EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
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ADMINISTRATOR
OFFICE OF
INFORMATION AND
REGULATORY
AFFAIRS

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

FROM: Cass R. Sunstein, Administrator, (NS
Office of Information and Regulatory Affairs

SUBJECT: Fall 2012 *Regulatory Plan* and *Unified Agenda of Federal Regulatory and Deregulatory Actions*

This memorandum and its attachments contain guidelines and procedures for publishing the Fall 2012 *Regulatory Plan* (see Attachment 1) and *Unified Agenda of Federal Regulatory and Deregulatory Actions* (see Attachment 2). Publication of the Plan and Agenda represents a key component of the regulatory planning mechanism prescribed in Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735), as incorporated in Executive Order 13563, "Improving Regulation and Regulatory Review" (76 FR 3821).

The Fall 2012 edition of the Unified Agenda and Regulatory Plan will follow the publication format introduced for the Fall 2007 edition, relating to printing in the *Federal Register* only the Agenda information required by the Regulatory Flexibility Act (5 U.S.C. 602 and 610) plus the entire Regulatory Plan. The complete Unified Agenda, including the Plan, will be published online at www.reginfo.gov. For further information about publication format, please refer to the attached guidelines and procedures.

We emphasize that your submissions should be based on careful consideration of the principles and requirements laid out in Executive Order 13563. In particular, your submissions should be designed so as to "promote predictability and reduce uncertainty," and to "use the best, most innovative, and least burdensome tools for achieving regulatory ends." To the extent permitted by law, your submissions should be tailored "to impose the least burden on society . . . taking into account, among other things, and to the extent practicable, the costs of cumulative regulations." Also to the extent permitted by law, a regulation should be proposed or adopted "only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify)."

Agencies should also seek to coordinate, simplify, and harmonize rules, thus reducing costs. Finally, agencies should consider "flexible approaches that reduce burdens" and maintain "freedom of choice for the public," such as "warnings, appropriate default rules, and disclosure requirements." Submissions should be developed only after close examination of Executive Order 13563.

We draw your attention as well to Executive Order 13610, "Identifying and Reducing Regulatory Burdens," which stresses the importance of retrospective review of existing significant regulations, and which imposes a series of requirements designed to promote public participation, priority-setting, and accountability. In particular, Executive Order 13610 requires agencies to report regularly on retrospective review efforts; you should be sure to include in your submissions the rules that emerge from such efforts. Executive Order 13610 also states that agencies "shall give consideration to the cumulative effects of their own regulations, including cumulative burdens," and shall "give priority to reforms that would make significant progress in reducing those burdens while protecting public health, welfare, safety, and our environment." This instruction is consistent with the OIRA guidance memorandum of March 20, 2012, "Cumulative Effects of Regulations," and you should consider this memorandum in preparing your submissions.

Finally, you should carefully consider Executive Order 13609, "Promoting International Regulatory Cooperation," which is designed to promote economic growth, innovation, competitiveness, and job creation through international regulatory cooperation. You should consider in particular the requirements of section 3 of Executive Order 13609, which offers guidance on your submissions.

Preparing and Transmitting Agency Unified Agenda and Regulatory Plan Submissions:

The attachments to this memorandum identify the materials you will need and explain in detail how to prepare agency submissions for the Unified Agenda and Regulatory Plan, whether the agency enters the information directly into the database, transmits a complete electronic file, or submits the information on paper forms. Please follow carefully the procedures explained in the attachments and be sure to include all required documents with your submissions. Your agency may direct any questions regarding the content of its Agenda or Plan submissions to the appropriate desk officer in the Office of Information and Regulatory Affairs, Office of Management and Budget.

It is very important that your agency submits all Regulatory Plan and Unified Agenda materials by September 7, 2012. Please direct your submissions and production questions, as well as requests for additional materials, to the Regulatory Information Service Center (RISC), General Services Administration, One Constitution Square, 1275 First Street NE., 6th Floor, Washington, DC 20417, (202) 482-7340.

How an Agency Can Make Its Regulatory Plan and Unified Agenda Submissions More Open and Informative:

Agencies can help achieve the objective of open government by making clear, meaningful, and informative contributions to *The Regulatory Plan* and Unified Agenda. As you prepare your Regulatory Plan and Unified Agenda submissions, please keep in mind the underlying objectives of better planning and coordination of the regulatory process and the need to make the regulatory process more transparent and accessible. The value of *The Regulatory Plan* and Unified Agenda depends on the accuracy and timeliness of their content. I urge you to take this opportunity to help us make these documents as useful to the public as possible.

Agency introductory narratives in the Fall 2012 Regulatory Plan should include the following, consistent with Executive Orders 13563, 13609, and 13610:

- Agencies should discuss their regulatory priorities. These discussions should address recent legislative and programmatic activities that affect regulation and should provide a context for the regulations identified in the Plan.

- Agencies should highlight rulemakings that are expected to have high net benefits, that is, benefits well in excess of costs.

- Agencies should highlight rulemakings that promote open government and that use disclosure as a regulatory tool.

- Agencies should highlight rulemakings that streamline regulations and reduce unjustified burdens.

- Agencies should identify regulations that are of particular concern to small businesses. These regulations should be discussed in a separate section of the introductory narrative. Serious efforts should be made to minimize burdens on small businesses.

- Agencies should draw on their plans, produced under section 6 of Executive Order 13563, to identify rules that are to be "modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives." Consistent with Executive Order 13610, initiatives that are discussed in those plans should be explicitly identified.

- Agencies should, consistent with Executive Order 13609, identify regulations that have significant international impacts, and designate those regulations as such.

- Agencies should, consistent with Executive Order 13609, include a summary of international regulatory cooperation activities that are reasonably anticipated to lead to significant regulations.

The Unified Agenda offers optional data elements for the URLs of websites with more

information about a rulemaking and for submitting public comments. To help implement OMB's focus on open government, we encourage you to provide information about relevant URLs whenever available. In addition, please include in your agency's preamble a reference to www.regulations.gov, the website for submission of comments on proposed regulations.

Here are some suggestions for actions you can take that can improve your agency's agenda:

- In recent years, a large number of Unified Agenda entries have been for regulatory actions for which no real activity is expected within the coming year. Many of these entries are listed as "Long-Term." Please consider terminating the listing of such entries until some action is likely to occur, unless early announcement has some benefit to readers.

- Many entries are listed with projected dates that have simply been moved forward year after year, with no action taken. Unless your agency realistically intends to take action in the next 12 months, you can remove these items from the Agenda.

- Please review any Agenda entries with a Priority of "Routine and Frequent" or "Informational/Administrative/Other" and consider whether these entries are categorized correctly and whether or not it is likely to be useful to readers to include them.

- The timetables that appear for each entry in the Agenda are particularly important for promoting predictability and for public understanding of the timeframes for participation in the regulatory process. You should make a sincere effort to ensure the accuracy of timetable information.

- An overall effort at improving agency Agenda content should include an emphasis on the consistency of the data. As one example of coordinating related information, please make sure that responses for Priority, Major, Unfunded Mandates, Federalism, and Government Levels Affected are consistent.

- Abstracts should inform readers of the reason the rulemaking is under development and what the agency intends to accomplish. Entries with outdated abstract information or abstracts that merely repeat information that appears in other parts of the entry, such as the title, timetable, and legal authority, detract from the usefulness of the Agenda.

Thank you for your cooperation and prompt attention.

Attachments

Attachment 1

Guidelines and Procedures for the Fall 2012 Regulatory Plan

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 Executive Order 12866 "Regulatory Planning and Review" (58 FR 51735), incorporated in Executive Order 13563 "Improving Regulation and Regulatory Review" (76 FR 3821) requires agencies to publish an annual regulatory plan as part of the Fall edition of the *Unified Agenda of Federal Regulatory and Deregulatory Actions*.

What Regulations Should Agencies Include in Their Regulatory Plans?

Regulatory 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 through October 2012 that will help implement the Administration's policies and priorities. By "most important" significant regulatory 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 Regulatory Plan. You should not include actions that are likely to be completed by October 2012.

How Will the Publication Format Change Introduced in 2007 for the Unified Agenda Affect *The Regulatory Plan*?

The change in publication format has no affect whatsoever on the preparation and review of agency Regulatory Plan submissions.

The entire Unified Agenda, including *The Regulatory Plan*, is available online at www.reginfo.gov. The entire Regulatory Plan will continue to be printed in the **Federal Register**, as in past years, and will therefore continue to be available at GPO Access. In general, the portions of each agency's agenda that are printed in the **Federal Register** are limited to the agency's preamble and any of its entries that are in the agency's regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act, or have been identified for periodic review under section 610 of that Act.

For further information about the new publication format, please see the *Guidelines and Procedures for the Fall 2012 Unified Agenda of Federal Regulatory and Deregulatory Actions*.

How Is *The Regulatory Plan* Organized?

The Regulatory Plan is a single Governmentwide document that appears in the first section of the Fall edition 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 regulatory

plans of participating Federal departments and agencies. Cabinet department plans are printed first, followed by plans of other Executive agencies and independent regulatory agencies.

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

Each department or agency presents its plan entries divided by subagency, if applicable, and then under one of three headings according to the rulemaking stage of the entry. These headings are the same as the first three of the five headings applicable to the Unified Agenda: Prerule, Proposed, and Final rulemaking stages. Unless otherwise specified by the agency, the final sort is by "regulation identifier number" (RIN). All entries are numbered sequentially in the printed **Federal Register** edition, from the beginning to the end of the Plan.

The Plan will also be available online as part of the Unified 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?

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 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. 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.

For the Fall 2012 Plan, and consistent with Executive Orders 13610, 13609, 13563, and 12866, agency introductory narratives should address the following:

- Agencies should discuss their regulatory priorities. These discussions should address recent legislative and programmatic activities that affect regulation and should provide a context for the regulations identified in the Plan.

- Agencies should highlight rulemakings that are expected to have high net benefits, that is, benefits well in excess of costs.

- Agencies should highlight rulemakings that promote open government and that use disclosure as a regulatory tool.

- Agencies should highlight rulemakings that streamline regulations and reduce unjustified burdens.

- Agencies should identify regulations that are of particular concern to small businesses.

These regulations should be discussed in a separate section of the introductory narrative. Serious efforts should be made to minimize burdens on small business.

- Agencies should draw on their plans, produced under section 6 of Executive Order 13563, to identify rules that are to be "modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives." Consistent with Executive Order 13610, initiatives that are discussed in those plans should be explicitly identified.

- Agencies should, consistent with Executive Order 13609, identify regulations that have significant international impacts, and designate those regulations as such.

- Agencies should, consistent with Executive Order 13609, include a summary of international regulatory cooperation activities that are reasonably anticipated to lead to significant regulations.

- Agency Plans should include preliminary estimates of the anticipated costs and benefits of each rule. To the extent feasible, these estimates should be presented in tabular form (with clear notations for consequences that cannot be quantified or monetized). Agencies should highlight rulemakings that are expected to have high net benefits, that is, benefits in excess of costs.

- Each agency should add the individual rule-by-rule estimates into a combined aggregate estimate of the costs and benefits of all its regulations planned for each calendar year or thereafter. The summation methodology should be internally consistent and transparent. The aggregate figures should be provided in a manner that allows for the public to understand the overall impact of the planned regulatory actions.

- For Plan actions required by statute or court order, agencies should provide a specific citation to such statute, order, or other legal authority.

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 "regulation identifier number" (RIN). Each Plan entry also contains two or more of the following additional fields. It must contain at least the Statement of Need and Anticipated Costs and Benefits.

(1) *Statement of Need.* This is a description of the need for the regulatory action (sec. 4(c)(1)(D) of E.O. 12866).

(2) *Summary of the Legal Basis.* This should include a description of the legal basis for the action and whether any aspect of the action is required by statute or court order (sec. 4(c)(1)(C) of E.O. 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 E.O. 12866). Special consideration should be given to flexible approaches that "reduce burdens" and maintain "freedom of choice for the public" (sec. 4 of E.O. 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 E.O. 12866). Under E.O. 13563, agencies must "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 E.O. 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 E.O. 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 Regulatory Plan* should prepare its portion in the same manner and format that it uses for a normal Agenda entry. As with the Agenda, the Regulatory Information Service Center (RISC) edits and compiles the Plan on behalf of the Office of Information and Regulatory Affairs (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.

Reports. As with the Unified Agenda, the RISC OIRA Consolidated Information System (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 Plan entries, for entries updated since a specified date, or for a particular RIN or set of RINs. For each agency that prepares its Plan by direct entry or by data file submission, ROCIS provides the agency's agenda contact staff the ability to generate and print out these reports on the agency's own printers. You should use the Agenda Review Report to review the content of your agency's submission; you should use the Error Report to correct any errors and supply any missing data.

Statement of Regulatory and Deregulatory Priorities. Each direct entry or data file agency must save a copy of last year's statement from ROCIS to its own computer system. Make changes in that file to update the statement for 2012 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 that submit their portions of *The Regulatory Plan* by direct entry or by data file need only email a copy of the agency's Statement of Regulatory and Deregulatory Priorities attached to message indicating that the agency's regulatory plan is complete in ROCIS. These agencies should notify RISC via e-mail when they indicate in ROCIS that their plan is complete and that they are submitting it. ROCIS will terminate access to Plan entries and to statements of priorities. These agencies will still have access to 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, plus an electronic copy.

(2) A paper copy of the agency's Plan entries. New entries should be on the Fall 2012 edition of the Regulatory Information Data Form. 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 September 7, 2012.

Agencies should submit the required documents to the Regulatory Information Service Center (MI), General Services Administration, One Constitution Square, 1275 First Street NE., 6th Floor, Washington, DC 20417; telephone (202) 482-7340.

RISC will upload agency regulatory plans to the MAX Federal Community. A copy of each agency's regulatory plan will be available for review in MAX to other interested agencies and the Regulatory Policy Advisors. If you wish to receive a copy of another agency's Plan submission, please notify OIRA.

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.

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.