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OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

ADMINISTRATOR
OFFICE OF
INFORMATION AND
REGULATORY
AFFAIRS

July 23, 2010

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
Office of Information and Regulatory Affairs

SUBJECT: Fall 2010 *Regulatory Plan* and *Unified Agenda of Federal Regulatory and Deregulatory Actions*

This memorandum and its attachments contain guidelines and procedures for publishing the fall 2010 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).

In his Presidential Memorandum on Regulatory Review of January 30, 2009, President Obama stated that "regulations are critical to protecting public health, safety, our shared resources, and our economic opportunities and security." He also stressed the need for a balanced approach to regulation by stating, "While recognizing the expertise and authority of executive branch departments and agencies, I also believe that, if properly conducted, centralized review is both legitimate and appropriate as a means of promoting regulatory goals."

Executive Order 12866 identifies a number of principles that you should keep in mind, to the extent permitted by law, as you set priorities and prepare your submissions.

First, Executive Order 12866 directs agencies to propose or adopt a regulation "only upon a reasoned determination that the benefits of the intended regulation justify the costs" (recognizing that some benefits are difficult to quantify but are nonetheless essential to consider, such as visibility in national parks).

Second, it requires each agency to "tailor its regulations to impose the least burden on society . . . taking into account, among other things, and to the extent practicable, the costs of cumulative regulations."

Third, it requires agencies to "identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as

user fees or marketable permits, or providing information upon which choices can be made by the public."

Fourth, it directs agencies to design regulations "in the most cost-effective manner to achieve the regulatory objective."

Fifth, it asks each agency to "avoid regulations that are inconsistent, incompatible, or duplicative with its other regulations or those of other Federal agencies."

Sixth, it directs agencies to "select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach."

You should comply with these requirements as you develop your submissions. Consistent with those requirements, OIRA has recently issued guidance on disclosure and simplification as regulatory tools, and you should consult that guidance to the extent that it is relevant to your submissions.

The 2010 Regulatory Plan, together with the Unified Agenda information required to be published by the Regulatory Flexibility Act, will be published in the Federal Register. They also will be published online at www.reginfo.gov. For further information about publication format, please refer to the attached guidelines and procedures.

Preparing and Transmitting Agency Unified Agenda and Regulatory Plan Submissions:

The attachments to this memorandum explain in detail how to prepare agency submissions for the Unified Agenda and Regulatory Plan. 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 about 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 submit all Regulatory Plan and Unified Agenda materials by **September 10**. Please direct your submissions and production questions, as well as requests for additional materials, to the Regulatory Information Service Center (RISC), General Services Administration, 1800 F Street NW., Suite 3039, Washington, DC 20405, (202) 482-7340. OIRA and RISC will be using the Max Community system to provide a new opportunity for interagency comment on the Regulatory Plans. More information about this step will be available in August.

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 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.

With respect to agency introductory narratives in the fall 2010 Regulatory Plan, each agency should:

- Discuss its 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.

- Highlight rulemakings that promote open government and that use disclosure as a regulatory tool.

- Highlight rulemakings that simplify or streamline regulations and reduce or eliminate unjustified burdens.

- Include, to the extent feasible, preliminary estimates of the anticipated costs and benefits of each rule. To promote transparency, these estimates will often be best presented in tabular form (with clear notations for consequences that cannot be quantified or monetized).

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

- To the extent feasible, add the individual rule-by-rule estimates into an aggregate estimate of the costs and benefits of all its regulations planned for each calendar year or thereafter. To supplement and qualify the aggregate estimate, nonquantifiable costs and benefits should be identified as each agency sees fit. The summation methodology should be internally consistent and transparent. The aggregate figures should be provided in a manner that allows the public to understand the overall impact of the planned regulatory actions.

- Identify regulations that are of particular concern to small businesses. These regulations should be discussed in a separate section of the introductory narrative.

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

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 to promote public participation and 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 Government-wide website for submission of comments on proposed regulations.

The following are suggestions to 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 may 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 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 promoting 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, and please review carefully the enclosures concerning preparation of the Regulatory Plan and Unified Agenda.

Attachments

Guidelines and Procedures for the Fall 2010 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) 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 2011 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 2010.

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 2010 Unified Agenda of Federal Regulatory and Deregulatory Actions*.

How Is The Regulatory Plan Organized?

The Regulatory Plan is a single Government-wide 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.

With respect to agency introductory narratives in the fall 2010 Regulatory Plan, each agency should:

- Discuss its 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.

- Highlight rulemakings that promote open government and that use disclosure as a regulatory tool.

- Highlight rulemakings that simplify or streamline regulations and reduce or eliminate unjustified burdens.

- Include, to the extent feasible, preliminary estimates of the anticipated costs and benefits of each rule. To promote transparency, these estimates will often be best presented in tabular form (with clear notations for consequences that cannot be quantified or monetized).

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

- To the extent feasible, add the individual rule-by-rule estimates into an aggregate estimate of the costs and benefits of all its regulations planned for each calendar year or thereafter. To supplement and qualify the aggregate estimate, nonquantifiable costs and benefits

should be identified as each agency sees fit. The summation methodology should be internally consistent and transparent. The aggregate figures should be provided in a manner that allows the public to understand the overall impact of the planned regulatory actions.

- Identify regulations that are of particular concern to small businesses. These regulations should be discussed in a separate section of the introductory narrative.

- For Plan actions required by statute or court order, 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).

(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). 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 qualitative terms and 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.) If benefits or costs cannot be monetized, but can be quantified, it is appropriate to provide quantitative information without using monetary equivalents.

(5) *Risks*. This 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) of E.O. 12866). To the extent feasible, 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, 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 2010 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 submit a paper copy of the agency's Statement of Regulatory and Deregulatory Priorities. 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 2010 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?

It is very important that your agency submits all Regulatory Plan materials by **September 10, 2010**.

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 and the Regulatory Policy Advisors for review. 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.

GPO will bill each agency for the cost of printing its portions of The Regulatory Plan and the Agenda that appear in the **Federal Register**. Because RISC submits the Plan 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 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.

Guidelines and Procedures for the Fall 2010 Unified Agenda of Federal Regulatory and Deregulatory Actions

Why Is the Unified Agenda Published?

All executive departments and establishments subject to Executive Order 12866 "Regulatory Planning and Review" (58 FR 51735) 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, 605, and 610); Executive Order 13132 entitled "Federalism," signed August 4, 1999 (64 FR 43255); the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, title II); and the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104-121, title II).

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. Agencies have the option of including activities that will have a next 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 2010 Edition of the Unified Agenda Be Published?

The fall edition of the Unified Agenda will follow the new publication format that has been in use since the fall 2007 edition. The Internet is now the basic means for disseminating the Agenda. Publication in the **Federal Register** is mandated for the regulatory flexibility agendas required by the Regulatory Flexibility Act and therefore it will continue. The Regulatory Plan will also continue to be printed. The Unified Agenda is now available online in its entirety, at www.reginfo.gov, in a format that offers users a greatly enhanced ability to obtain information from the Agenda database. Agency agendas printed in the **Federal Register** will consist of the following:

(1) the agency's Agenda preamble;
(2) rules that are in the agency's regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act, because they are likely to have a significant economic impact on a substantial number of small entities; and
(3) any rules that the agency has identified for periodic review under section 610 of the Regulatory Flexibility Act.

Printing of these entries will be limited to fields that contain information required by the Regulatory Flexibility Act's Agenda requirements (5 U.S.C. 602). Additional information on these entries will be available in the Unified 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. For fall editions of the Agenda, the ***entire*** Regulatory Plan will continue to be printed, as in past years. Under **Federal Register** regulations, GPO Access will have the same content as the printed **Federal Register**.

How Does the New Publication Format of the Unified Agenda Affect Preparation and Review of an Agency's Agenda Data?

Because the entire Unified Agenda will continue to be available to the general public online, each agency should prepare all of its data for the Unified Agenda with the same degree of care and attention that has been required for previous editions. All Agenda information, whether or not it will be printed in the **Federal Register**, will be reviewed for content, completeness, consistency, and accuracy.

In the past, the Regulatory Information Service Center (RISC) has supplied agencies with "galleys" of their Agenda and Plan submissions for review and updating approximately 4 weeks prior to final publication. To enable agencies to have the same opportunity for review and updating, RISC will continue to make electronic files available to agencies in the same time frame, which will have the appearance of complete printed galleys, even though only a portion may actually be printed in the **Federal Register**.

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

The Agenda that will be printed in the **Federal Register** for fall 2010 will, in general, follow the organizational pattern of prior fall editions of the Unified Agenda but will display only The Regulatory Plan and 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 Plan and the Agenda, followed by the entire Regulatory Plan. 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."

Each agency presents its entries, divided by subagency if applicable, under one of five headings according to the rulemaking stage of the entry. The stages are:

1. *Prerule Stage*--actions agencies will undertake to determine whether or how to initiate rulemaking. Such actions occur prior to a Notice of Proposed Rulemaking (NPRM) and may include an Advance Notice of Proposed Rulemaking (ANPRM) or a review of existing regulations.

2. *Proposed Rule Stage*--actions for which agencies plan to publish a Notice of Proposed Rulemaking as the next step in their rulemaking process or for which the closing date of the NPRM Comment Period is the next step.

3. *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.

4. *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 edition of the Unified Agenda. Some of the entries in this section may contain abbreviated information.

5. *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 Unified Agenda.

Some agencies use Agency Sort Codes to arrange the order of their entries in the printed Agenda, with the final sort by "regulation identifier number" (RIN).

A bullet (•) preceding the title of an entry indicates that the entry is appearing in the Unified 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 edition. The printed Agenda will not have any separate indexes.

How Will the Online Unified Agenda Be Organized?

The entire Unified 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. The Agenda will have an alphabetical Subject Matter Index based on the *Federal Register Thesaurus of Indexing Terms*, as in past editions. Because the online Agenda will not utilize sequence numbers, the Subject Matter Index will be linked to individual entries by hot-linked RINs. Each individual entry may be viewed in its entirety.

The other indexes that appeared in editions prior to fall 2007 are no longer necessary because users can select and search for the specific characteristics of the entries they want to view. For example, to obtain a list of all entries that are Section 610 Reviews under the Regulatory Flexibility Act or to obtain a list of all entries that have federalism implications or unfunded mandates, a user would select the desired responses on the search screen and, in effect, generate the desired "index."

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

All entries in the online Unified 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:

(1) **Economically Significant**--As defined in Executive Order 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 5 U.S.C. 801 (Pub. L. 104-121). (See below.) These rules are generally included in the agency's regulatory plan, which appears only in the fall editions of the Unified Agenda.

(2) **Other Significant**--A rulemaking that is not economically significant but is considered significant by the agency. This category includes rules that the agency anticipates will be reviewed under E.O. 12866 or rules that are a priority of the agency head. These rules may or may not be included in the agency's regulatory plan.

(3) **Substantive, Nonsignificant**--A rulemaking that has substantive impacts but is neither Significant, nor Routine and Frequent, nor Informational/Administrative/Other.

(4) **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.

(5) **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 Unified Agenda to inform the public of the activity.

Major--an indication that a rule may be "major" under 5 U.S.C. 801 (Pub. L. 104-121) 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 in that Act. The Act provides that the Administrator of the Office of Information and Regulatory Affairs will make the final determination as to whether a rule is major.

Unfunded Mandates--whether the rule is covered by section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). The Act 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 1 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 the Act, this data element will not be printed.

Legal Authority--the section(s) of the United States Code or Public Law or the Executive order that authorize(s) the regulatory action. Agencies may provide popular name references to laws in addition to these citations.

CFR Citation--the 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 an 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 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 is predicting 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 you provide in the Timetable section an estimated date for the "Next Action"--the first action scheduled to occur on or after October 1, 2010--or indicate "Next Action Undetermined."

Regulatory Flexibility Analysis Required--whether the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) 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 Regulatory Flexibility Act. 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 Executive Order 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. Affected Sectors are identified by North American Industry Classification System (NAICS) codes.

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 Executive Order 13211 "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," signed May 18, 2001 (66 FR 28355).

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 Regulatory Flexibility Act (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--if available, enter a URL for a website that provides 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 Governmentwide e-rulemaking address: http://www.regulations.gov.

The data elements printed for an entry appearing in the **Federal Register** (other than Regulatory Plan entries in fall editions) will be limited to the information required by the Regulatory Flexibility Act. These elements are: Title; Section 610 Review, if applicable; Legal Authority; Abstract; Timetable; Regulatory Flexibility Analysis Required; Agency Contact; and Regulation Identifier Number (RIN). In fall editions, all Regulatory Plan entries are printed in full in the **Federal Register**.

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 the Regulatory Information Service Center (RISC). RISC edits and compiles the Unified Agenda on behalf of the Office of Information and Regulatory Affairs (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 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.

(2) 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 September 11 deadline. If you are interested in data file submission, contact RISC for further information.

(3) Paper Forms. Agencies that cannot use direct entry or submit a data file may choose to submit their Agenda entries on paper forms. The RISC staff will key the data into ROCIS. For entries that will appear for the first time in the fall 2010 Agenda, you should use only the fall 2010 edition 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 spring 2010 Unified Agenda, you should submit marked copies of 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. You should use the Agenda Review Report to review the content of your agency's submission; you should use the Error Report to help you correct any errors and supply any missing data.

Preambles. If your agency is 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 Agenda. Make changes in that file to update the preamble for the fall 2010 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). If you supply your data for the Unified Agenda on paper forms and RISC enters all of your data, then you should submit a printed signed copy of your preamble and two certified copies.

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. (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. ***In addition, please submit an electronic scanned copy of the signed preamble.***

(2) *(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.

(3) A letter addressed to the Office of the Federal Register (see sample letter attached in the data call transmittal email) 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?

<u>The deadline for submission of all completed agenda materials is September 10, 2010.</u>

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 arrange for online publication at www.reginfo.gov. RISC will also ensure that all agency regulatory flexibility agendas are compiled and forwarded 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 the Agenda is submitted by RISC 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 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.