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## Department of the Interior

# Departmental Manual

**Effective Date:** 5/14/98

**Series:** Administrative Procedure

**Part 318:** Federal Register Documents

**Chapter 4:** Requirements for Rulemaking Documents

**Originating Office:** Executive Secretariat and Office of Regulatory Affairs

### 318 DM 4

**4.1 What does this chapter do?** This chapter tells you what standard procedural components you must include in the preamble and text of a rule. You should use this chapter as a supplement to the Federal Register Document Drafting Handbook (DDH), which contains the basic format requirements for rulemaking documents. Appendix 1 to this chapter is a checklist that restates the requirements of the chapter and the DDH. Appendix 2 provides suggested language to use in the standard elements. Appendix 3 is a list of sources that apply to Federal Register documents.

**4.2 What language standards must a rule meet?** You must write each rulemaking document in plain English. This means that wherever possible you should:

- A. Write your rule in the active voice;
- B. Avoid legalistic language and unnecessarily complicated provisions;
- C. Organize your rule to serve the user's needs, with information that a user is most likely to need at the front;
- D. Use short sections and sentences;
- E. Speak directly to the reader through the use of pronouns such as "I", "we", and "you";

F. Use tables and lists;

G. If appropriate, write in a question-and-answer format; and

H. Use "must" or "have to" or, when appropriate, "will" to convey requirements.

If you believe that circumstances warrant diverging from the plain English approach, please contact us early in the process to discuss why your rule cannot adhere to the above standards.

**4.3 What other sources can I consult for information about rulemaking documents?** You can find additional guidance in 1 CFR Parts 18, 21, 22 and 51, and the sources listed in Appendix 3 to this chapter. You will find the format requirements for rulemaking documents in the *Federal Register Document Drafting Handbook* (DDH), published online at this address:

<http://www.nara.gov/nara/fedreg/ddh/ddhhome.html>

**4.4 What is the preamble?** The preamble gives the background of the rule and explains its provisions. It tells the public how to comment on the rule and what the applicable deadlines are. Each rulemaking document must have a preamble that meets the requirements of the DDH and 1 CFR 18.12.

**4.5 Do I need to have a preamble in a Federal Register notice?** The Office of the Federal Register (OFR) prefers, but does not require, the preamble format for notices.

**4.6 What statements must I include in the preamble of every rule?** You must include the statements from the table below in the "Supplementary Information" section of the preamble of every rule. See Appendix 2 to this chapter for suggested language to use in the statements.

<b>To comply with...</b>	<b>You must state...</b>
E.O. 12866	whether the rule is subject to OMB review.
Regulatory Flexibility Act (5 U.S.C. 601 <u>et seq.</u> ).	whether the rule has a significant economic effect on a substantial number of small entities
Small Business Regulatory Enforcement Fairness Act (SBREFA) 5 U.S.C. 804(2)	whether the rule has an annual effect on the economy of \$100 million or more, increases costs, or affects competition
Unfunded Mandates Reform Act (2 U.S.C. 1502 <u>et seq.</u> )	whether the rule affects State, local, or tribal governments.
E.O. 12630 (Takings)	determine whether the rule poses "significant takings implications"
E.O. 12612 (Federalism)	the rule will have significant Federalism effects
E.O. 12988 (Civil Justice Reform)	that the rule meets the standards in sections 3(a) and 3(b)(2) of the Order.
Paperwork Reduction Act (44 U.S.C. 3501 <u>et seq.</u> )	whether the rule contains information collection requirements requiring OMB approval.
National Environmental Policy Act of 1969 (42 U.S.C. 4321 <u>et seq.</u> )	whether the rule is a major Federal action significantly affecting the quality of the human environment.
Departmental policy on plain English	that you solicit comments and suggestions on the readability of the rule
1 CFR 18.20	the subject terms for each Code of Federal Regulations part affected by the document.

**4.7 What dates must I include in the preamble?** This section refers to the headings in the preamble format required by OFR. See the DDH for an explanation of the format.

A. Proposed rule. In the "DATES" heading, give the deadline for submitting comments. Include in the "supplementary information" section a statement that requests comments on the rule. You must also include the following if appropriate:

<b>If...</b>	<b>Then...</b>
you give the public fewer than 60 calendar days to comment on the NPRM	you must explain the reasons for the shorter comment period in the "supplementary information" section.
the proposed rule contains information collection requirements requiring OMB approval	include in the preamble a deadline by which the public must submit comments on the information collection

**B. Final rule.**

(1) State in the "Dates" heading in the preamble when the rule becomes effective.

(i) If the effective date is less than 30 days from the publication date of the rule, you must explain in the "supplementary information" section the reason for the earlier date. (See 5 U.S.C. 553(d).)

(ii) If your rule is major under SBREFA, the effective date must be at least 60 days after publication.

(2) If you publish a final rule without having first published a proposed rule, you must explain why and state in the "supplementary information" section how you have met the requirements of the Administrative Procedure Act. (See 5 U.S.C. 553(b)(B).)

**4.8 Is there information that I must include in the preamble only in selected cases?** Some statements are required only if a rule meets certain criteria. The table below lists statements and when they are required. For further information, consult the requiring document listed in column 3 of the table.

<b>If...</b>	<b>you must...</b>	<b>as required by...</b>
you incorporate material by reference	in the NPRM, discuss and solicit comments on the proposed incorporation. In the final rule, discuss comments on the incorporation and indicate approval by OFR	1 CFR Part 51
the rule refers to a Federal assistance program	give the official program number and title of any Federal assistance program	OMB Circular A-89

**4.9 What statements must I include in the text of the rule?** The text of each rule must comply with OFR format and content requirements. All rules must be written clearly in plain English so that they are understandable to all potential users. You must also include the following information in the text of the rule when applicable.

<b>If the rule includes...</b>	<b>You must...</b>	<b>For further information see...</b>
a collection of information as defined by 44 U.S.C. 3501	include the Paperwork Reduction Act statement required by law	318 DM 11 and 12
an incorporation by reference	include specific information about the incorporation	the DDH and 1 CFR Part 51

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**Appendix 1 to Chapter 4**

**CHECKLIST FOR REVIEWING FEDERAL REGISTER DOCUMENTS**

\_\_\_\_\_ Billing code. Is the billing code at top of the first page?

\_\_\_\_\_ Classification. Proposed rule? Final rule? Notice? Have you used the preamble format ?

\_\_\_\_\_ Headings. Do the proper agency, CFR citation, and subject headings precede the preamble?

\_\_\_\_\_ RIN. Did you include it in the heading?

\_\_\_\_\_ Preamble. Are all required elements of the preamble included? Does the summary answer all three questions?

--What action is being taken?

--Why is this action necessary?

--What is the intended effect of this action?

\_\_\_\_\_ Dates. Include as appropriate effective date, date comments due, date of public hearing, etc. If you wish, include language to allow the Office of the Federal Register to compute and insert date.

\_\_\_\_\_ Addresses. Include address for mailing or hand delivering comments, attending meetings, etc. This caption is optional for final rules.

\_\_\_\_\_ For Further Information Contact. Are the address, phone, and e-mail address included?

\_\_\_\_\_ Did you include in the preamble all statements required by section 4.6? This includes:

<input type="checkbox"/> E.O. 12866	<input type="checkbox"/> E.O. 12630	<input type="checkbox"/> NEPA	<input type="checkbox"/> 512 DM
<input type="checkbox"/> Reg Flex Act	<input type="checkbox"/> E.O. 12612	<input type="checkbox"/> Plain English	
<input type="checkbox"/> SBREFA	<input type="checkbox"/> E.O. 12988	<input type="checkbox"/> Paperwork Reduction Act	

\_\_\_\_\_ List of subjects. Are subject terms listed for each CFR part affected? Are they placed at end of preamble?

\_\_\_\_\_ If necessary, do you have statements in the preamble for:

\_\_\_\_\_ Incorporation by reference \_\_\_\_\_ Federal assistance program announcement

\_\_\_\_\_ Public comment period. If less than 60 days, preamble must contain a statement of the reason for the shorter period.

\_\_\_\_\_ Effective date. If less than 30 days from date of publication, does the preamble must state good cause for the shorter period?

\_\_\_\_\_ Signature and title. Is document signed by an Assistant Secretary? Is original signature (hand signed in ink) included? (One person may not sign for another or initial a signature.) Are signer's name and title typed beneath actual signature?

\_\_\_\_\_ Amendatory language.

-- Does it specify the exact unit being changed?

-- Does it use the correct term to describe the type of change?

-- Does it describe the change to the CFR accurately?

\_\_\_\_\_ Authority citation. Is the U.S.C. cite included at the end of the table of contents?

\_\_\_\_\_ Table of contents. Needed if you add or revise an entire subpart or part. Do entries agree with part, subpart, and section headings in the regulatory text?

\_\_\_\_\_ Paragraph numbers. Are all paragraphs lettered or numbered correctly?

\_\_\_\_\_ Page numbers. Are all pages numbered consecutively?

\_\_\_\_\_ Are asterisks correctly used to indicate omissions?

\_\_\_\_\_ Quality. Are original and copies clear and legible? Are all ink changes printed and initialed on all copies?

\_\_\_\_\_ Matching copies and certification. Are copies identical? Are all pages included? Are copies of the document properly signed or certified?

\_\_\_\_\_ If the rule is significant under E.O. 12866, are all items on the OMB review form correct?

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## Appendix 2 to Chapter 4

# Statements Required in All Rulemaking Document Preambles for Certifying Compliance with Laws, Executive Orders, and Department Policy

For additional information on complying with these laws and Executive Orders (including additional material required in the preamble if the law or Executive Order applies), see Appendix 2 to Chapter 3.

### 1. Regulatory Planning and Review (E.O. 12866).

This document *[is/is not]* a significant rule and *[has been reviewed by/is not subject to review by]* the Office of Management and Budget under Executive Order 12866.

(1) This rule *[will/will not]* have an effect of \$100 million or more on the economy. It *[will/will not]* adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. (Explain the basis for this statement. If the rule will affect the economy, you must summarize the cost/benefit analysis and tell the public how to obtain copies.)

(2) This rule *[will/will not]* create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. (Explain the basis for this statement.)

(3) This rule *[does/does not]* alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. (Explain the basis for this statement.)

(4) This rule *[does/does not]* raise novel legal or policy issues. (Explain the basis for this statement.)

### 2. Regulatory Flexibility Act.

The Department of the Interior certifies that this document *[will/will not]* have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 etseq.). (Explain why the rule does or does not have a significant effect on a substantial number of small entities.)

### 3. Small Business Regulatory Enforcement Fairness Act (SBREFA).

This rule *[is/is not]* a major rule under 5 U.S.C. 804(2), the Small Business Regulatory

Enforcement Fairness Act. This rule:

- a. *[Has/Does not have]* an annual effect on the economy of \$100 million or more. (Explain the basis for this statement, including the estimated effect that the rule will have on the economy.)
- b. *[Represents/Will not cause]* a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. (Explain the basis for this statement, including the extent to which you estimate the rule will affect costs or prices.)
- c. *[Has/Does not have]* significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. (Explain the basis for this statement.)

#### **4. Unfunded Mandates Reform Act.**

This rule *[imposes/does not impose]* an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule *[has/does not have]* a significant or unique effect on State local or tribal governments or the private sector. (Explain the basis for these statements.) A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) (*has been prepared and is summarized below/is not required*).

#### **5. Takings (E.O. 12630).**

In accordance with Executive Order 12630, the rule *[has/does not have]* significant takings implications. (Explain the basis for this statement.) A takings implication assessment *[has been prepared and is attached/is not required]*.

#### **6. Federalism (E.O. 12612).**

In accordance with Executive Order 12612, the rule *[has/does not have]* sufficient federalism implications to warrant the preparation of a Federalism Assessment. (Explain the basis for this statement.) A Federalism Assessment *[has been prepared and you May request a copy by writing to the person listed in the "For further information contact" section/is not required]*.

#### **7. Civil Justice Reform (E.O. 12988).**

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule *[does/does not]* unduly burden the judicial system and *[does not meet/meets]* the requirements of sections 3(a) and 3(b)(2) of the Order.

#### **8. Paperwork Reduction Act.**

This regulation *[requires/does not require]* an information collection from 10 or more parties and a submission under the Paperwork Reduction Act *[is/is not]* required. An OMB form 83-I *[has been reviewed by the Department and sent to OMB for approval/is not required]*. *NOTE: Consult 381 DM 11 for additional information that you must include in the preamble and the rule.*

## **9. National Environmental Policy Act.**

This rule *(constitutes/does not constitute)* a major Federal action significantly affecting the quality of the human environment. (If the rule does not affect the environment as set forth in NEPA, add the following sentence: *A detailed statement under the National Environmental Policy Act of 1969 is not required.*) (If the rule affects the environment, include the detailed statement in the preamble.)

## **10. Clarity of this regulation.**

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "\$" and a numbered heading; for example, §*[fill in a sample section number and heading from the rule]* .) (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also e-mail the comments to this address:

Exsec@ios.doi.gov

## **11. Public Comment Solicitation.**

Include the following statement in the Addresses caption of your preamble:

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to [bureau/office name and address]. You may also comment via the Internet to [bureau/office Internet address]. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: [RIN number] and your name and return address in your Internet message. If you do not receive a confirmation from

the system that we have received your Internet message, contact us directly at [bureau/office contact phone number]. Finally, you may hand-deliver comments to [bureau/office street address]. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

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## **Appendix 3 to Chapter 4**

### **List of Sources**

#### **That Apply to Federal Register Documents**

Executive Order 12866, "Regulatory Planning and Reviews," September 30, 1993

Executive Order 12612, "Federalism," October 26, 1987

Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," March 15, 1988

Executive Order 12988, "Civil Justice Reform," February 5, 1996

Administrative Procedure Act (5 U.S.C. 551 et seq.)

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

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

Legislative Branch Appropriations Act (44 U.S.C. 1509)

Public Printing and Documents Act (44 U.S.C. 1505(c))

Unfunded Mandates Reform Act (2 U.S.C. 1502 et seq.)

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 etseq.)

"Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 35953, May 28, 1980)

1 CFR Part 17 - Publication Schedules

1 CFR Part 18 - Preparation and Transmittal of Documents Generally

1 CFR Part 21 - Preparation of Documents Subject to Codification

1 CFR Part 22 - Preparation of Notices and Rulemaking Proposals

1 CFR Part 51 - Incorporation by Reference

5 CFR Part 1320 - Controlling Paperwork Burdens on the Public

13 CFR Part 121 - Small Business Size Standards

40 CFR Parts 1500-1508 - National Environmental Policy Act Implementing Rules

200 DM - Delegations of Authority

318 DM - Federal Register Documents

381 DM - Origination of Records and Information

455 DM - Hearings

516 DM - National Environmental Policy Act of 1969

900 DM - Civil Defense Emergency

Federal Register Document Drafting Handbook

Federal Register Thesaurus of Indexing Terms

Federal Register List of Subject Terms

5/14/98 #3208

Replaces 11/19/86 #2717

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