies will have the opportunity to change or add to 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.

GPO will bill each agency for the cost of printing its portions of *The Regulatory Plan* and the Unified Agenda. Because the Plan and the Unified Agenda are submitted by RISC to GPO for publication in a fully coded format, agencies receive a discount from GPO's regular charges.

How Can Agencies Obtain Further Information?

For further information concerning the content requirements of agency regulatory plans, contact your agency's desk officer in the Office of Information and Regulatory Affairs, Office of Management and Budget.

For further information concerning automated production, information requirements, format, or submission of materials, contact the Regulatory Information Service Center; telephone (202) 482-7340.

NOTE: WE HAVE SENT THE INSTRUCTIONS FOR PREPARATION
OF YOUR AGENDA TO BETTY GOLDEN AT YOUR AGENCY.

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