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

March 12, 2012

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

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

This memorandum and its attachment contain guidelines and procedures for publishing the spring 2012 *Unified Agenda of Federal Regulatory and Deregulatory Actions*. Publication of the Agenda represents a key component of the regulatory planning mechanism prescribed in Executive Order 12866 "Regulatory Planning and Review" (58 FR 51735) and incorporated by reference in the President's Executive Order 13563 on Improving Regulation and Regulatory Review, issued on January 18, 2011. The spring 2012 edition of the Unified Agenda will follow the publication format in use since 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). The complete Unified Agenda will be published online at www.reginfo.gov. For further information about publication format, please refer to the attached guidelines and procedures.

As you design your submissions, we ask that you give especially careful attention to the principles and requirements identified in Executive Order 13563, "Improving Regulation and Regulatory Review."

Preparing and Transmitting Agency Unified Agenda Submissions:

The attachment to this memorandum identifies the materials you will need and explains in detail how to prepare agency submissions for the Unified Agenda, 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 attachment and be sure to include all required documents with your submission. Your agency may direct any questions regarding the content of its Agenda submission 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 Unified Agenda materials by April 13, 2012. Please direct your submission 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., 623B, Washington, DC 20417, (202) 482-7340.

Ways for an Agency To Make Its Unified Agenda Submission More Open and Informative to the Public:

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

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 promote accessibility, 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.

Here are some suggestions for steps 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.

- Many entries are listed with projected dates that have simply been moved back 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 consult RISC or your desk officer for options to preserve RINs for particular actions that fall into this category.

- 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 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.

Attachment

Guidelines and Procedures for the Spring 2012 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). A central goal of the Unified Agenda is to promote transparency and open government.

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 Spring 2012 Edition of the Unified Agenda Be Published?

The spring edition of the Unified Agenda will follow the 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 Unified Agenda is 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. 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 four 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 spring 2012 will, in general, follow the organizational pattern of prior spring editions of the Unified Agenda but will display only 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 Agenda. The individual agency agendas will then appear in separate parts, organized alphabetically in four groups: Cabinet departments; other executive agencies; the Federal Acquisition Regulation, a joint authority; and independent regulatory agencies. Departments may be divided into their component agencies. If an agency has no entries in the printed **Federal Register** version of the Agenda, its preamble will not be printed, and the agency will not have a separate part in the **Federal Register**.

Each agency's part of the Agenda begins with a preamble providing information specific to that part. RISC will provide a table of contents for each agency after the agency's preamble. The table of contents will list the agency's printed entries. Agencies should consider including in their Agenda preambles a statement indicating that the agency's complete regulatory agenda is available online at www.reginfo.gov. RISC provides some suggested language for this purpose in the "Unified Agenda News."

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). OMB has also asked agencies to include RINs in the headings of their Final and Proposed Rule Documents published in the **Federal Register** to make it easier for the public and agency officials to track the publication history of regulatory actions through their development.

A bullet (•) preceding the title of an entry indicates that the entry is appearing in the 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 April 1, 2012—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 Government-wide 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 April 13th 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 spring 2012 Agenda, you should use only the spring 2012 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 fall 2011 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 spring 2011 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) 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 April 13, 2012. This is a firm deadline.

Agencies should submit the applicable forms and other required documents to the Regulatory Information Service Center (MI), General Services Administration, One Constitution Square, 1275 First Street NE., Washington, DC 20417; 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, 623B, 1275 First Street NE, Washington DC 20417; telephone (202) 482-7340.