

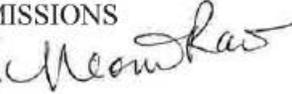


EXECUTIVE OFFICE OF THE
PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

August 18, 2017

ADMINISTRATOR
OFFICE OF
INFORMATION AND
REGULATORY
AFFAIRS

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

FROM: Neomi Rao, Administrator 
Office of Information and Regulatory Affairs

SUBJECT: Data Call for the Fall 2017 *Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions*

This Data Call requests information for compilation of the Fall 2017 Regulatory Plan (Plan) and Unified Agenda of Federal Regulatory and Deregulatory Actions (Agenda). The Plan and Agenda provide important public notice and transparency about proposed regulatory and deregulatory actions within the Executive Branch. This process highlights agency priorities, promotes planning and coordination, and encourages public participation in the regulatory process.

Submissions to the Agenda are due by September 18, 2017. This memorandum and its attachments contain guidelines and procedures for publishing the Plan (Attachment 1) and Agenda (Attachment 2); as well as the designation worksheet for compliance with Executive Order (EO) 13771 (Attachment 3). Publication of the Plan and Agenda represent a key component of a longstanding regulatory planning mechanism. See EO 12866, "Regulatory Planning and Review," [58 FR 51735](#) (September 30, 1993).

As you draft your submissions, please give particular attention to EO 13771 "Reducing Regulation and Controlling Regulatory Costs," [82 FR 9339](#) (January 30, 2017). EO 13771 recognizes "it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations." (Sec. 1). The requirements of EO 13771 are further explicated in the "Guidance Implementing Executive Order 13771," ([M-17-21](#), April 5, 2017) (Guidance). Consistent with these principles, your agency's submissions should adhere to the following EO 13771 requirements to the extent permitted by law.

1. - For its Regulatory Plan, an agency should summarize regulatory and deregulatory priorities. In addition, the Plan should provide an agency's aggregate number of anticipated regulatory and deregulatory actions and incorporate by reference the itemized

actions in the Agenda in order to satisfy Section 3 of EO 13771. Section 3(a) states that “Beginning with the Regulatory Plans ... for fiscal year 2018, and for each fiscal year thereafter, the head of each agency shall identify, for each regulation that increases incremental cost, the offsetting regulations described in Section 2(c) of this order, and provide the agency’s best approximation of the total costs or savings associated with each new regulation or repealed regulation.” More detailed instructions for this requirement can be found in Attachment 1.

2. In its Agenda, an agency should counterbalance the costs of anticipated regulatory actions issued within the fiscal year with cost savings from anticipated deregulatory actions in order to demonstrate anticipated compliance with its total incremental cost allowance.
3. Agencies should further offset the number of anticipated regulatory actions they plan to issue in FY 2018 with anticipated deregulatory actions. By the end of FY 2018, this should result in at least two deregulatory actions taken for each regulatory action (absent waivers).
4. Beginning with this Fall 2017 Agenda and as required by EO 13771, agencies should not issue regulations that have not been included in the most recent version or update of the Agenda, unless otherwise required by law or approved in advance in writing by the Director of the Office of Management and Budget (OMB). This requirement applies to all significant regulatory actions, both proposed and final. Consistent with EOs 12866 and 13771, agencies’ Agendas should provide an exhaustive list of the regulatory activities they have planned for the year. Going forward, if an agency plans to issue regulations that were not in the most recent Agenda, they will need to request a waiver. Guidance on the EO 13771 waiver process is forthcoming.

Preparing and Transmitting Agency Regulatory Plan and Unified Agenda Submissions:

The attachments to this memorandum identify the materials you will need and explain in detail how to prepare your agency’s submission for the Plan and Agenda (whether you enter the information directly into the database, transmit a complete electronic file, or submit the information on paper forms). Please follow the procedures explained in the attachments carefully and be sure to include all required documents with your submission.

Your agency may direct any questions regarding the content of its Plan and Agenda submission to the appropriate desk officer in the Office of Information and Regulatory Affairs (OIRA), OMB.

It is very important that your agency submit all Plan and Agenda materials by **September 18, 2017**. Please submit electronically directly into ROCIS or email XML submissions to your RISC analyst. Please email paper submissions to the agency's RISC analyst or submit to Regulatory Information Service Center (RISC), General Services Administration, 1800 F Street NW., Room 2219F, Washington, DC 20405-0001. For further information concerning automated production, information requirements, format, or submission of materials, contact your analyst at the RISC, (202) 482-7340.

Consistent with prior practice, the complete Plan and Agenda will be published online at www.reginfo.gov as well as in the *Federal Register* in a more streamlined format. For further information about publication format, please refer to the attached guidelines and procedures.

Making the Regulatory Plan and Unified Agenda Submissions More Open and Informative to the Public

As you prepare your submission, please keep in mind that agencies can help achieve the objectives of open government by making clear, meaningful, and informative contributions to the Plan and Agenda. By supplying accurate and timely content, you will increase the transparency and accessibility of the regulatory process, which maximizes the value of these documents to the public and also improves planning and coordination.

The 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 preamble a reference to www.regulations.gov, the government-wide website for the submissions of comments on proposed regulations.

In addition, consistent with the requirements of EOs 12866 and 13771, agencies must publish and assign "regulatory identification numbers" RINs to all anticipated regulatory and deregulatory rulemakings. In order to ensure accurate accounting for an EO 13771 deregulatory regulation, agencies should assign a RIN to the action and publish it in an Agenda.

Beginning with the Fall 2017 Agenda, a new data field requires agencies to classify regulatory actions to provide greater transparency to the public. For each anticipated action, agencies will now provide a preliminary EO 13771 designation as defined by Guidance (i.e. "deregulatory," "regulatory," "exempt," "waived," or "other"). Attachment 2 and forthcoming RISC instructions provide further detail on this new data requirement.

The process for designating "significant" regulatory actions set forth in EO 12866 has not changed and we ask that you consult with your agency's OIRA desk officer on significance determinations for planned regulatory actions.

An Agency's introductory narrative in the Fall 2017 Regulatory Plan should include the following. See Attachment 1 for further detail.

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

Agencies should, consistent with EO 13771, present the aggregated number of anticipated regulatory and deregulatory regulations. Agencies should further expressly note that the count of EO 13771 deregulatory regulations excludes non-rulemakings, such as guidance or information collections, that will not appear in the Agenda. Agencies may also wish to briefly acknowledge either broad categories of anticipated deregulatory actions or specific examples of anticipated deregulatory actions that will not appear in the Agenda.

- Agencies should highlight rulemakings expected to have large net benefits (where benefits exceed 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 interest to small business. Please discuss these regulations in a separate section of the introductory narrative.
- Agencies should draw their plans in accordance with Section 6 of Executive Order 13563, "Improving Regulation and Regulatory Review," [76 FR 3821](#) (January 18, 2011) to conduct retrospective review of existing rules to identify rules that are "outmoded, ineffective, insufficient, or excessively burdensome," and to determine whether such regulations should be "modified, streamlined, expanded, or repealed" to make regulatory programs more effective or less burdensome in achieving their regulatory objectives.

The following are suggested steps you can take to improve your agency's Agenda:

- In recent years, a large number of Unified Agenda entries have reflected regulatory actions for which no substantial activity was expected within the coming year. Many of these entries are listed as "Long-Term." We have retained the ability to list these items in the Agenda, and see merit in their continued inclusion, particularly notable rulemakings that may not conclude in the coming year. Please, however, consider whether the listing of such entries

benefits the public.

- Many entries are listed with projected dates that have simply been moved forward year after year, with no action taken. Unless the agency realistically intends to take action over the next 12 months, please consider removing these items from the Agenda.
- Please review any Unified Agenda entries marked “Routine and Frequent” or “Informational/Administrative/Other” and consider whether these entries (1) are categorized correctly and (2) meet the criteria for inclusion in the Unified Agenda under Executive Order 12866.
- The timetables that appear for each entry in the Unified Agenda are particularly important for public understanding of the timing for participation in the regulatory process. Please take all reasonable steps to ensure the accuracy of timetable information.
- Maintaining the quality of Unified Agenda content requires consistency of agency data. As one example of coordinating related information, please make sure that responses for Priority, EO 13771 designation, Major, Unfunded Mandates, Federalism, and Government Levels Affected are consistent within an agency.
- Abstracts should inform readers of the reason the rulemaking is under development and what the agency intends to accomplish. Entries with outdated information, or abstracts that merely repeat content appearing elsewhere in the entry—such as the title, timetable, or legal authority—detract from the usefulness of the Agenda, and should be avoided.

An Update on Inactive Actions

Beginning with the 2017 update to the Agenda, inactive actions, which do not appear in the Agenda, were published on reginfo.gov. In the Fall 2017 Agenda and going forward, inactive actions will continue to be published on reginfo.gov. Inactive actions will also be chronologically searchable. See Attachment 2 for further detail.

Thank you for your prompt attention to this call for data. All submissions are due by **September 18, 2017**.

Attachments

ATTACHMENT 1

Guidelines and Procedures for the Fall 2017 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 EO 12866, supplemented and reaffirmed by EO 13563, requires agencies to publish an annual regulatory plan as part of the Fall 2017 Unified Agenda of Federal Regulatory and Deregulatory Actions.

What Regulations Should Agencies Include in Their Regulatory Plans?

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 2018. By "most important" significant regulatory and deregulatory 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 Plan. You should not include actions that are likely to be completed by October 2017.

How Is The Regulatory Plan Organized?

The Plan is a single Government-wide document that appears in the first section of the 2017 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 plans of participating Federal departments and agencies. Cabinet department's plans are printed first, followed by plans of other Executive agencies and independent regulatory agencies.

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

Each department or agency presents its plan entries divided by sub agency, if applicable, and then categorized as follows. First, each Plan should group regulations according one of five preliminary EO 13771 designations. Next, within each EO 13771 category, each Plan should group actions under one of three headings according to the rulemaking stage of the entry. These headings are the same as those in the EO 13771 preliminary designation menu and the first three of five headings applicable to the Agenda:

- *Deregulatory, Regulatory, Exempt, Waived, Other.* Group regulations under these headings and then sort by anticipated rulemaking stage.
- *Prerule, Proposed, and Final rulemaking stages.* Unless otherwise specified by the agency, the final sort within each stage 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 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?

As specified in the data call, 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 and deregulatory actions that will implement these 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.

What Information Should Appear in the Plan in Order to Satisfy Section 3 of EO 13771?

Each agency's Plan narrative should reference the requirements under Section 3(a) of EO 13771 and provide further detail as specified in the data call.

An agency's preliminary EO 13771 designation, the abstract, and preliminary cost estimates will be viewed as satisfying EO 13771's Section 3 regulatory cost submission requirements. See Attachment 3 for best practices in estimating costs and cost savings of anticipated EO 13771 actions.

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 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 EO 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 EO 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 EO 12866). Special consideration should be given to flexible approaches that "reduce burdens" and maintain "freedom of choice for the public" (Sec. 4 of EO 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 EO 12866).

Under EO 13563, agencies are directed to “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 EO 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 EO 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 Plan should prepare its portion in the same manner and format that it uses for a normal Agenda entry. As with the Agenda, RISC edits and compiles the Plan on behalf of 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. Agencies will also receive the same RISC reports that accompany Agenda submissions.

Statement of Regulatory and Deregulatory Priorities. Each agency must save a copy of last year’s statement from ROCIS to its own computer system, and make changes in that file to update the statement for 2017, 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 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.

Agencies that cannot use direct entry or submit a data file may choose to submit their Unified Agenda entries on paper forms. Any agency participating in the Plan that submits its data on paper forms must submit the following documents to RISC:

- A paper copy of the agency's Statement of Regulatory and Deregulatory Priorities, plus an electronic copy.
- A paper copy of the agency's Plan entries. New entries should be on the fall 2013 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.
- A cover letter identifying the enclosures as your agency's Plan submission.

When and How Should Agencies Submit Their Regulatory Plans?

Please submit electronically directly into ROCIS or email XML submissions to your RISC analyst. Please email paper submissions to the agency's RISC analyst or submit to Regulatory Information Service Center (RISC), General Services Administration, 1800 F Street NW., Room 2219F, Washington, DC 20405-0001. For further information concerning automated production, information requirements, format, or submission of materials, contact your analyst at the RISC, (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 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.

ATTACHMENT 2

Guidelines and Procedures for the Fall 2017 Unified Agenda of Federal Regulatory and Deregulatory Actions

Why Publish the Unified Agenda for Regulatory and Deregulatory Actions?

Section 4(b) of EO 12866 requires agencies to publish a regulatory and deregulatory agenda. The Unified Agenda of Federal Regulatory and Deregulatory Actions is a compilation of each agency's regulatory agenda. A central goal of the Agenda is to promote transparency and open government. The Fall Agenda also includes The Regulatory Plan.

In addition, the Agenda furthers the purposes of the Regulatory Flexibility Act (5 U.S.C. § 601 et seq.) (RFA); EO 13771; EO 13563; EO 13132, "Federalism," [64 FR 43255](#) (August 4, 1999); the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1501–04, 1531–38, 1551–56 (UMRA); and the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. § 601 note (SBREFA).

What Regulations Should Agencies Include in Their Agendas?

Regulatory agendas should describe all regulations (regulatory and deregulatory) under development or review during the 12 months following publication. Agencies should include, at a minimum, any plans to publish or otherwise implement an advance notice of proposed rulemaking (ANPRM), a notice of proposed rulemaking (NPRM), or a final rule. Agencies may include any plans to conduct a review pursuant to 5 U.S.C. § 610(c) or Section 5 of EO 12866. An agency need not include in its regulatory agenda those rulemaking actions that are excluded by Section 3(d)(1)–(4) of EO 12866.

Agencies have the option of including activities that will result in action beyond 12 months. However, such entries should be limited to rulemakings for which listing in the Unified Agenda will provide a benefit to users. Agency agendas also should include actions or reviews completed or withdrawn since the last Agenda.

In What Format Will the Fall 2017 Unified Agenda Be Published?

The Unified Agenda will be available online, in its entirety, at www.reginfo.gov, in a format that offers users the ability to obtain information easily from the Unified Agenda database. Publication in the *Federal Register* is mandated for the regulatory flexibility agendas required by the RFA, and therefore it will continue. Agency agendas printed in the *Federal Register* will consist of the following:

- The agency's agenda preamble;

- Rules that are in the agency’s regulatory flexibility agenda, in accordance with the RFA, because they are likely to have a significant economic impact on a substantial number of small entities;
- Any rules that the agency has identified for periodic review under Section 610 of the RFA;
- The agency’s preliminary EO 13771 designation for each listed rule.

Printing of these entries will largely be limited to fields that contain information required by the RFA’s agenda requirements (5 U.S.C. § 602). Additional information on these entries will be available in the Unified Agenda published on the Internet. If an agency has no entries in the printed *Federal Register* version of the Unified Agenda, its preamble will not be printed. Under *Federal Register* regulations, GPO Access will have the same content as the printed *Federal Register*.

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

The portion of the Agenda that will be printed in the *Federal Register* for fall 2017 will, in general, follow the organizational pattern of prior publications of the Agenda, displaying primarily the information required in the regulatory flexibility agenda, along with agency preambles, and the action’s preliminary EO 13771 designation. Part II of the *Federal Register* on the day of publication will have RISC’s Introduction to the Unified Agenda. The individual agency agendas will then appear in separate parts, organized alphabetically in four groups: Cabinet departments; other Executive agencies; the Federal Acquisition Regulation, a joint authority; and independent regulatory agencies. Departments may be divided into their component agencies. If an agency has no entries in the printed *Federal Register* version of the Agenda, its preamble will not be printed, and the agency will not have a separate part in the *Federal Register*.

Each agency’s part of the Agenda begins with a preamble providing information specific to that part. RISC will provide a table of contents for each agency after the agency’s preamble. The table of contents will list the agency’s printed entries. Agencies should consider including in their Agenda preambles a statement indicating that the agency’s complete regulatory agenda is available online at www.reginfo.gov. RISC provides some suggested language for this purpose in the “Unified Agenda News” section of RISC’s website. Each agency presents its entries, divided by sub-agency if applicable, under one of five headings according to the rulemaking stage of the entry. The stages are:

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

- *Proposed Rule Stage* - actions for which agencies plan to publish an NPRM as the next step in their rulemaking process or for which the closing date of the NPRM comment period is the next step.
- *Final Rule Stage* - actions for which agencies plan to publish a final rule or an interim final rule or to take other final action as the next step.
- *Long-Term Actions* - items under development but for which the agency does not expect to have a regulatory action within the 12 months after publication of this update of the Agenda. Some of the entries in this section may contain abbreviated information.
- *Completed Actions* - actions or reviews the agency has completed or withdrawn since publishing its last Agenda. This section also includes items the agency began and completed between issues of the Agenda.

Some agencies use Agency Sort Codes to arrange the order of their entries in the printed Unified Agenda, with the final sort by RIN. OMB has also asked agencies to include RINs in the headings of their final and NPRM documents published in the Federal Register to make it easier for the public and agency officials to track the publication history of regulatory actions through their development.

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

How Will the Online Unified Agenda Be Organized?

The entire Agenda will be available online at www.reginfo.gov. The Agenda will be presented in the form of a searchable database rather than as a single document that is ordered according to a prescribed sequence. Users will be able to view an individual agency's complete agenda. Because the online Unified Agenda will not utilize sequence numbers, the Subject Matter Index will be linked to individual entries by hyperlinked RINs. Each individual entry may be viewed in its entirety.

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

All entries in the online Agenda contain uniform data elements including, at a minimum, the following information:

- *Title of the Regulation* - a brief description of the subject of the regulation.
- *Priority* - An indication of the significance of the regulation. Agencies assign each entry to one of the following five categories of significance:

- *Economically Significant* - as defined in EO 12866, a rulemaking action that will have an annual effect on the economy of \$100 million or more or will adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities. The definition of an “economically significant” rule is similar but not identical to the definition of a “major” rule under the Congressional Review Act, 5 U.S.C. § 801 et seq. (“CRA”). (See below.)
- *Other Significant* - a rulemaking that is not economically significant but is considered significant by the agency according to Section 3(f) of EO 12866. This category includes rules that the agency anticipates will be reviewed under EO 12866 or rules that are a priority of the agency head.
- *Substantive, Non-significant* - a rulemaking that has substantive impacts but is neither Significant, nor Routine and Frequent, nor Informational/Administrative/Other.
- *Routine and Frequent* - a rulemaking that is a specific case of a multiple recurring application of a regulatory program in the Code of Federal Regulations and that does not alter the body of the regulation.
- *Informational/Administrative/Other* - a rulemaking that is primarily informational or pertains to agency matters not central to accomplishing the agency’s regulatory mandate but that the agency places in the Agenda to inform the public of the activity.
- *Major* - an indication that a rule may be “major” under the CRA because it has resulted in or is likely to result in an annual effect on the economy of \$100 million or more or meets other criteria specified. The CRA provides that the Administrator of OIRA will make the final determination as to whether a rule is major.
- *Unfunded Mandates* - whether the rule is covered by Section 202 of UMRA. UMRA requires that, before issuing an NPRM likely to result in a mandate that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector of more than \$100 million in one year, agencies (other than independent regulatory agencies) shall prepare a written statement containing an assessment of the anticipated costs and benefits of the Federal mandate. If the agency believes the entry is not subject to UMRA, this data element will not be printed.
- *Legal Authority* - the section(s) of the United States Code or Public Law or the EO that authorize(s) the regulatory action. Agencies may provide popular name references to laws in addition to these citations.
- *CFR Citation* - the part(s) or section(s) of the Code of Federal Regulations that will be affected by the action.
- *Legal Deadline* - whether the action is subject to a statutory or judicial deadline, the date of that deadline, and whether the deadline pertains to a NPRM, a final action, or some other action.
- *Abstract* - a brief description of the problem the regulation will address; the need for a Federal solution; to the extent available, alternatives that the agency is considering to address the problem; and potential costs, cost savings, and benefits of the action. See

Attachment 3 for further detail on how to provide cost and cost savings estimates in satisfaction of EO 13771 requirements.

- *Timetable* - the dates and citations (if available) for all past steps and a projected date for at least the next step for the regulatory action. A date printed in the form mm/00/yyyy means the agency predicts the month and year the action will take place but not the day it will occur. In some instances, agencies may indicate what the next action will be, but the date of that action is “To Be Determined.” Agencies indicate this by entering a date in the form 00/00/0000. “Next Action Undetermined” indicates the agency does not know what action it will take next. For every entry that is not a completion, it is important that the agency provide in the Timetable section an estimated date for the “Next Action”, the first action scheduled to occur on or after the listed action. In the alternate, the agency should indicate “Next Action Undetermined.”
- *EO 13771 Designation* - the preliminary EO 13771 designation as defined by Guidance: “deregulatory,” “regulatory,” “exempt,” “waived,” “other.” A similar menu will accompany Information Collection Request (ICR) submissions.
- *Regulatory Flexibility Analysis Required* - whether the RFA requires an analysis because the rulemaking action is likely to have a significant economic impact on a substantial number of small entities as defined by the Act.
- *Small Entities Affected* - the types of small entities (businesses, governmental jurisdictions, or organizations) on which the rulemaking action is likely to have an impact as defined by the RFA. Agencies have the option of indicating likely effects on small entities even though they believe that a Regulatory Flexibility Analysis will not be required.
- *Government Levels Affected* - whether the action is expected to affect levels of government and, if so, whether the governments are State, local, tribal, or Federal.
- *International Impacts* - whether the regulation is expected to have international trade and investment effects, or otherwise may be of interest to our international trading partners.
- *Federalism* - whether the action has “federalism implications” as defined in EO 13132. This term refers to actions “that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” If the action does not have federalism implications, this data element will not be printed. Independent regulatory agencies are not required to supply this information.
- *Agency Contact* - the name and phone number of at least one person in the agency who is knowledgeable about the rulemaking action. The agency may also provide the title, address, fax number, e-mail address, and TDD for each agency contact.

Some agencies have provided the following optional information:

- *Additional Information* - any information that the agency wants to provide for which there is not a specific data element.

- *Agency Sort Codes* - alternative or additional criteria for the order in which RINs are published within an agency's agenda, as requested and specified by the agency.
- *Compliance Cost to the Public* - the estimated gross compliance cost of the action.
- *Affected Sectors* - the industrial sectors that the action may most affect, either directly or indirectly. Please use the North American Industry Classification System (NAICS) codes to identify the affected sectors
- *Energy Effects* - an indication of whether the agency plans to prepare or has prepared a Statement of Energy Effects for significant energy actions, as required by EO 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 18, 2001).
- *Related RINs* - one or more past or current RIN(s) associated with activity related to this action, such as merged RINs, split RINs, new activity for previously completed RINs, or duplicate RINs.
- *Related Agencies* - any other agencies participating in this action if it is a joint rulemaking or common rule.
- *RFA Section 610 Review* - an indication that the agency has selected the rule for its periodic review of existing rules under the RFA (5 U.S.C. § 610(c)). Some agencies have indicated completions of Section 610 reviews or rulemaking actions resulting from completed Section 610 reviews.
- *URLs or Web Address* - if available, please enter a URL for a website to provide the public with more information about the rulemaking and a URL for a website on which the public can submit comments on the rulemaking. If the agency does not provide its own specific website for submission of comments, then you should enter the Government-wide e-rulemaking address: <http://www.regulations.gov>.

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

Agencies participating in the Unified Agenda should submit their respective portions in the uniform format specified in the instructions of RISC. RISC edits and compiles the Agenda on behalf of OIRA. Agencies have three alternative methods to prepare data on individual entries for publication in the Agenda:

- *Direct Entry* - The agency establishes a connection to the RISC/OIRA Consolidated Information System (ROCIS) from one or more of its own computer terminals, through an Internet browser. Agency personnel should enter data directly into the ROCIS database.
- *Data File* - An agency that stores its Agenda data in its own database may choose to transmit to ROCIS all of its data in electronic files prepared according to the specific file format prescribed by RISC. Please note that to allow sufficient time for editing, it is especially important to submit data files prior to the deadline. If you are interested in data file submission, contact RISC for further information.

- *Paper Forms* - Agencies that cannot use direct entry or submit a data file may choose to submit their Unified Agenda entries on paper forms. The RISC staff will key the data into ROCIS. For entries that will appear for the first time, please use only the fall 2017 version of the Regulatory Information Data Form. You can print copies of this form from <http://reginfo.gov/public/jsp/regform/download.jsp>. To update entries that appeared in the 2017 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. Please use the Agenda Review Report to review the content of your submission; you should use the Error Report to help you correct any errors and supply any missing data.
- *Preambles* - If you are designating Section 610 reviews in the Unified Agenda, your preamble should include a reference to Section 610 reviews. Each direct entry or data file agency must save from ROCIS to its own computer system a copy of its preamble from the preceding Unified Agenda. Please make changes in that file to update the preamble for the previous Agenda and then upload the file to ROCIS. Do not cut and paste into ROCIS. Print the preamble file you are uploading for the required, signed copies of preambles (see below). For further information about these procedures, please contact RISC.

What Documents and Information Should an Agency Submit?

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

- One signed original and two certified copies of the preamble to its Unified Agenda entry. (Please note that the signature is required to be that of the person whose name and title typed is in the document's signature block. One person may not sign for another person.) The preamble must meet the normal requirements for printing in the Federal Register, including a list of CFR chapters pertaining to the agency.
- (For agencies that use direct entry or data file) When the agency is satisfied that its entries are complete, accurate, and represent what the agency wishes to publish, a designated person at the agency will be able to submit the entries to RISC electronically through ROCIS.
- (Only for agencies that choose to submit their data on paper forms) A paper copy of the agency's agenda entries. New entries should be on Regulatory Information Data Forms.

Repeating entries should be on marked copies of Agenda Review Reports that the agency has obtained from RISC.

- 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 and be delivered to RISC at 1800 F Street, NW., Room 2219F, Washington, DC 20405-0001, (202) 482-7340.

What Are Inactive Actions, and Where Are They Located?

An agency designates an inactive action as one it does not plan to undertake in the coming calendar year or identify as a long-term action. Inactive actions assist internal agency tracking of past actions and allow an agency to retain the same RIN for an action over its lifetime as they further consider policy. Inactive actions are not published in the Agenda; however, a list of these actions will be published along with the latest Agenda on www.reginfo.gov

When and How Should Agencies Submit Their Agendas?

The deadline for submission of all completed agenda materials is **September 18, 2017**. This is a firm deadline

Agencies should submit the applicable forms and other required documents to RISC. RISC will then assemble the entire Agenda and arrange for online publication at www.reginfo.gov. RISC forwards and compiles all agency regulatory flexibility agendas to GPO for printing in a single day's issue of the *Federal Register*. GPO will bill each agency for the cost of printing its portions of the Agenda that appear in the *Federal Register*. Because RISC submits the Agenda to GPO for publication in a fully coded format, agencies receive the maximum discount from GPO's regular charges.

How Can Agencies Obtain Further Information?

For further information concerning the content requirements of agency agendas, contact your agency's OIRA desk officer. For further information concerning automated agenda production, specific data requirements, format, completion, or submission of agency agendas, contact the Regulatory Information Service Center, 1800 F Street NW, Room 2219F, Washington, DC 20405-0001; or your agency's RISC analyst at (202) 482-7340.

Fall 2017 Regulatory Plan (Plan) and Unified Agenda of Federal Regulatory and Deregulatory Actions (Agenda)

UPDATED ATTACHMENT 3

(08/30/2017)

Executive Order 13771 Designation

For the Fall 2017 Agenda, EO 13771 requirements as detailed in Guidance apply to agencies. This attachment explains how to complete EO 13771 Worksheets and explains recent changes in the ROCIS system. Agencies must provide preliminary designations in ROCIS as part of their Agenda submission and submit a fully completed EO 13771 Worksheet by the **September 18, 2017** Deadline.

While agencies' Agenda submissions apply to Fiscal Year 2018, agencies must provide both Fiscal Year 2017 updates and Fiscal Year 2018 (and beyond) designations in their EO 13771 Worksheet. Information provided in the EO 13771 Worksheet will be used to assess agency compliance with the Fiscal Year 2017 and 2018 cost allowances. As such, agencies should ensure that OIRA has the most accurate information for each fiscal year. The accounting period for the Fiscal Year 2017 offset requirements will close September 30, 2017.

How Can an Agency Preliminarily Designate an Action As an EO 13771 Action?

Agencies will be required to provide a preliminary EO 13771 designation for each action submitted in the Agenda. These designations, defined by Guidance, will be made via a new drop down menu in the ROCIS system. Designations follow:

- *Deregulatory* - when finalized, the action is expected to have total costs less than zero;
- *Regulatory* – the action is either
 - (i) a significant regulatory action as defined in Section 3(f) of EO 12866, or
 - (ii) a significant guidance document (e.g., significant interpretive guidance) reviewed by OIRA under the procedures of EO 12866that, when finalized, is expected to impose total costs greater than zero;
- *Fully or Partially Exempt* - the action has been granted, or is expected to be granted, a full or partial waiver under one or more of the following circumstances: (i) it is expressly exempt (issued with respect to a “military, national security, or foreign affairs function of the United States”; or related to “agency organization, management, or personnel”); or (ii) it addresses an emergency such as critical health, safety, financial, or non-exempt national security matters (offset requirements may be exempted or delayed); or (iii) it is required to meet a statutory or judicial deadline (offset requirements may be exempted or delayed); or (iv) it is expected to generate de minimis costs;
- *Not subject to, not significant* - is a NPRM or final rule AND is neither an EO 13771 regulatory action nor an EO 13771 deregulatory action. PLEASE NOTE: this menu option does NOT appear in the EO 13771 Primary Worksheet.

- *Other* - at the time of designation, either the available information is too preliminary to determine EO 13771 status or other circumstances reasonably preclude a preliminary EO 13771 designation. This category can also be used for actions that do not fall within the other categories (e.g. ANPRM or RFI).
- *Independent agency* - is an action an independent agency anticipates issuing and thus is not subject to EO 13771. Independent agencies are not subject to EO 13771, though they may volunteer to participate. PLEASE NOTE: this menu option does NOT appear in the EO 13771 Primary Worksheet.

There is a designation that can be found only in the EO 13771 Primary Worksheet for FY 2018 and thereafter:

Waived - per Section 3(c) of EO 13771, an action for which the agency received written approval from the Director of OMB for an exemption from EO 13771 offset and publication requirements, or requirements are otherwise waived by law. PLEASE NOTE: this menu option does NOT appear in ROCIS.

How Should Anticipated EO 13771 Costs and Cost Savings Be Estimated for Both the Agenda and the EO 13771 Worksheet?

Regarding cost estimates for anticipated actions, to the extent possible, such estimates should be consistent with best practices established in OMB Circular A-4, “Regulatory Analysis,” (September 17, 2003). OMB requests that agencies base cost estimates on their best current prediction of the planned fiscal year actions. Also consistent with Circular A-4, where significant uncertainty underlies an estimate, a range or even qualitative presentation is preferred. Agencies make any such estimates with the understanding that they are subject to discussion and revision during the rulemaking, review, and regulatory budgeting processes. As a related point, all agencies should make a conscious effort to complete the Economic Data page in ROCIS when they subsequently submit a rulemaking for EO 12866 review.

What Is the EO 13771 Worksheet?

The EO 13771 Worksheet is an Excel file provided to the agencies with this data call. It has four tabs as listed:

1. *Instructions* - a step-by-step guide on how to complete the EO 13771 Worksheet; a list of links for associated OMB guidance; and upload instructions for the Unified Agenda MAX Community Page.
2. *Primary Worksheet* - the primary data collection sheet – each row represents a record associated with a RIN; and each column is a descriptive field. Agencies should record all EO 13771 actions, except information collections, in the primary work sheet. Please record information collections in the ICR Worksheet.

3. *ICR Worksheet* – the dedicated information collection sheet – each row represents a record associated with an OMB control number; and each column is a descriptive field. The ICR Worksheet also requires estimated annualized burden hours.
4. *Field Explanations* - a list of all the data field names; their associated identification number; an explanation of the data field; and the type of required data.

Please follow the step-by-step Instructions (first tab). Enter all required values in the EO 13771 Primary Worksheet (second tab). Enter all required data values in the ICR Worksheet (third tab). Please note that the EO 13771 Primary Worksheet and ICR Worksheet will only accept values in the required data format. For example, the primary cost/cost savings estimate field only accepts numeric data, while other fields only allow selection from a drop down list. Please make sure that all submitted values meet the data specification identified in the Field Explanations (fourth tab).

What Part of the EO 13771 Worksheet Do I Need to Complete?

Please follow the step-by-step Instructions. If you are not able to enter a data value, please reference the Field Explanations to verify the appropriate format. If you are unable to enter a designated field type, please use the contact list in the Instructions for technical assistance.

What Fields Must be Completed in the EO 13771 Primary Worksheet and ICR Worksheets?

Field Explanations defines the full list of data fields for both the Primary and ICR Worksheets, along with the associated data value and/or format validation requirements. Include the following data values in each worksheet:

EO 13771 Primary Worksheet

- Agency Name
- Sub-agency Name
- RIN/Agency Identifier
- Action Title
- Type of Action
- Preliminary Summary
- Executive Order 12866 Significance Recommendation
- Expected Finalization
- Regulatory/ Deregulatory/Partially or Fully Exempt/Waived/Other
- Statutorily or Judicially-Required
- Reference (Statute or Judicial Identifier)
- Deadline for Statutorily or Judicially-Required Action

- Primary Cost Estimate at 7 percent
- Primary Cost Estimate at 3 percent
- Low Range Estimate at 7 percent
- Low Range Estimate at 3 percent
- High Range Estimate at 7 percent
- High Range Estimate at 3 percent
- Length of Time that Costs or Cost Savings Occur (in years)
- Primary North American Industry Classification System Code (NAICS)

EO 13771 ICR Worksheet

- Agency Name
- Sub-agency Name
- RIN/Agency Identifier
- Action Title
- Type of Action
- Preliminary Summary
- Expected Finalization
- Regulatory/ Deregulatory
- Statutorily or Judicially-Required
- Reference (Statute or Judicial Identifier)
- Deadline for Statutorily or Judicially-Required Action
- Initial Total Annualized Burden Hours
- New Total Annualized Burden Hours
- Change in Annualized Burden Hours
- Initial Total Annualized Costs
- New Total Annualized Costs
- Change in Annualized Costs
- Length of Time that Costs or Cost Savings Occur (in years)
- Primary North American Industry Classification System Code (NAICS)

What Do I Do if I Have Submitted an EO 13771 Worksheet to MAX and Need to Make Changes?

Once an EO 13771 Worksheet is uploaded to MAX, that version is locked. If your agency develops a new or updated version, please contact your desk officer for instructions. A new EO 13771 Worksheet is only required if your agency adds new entries after the desk officer review period ends.

Will the EO 13771 Worksheet Be Made Publicly Available?

The EO 13771 worksheets as submitted to OMB will not be made public. However, data from the worksheets and associated ROCIS data may be released in the future. Thus, it is important for your agency to provide accurate and meaningful data in your submission.

I Have Questions That Are Not Addressed in the EO 13771 Worksheet; Who Do I Contact?

For further information concerning the content requirements, contact your agency's OIRA desk officer.

How Can an Agency Designate an ICR As an EO 13771 Deregulatory Action in ROCIS?

Agencies will now be able to provide an EO 13771 designation for ICRs submitted in ROCIS. This designation, defined by Guidance, will be made via a new drop down menu in the ROCIS system.

In ROCIS, the new dropdown menu will be preceded by the following text: Is this ICR an EO 13771 deregulatory action (as defined by M-17-21)?

Deregulatory means the ICR has been finalized and has total costs less than zero.