

Drafting Requirements for Rulemaking Documents

Regulatory Planning and Review (E.O. 12866)

Rulemaking documents must comply with the specified regulatory philosophy and principles of regulation.

Civil Justice Reform (E.O. 12988)

Rulemaking documents must be written in clear language designed to help reduce litigation.

Presidential Memorandum on Plain Language (63 FR 31885)

Rulemaking documents must comply with plain language principles.

Federal Register Publications

Rulemaking documents must comply with the Federal Register regulations (1 CFR). Additional guidance and requirements are contained in the Federal Register's *Document Drafting Handbook*.

Agendas for Rules Under Development or Review

Unified Regulatory Agenda

The Unified Regulatory Agenda provides information concerning agency rules under development or review.

The Unified Regulatory Agenda is published in the *Federal Register* in the spring and fall of each year.

Regulatory Plan

The Regulatory Plan provides information concerning the most important significant regulatory actions that the agency is planning to take.

The Regulatory Plan is published in the Unified Regulatory Agenda in the fall of each year.

Regulatory Flexibility Agenda

The Regulatory Flexibility Agenda provides information concerning any rule that an agency expects to prepare or promulgate that is likely to have a significant economic impact on a substantial number of small entities.

Agency regulatory flexibility agendas are published as part of the Unified Regulatory Agenda in the spring and fall of each year.

Regulatory Review

Specific Analyses for Steps Three and Seven

Regulatory Planning and Review (E.O. 12866)

Would the rule have a \$100 million annual impact, raise novel issues, and/or have other significant impacts? → **If yes** Prepare economic impact analysis.

Regulatory Flexibility Act (5 U.S.C. 601–612)

Is a notice of proposed rulemaking required by law? → **If yes**

Would the rule “have a significant economic impact on a substantial number of small entities”? → **and yes** Prepare regulatory flexibility analysis.

Note: Under limited circumstances analyses also are required for certain interpretive rules involving internal revenue laws (5 U.S.C. 603, 604).

Paperwork Reduction Act (44 U.S.C. 3501–3520)

Does the rule contain a “collection of information” (reporting, disclosure, or recordkeeping)? → **If yes** Prepare information collection clearance package for OMB review and approval, and prepare request for public comments.

Unfunded Mandates Reform Act (2 U.S.C. Chs. 17A, 25)

Does the rulemaking process include a proposed rule? → **If yes**

Does the rule include any Federal mandate that may result in the expenditure (direct costs minus direct savings) by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million in any one year (adjusted annually)? → **and yes** Prepare unfunded mandates analysis (unless an exclusion applies).

Federalism (E.O. 13132)

Is the rule a discretionary rule that has federalism implications and imposes substantial unreimbursed direct compliance costs on State and local governments? → **If yes** Prepare federalism summary impact statement.

Does the rule have federalism implications and preempt State law? → **If yes** Prepare federalism summary impact statement.

Indian Tribal Governments (E.O. 13175)

Is the rule a discretionary rule that has tribal implications and imposes substantial unreimbursed direct compliance costs on Indian tribal governments? → **If yes** Prepare tribal summary impact statement.

Does the rule have tribal implications and preempt tribal law? → **If yes** Prepare tribal summary impact statement.

National Environmental Policy Act (42 U.S.C. 4321–4347)

Is the rule categorically excluded from review?

→ **If no**

Does the rule constitute a major Federal action that could significantly affect the quality of the human environment?

→ **and yes**

Prepare environmental assessment or environmental impact statement, as appropriate.

National Technology Transfer and Advancement Act (15 U.S.C. 272 note)

Does the rule contain provisions for which the use of voluntary standards is applicable?

→ **If yes**

Adopt voluntary consensus standards or explain why not.

Governmental Actions and Interference with Constitutionally Protected Property Rights (E.O. 12630)

Does the rule regulate private property use for the protection of public health or safety?

→ **If yes**

Prepare takings analysis.

Is the rulemaking a proposed regulatory action that has takings implications (other than regulating private property for the protection of public health and safety)?

→ **If yes**

Prepare takings analysis.

Protection of Children from Environmental Health Risks and Safety Risks (E.O. 13045)

Is the rulemaking a “covered regulatory action”?

→ **If yes**

Prepare analysis of the environmental health or safety effects on children.

Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (E.O. 13211)

Is the rulemaking action a “significant energy action”?

→ **If yes**

Prepare statement of energy effects.