



Administrative Conference Recommendation 2022-2

Improving Notice of Regulatory Changes

Adopted June 16, 2022

Each year federal agencies issue hundreds of thousands of pages of legislative rules, guidance documents, adjudicative orders, notices, and other materials that affect administrative programs. Although the law generally requires these materials to be made publicly available,¹ individuals and organizations often lack the resources or expertise to track and understand regulatory changes that might affect them. This is particularly true for small entities and members of communities that have been historically underserved by government programs.² Without effective notice of regulatory changes, interested persons may miss out on benefits to which the law entitles them or find themselves subject to enforcement actions for noncompliance with legal requirements of which they were unaware, and other potentially interested persons may be unaware of regulatory changes that affect them. A lack of effective notice may also make it less likely that regulated parties will come into compliance with their legal obligations without the need for an agency to undertake an enforcement action.³

Although agencies must comply with legal requirements for notice, agencies can take a variety of steps to improve notice of regulatory changes. This is of particular importance when a change is significant, meaning that it could reasonably be expected to change the behavior of regulated parties or regulatory beneficiaries.⁴ An agency might consider strategies such as

¹ See, e.g., 5 U.S.C. § 552(a); 44 U.S.C. § 1505.

² Exec. Order No. 13,985, 86 Fed. Reg. 7009 (Jan. 25, 2021).

³ See Joshua Galperin & E. Donald Elliott, Providing Effective Notice of Regulatory Changes (May 17, 2022) (report to the Admin. Conf. of the U.S.).

⁴ Reference to “significant” regulatory changes in this Recommendation does not refer to “significant” or “major” rules as those terms are used in Executive Order 12,866 and the Congressional Review Act.



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publishing information about the change on its website, issuing a press release or fact sheet summarizing and explaining the change, communicating the change using social media or email lists, holding a public meeting to explain and answer questions about the change, and creating and updating agency reference guides. Agencies should also consider designing their websites to organize and present information in a way that makes significant regulatory changes clear and obvious to users and allows them to identify particular topics on which they wish to receive email alerts.

An agency's strategy for notifying potentially interested persons of a particular regulatory change will depend, in large part, on the agency's objectives; the nature, purpose, and significance of the regulatory change; and the characteristics of the persons who would potentially be interested in the change. This Recommendation provides a framework for developing effective notice strategies and for evaluating their effectiveness for future improvement.⁵

This Recommendation acknowledges differences across agencies in terms of the number and kinds of significant regulatory changes they make, their resources and capacities for providing notice, and the resources and capacities of potentially interested persons for following regulatory changes. Appropriate notice strategies will therefore differ among agencies. Accordingly, although it is likely that agencies following this Recommendation will employ

⁵ The Administrative Conference in recent years has issued several recommendations on providing public access to legal materials related to administrative programs, including agency guidance documents, adjudicative rules, and adjudicative decisions. *See, e.g.*, Admin. Conf. of the U.S., Recommendation 2021-7, *Public Availability of Inoperative Agency Guidance Documents*, 87 Fed. Reg. 1718 (Jan. 12, 2022); Admin. Conf. of the U.S., Recommendation 2020-6, *Agency Litigation Webpages*, 86 Fed. Reg. 6624 (Jan. 22, 2021); Admin. Conf. of the U.S., Recommendation 2020-5, *Publication of Policies Governing Agency Adjudicators*, 86 Fed. Reg. 6622 (Jan. 22, 2021); Admin. Conf. of the U.S., Recommendation 2019-3, *Public Availability of Agency Guidance Documents*, 84 Fed. Reg. 38,931 (Aug. 8, 2019); Admin. Conf. of the U.S., Recommendation 2018-5, *Public Availability of Adjudication Rules*, 84 Fed. Reg. 2142 (Feb. 6, 2019); Admin. Conf. of the U.S., Recommendation 2017-1, *Adjudication Materials on Agency Websites*, 82 Fed. Reg. 31,039 (July 5, 2017). This Recommendation expands on those recommendations by specifically addressing strategies for improving public notice of significant regulatory changes that agencies make through such materials.



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some of the strategies enumerated, this Recommendation should not be understood as necessarily advising agencies to employ every strategy for every significant regulatory change.

RECOMMENDATION

Developing and Reviewing Notice Plans

1. Agencies should develop written notice plans, as appropriate, for providing effective notice of significant regulatory changes. A significant regulatory change is any change in law or policy, however announced, that can reasonably be expected to alter the behavior of potentially interested persons. Notice plans should:
 - a. Identify persons who may be interested in the agency's significant regulatory changes;
 - b. Specify strategies the agency proposes to use to provide notice;
 - c. Assess the expected costs and benefits of each strategy; and
 - d. Establish processes and metrics for evaluating the effectiveness of each strategy.
2. In developing their notice plans, agencies should consider the categories of persons who may be interested in the agency's significant regulatory changes and the optimal approach to tailoring notice to each of the different categories of persons.
3. In developing their notice plans, agencies should consider the variety of legal materials, including legislative rules, guidance documents, and adjudicative decisions, through which significant regulatory changes are made and the optimal approach to tailoring notice based upon the nature of each change and the categories of persons it affects.
4. In developing their notice plans, agencies should obtain feedback from potentially interested persons as to which methods for providing notice they consider most effective.
5. Agencies should consider whether individual significant regulatory changes might warrant additional strategies not included in the agency's notice plan, either because they affect persons not previously regulated or new regulatory beneficiaries, or because the potentially interested persons have specific needs for effective notice.



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6. Agencies should periodically evaluate which strategies are most effective at notifying potentially interested persons, including historically underserved communities, of significant regulatory changes. In doing so, agencies should obtain feedback from potentially interested persons regarding which methods for providing notice they consider most effective and suggestions for improvement.

Strategies for Providing Effective Notice

7. Although no single technique will work for all agencies or in all circumstances, in assessing the strategies they wish to undertake both as a general matter and with regard to specific significant regulatory changes, agencies should consider whether such strategies:
 - a. Are cost-effective;
 - b. Are likely to increase compliance with legal obligations and reduce the need for enforcement;
 - c. Are targeted to reach members of historically underserved communities and potentially interested persons who may have less capacity to monitor changes;
 - d. Reduce the administrative burden for regulated persons to assemble changes that emerge from a combination of agency materials;
 - e. Have proved effective when used by other agencies to provide notice; and
 - f. Provide opportunities for interested persons to identify areas about which they would like to receive notice of significant regulatory changes.
8. Agencies should consider publishing in the *Federal Register* regulatory changes for which they anticipate the most widespread public interest, even when not required by law to do so.
9. When agencies publish guidance documents announcing significant regulatory changes on their websites, they should consider publishing notices in the *Federal Register* alerting potentially interested persons that the documents are available.
10. Agencies should seek to organize and present material on their websites in a way that makes significant regulatory changes clear and obvious to potentially interested persons



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and provides clear instructions to users regarding how to access materials announcing significant regulatory changes.

11. Agencies should consider optimizing their websites to improve the visibility of significant regulatory changes in commercial search engines.
12. Agencies should consider publishing summaries of legal materials organized by topic. This approach is particularly useful in providing notice when regulatory changes emerge from different agencies or when agencies announce policy through adjudications or guidance documents, because it can be difficult for potentially interested persons to synthesize the changes. Agencies that publish such summaries should revise those summaries promptly to reflect significant regulatory changes. Agencies must, however, balance the benefits of providing such summaries of the law against the costs in terms of staff time and potential oversimplification of the applicable law.
13. Agencies should consider issuing press releases when they make significant regulatory changes. This approach is particularly useful in alerting both potentially interested persons who may be subject to new or expanded regulatory requirements that have not previously affected them and potentially interested persons who may have less capacity to monitor changes.
14. Agencies should consider developing and using email distribution lists to inform potentially interested persons about significant regulatory changes. Email distribution lists are an effective way to provide notice to targeted groups of discrete and defined potentially interested persons, such as specific community or advocacy groups, at low cost. Agencies should, however, bear in mind the following limitations of email distribution lists:
 - a. Email distribution lists are less effective in providing notice to large groups of individuals or those not previously affected by regulatory requirements;
 - b. Potentially interested persons must know that lists exist and affirmatively sign up for them; and



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- c. Overuse of email distribution lists could result in a significant regulatory change being obscured by less relevant messages. Agencies can mitigate this risk by allowing users to opt in to receiving notice on narrowly defined topics.
15. Agencies should consider using available technologies such as web forms to allow interested persons to identify particular topics on which they wish to receive notice.
16. Agencies should consider using social media, which is inexpensive and far-reaching, to publicize significant regulatory changes.
17. Agencies should consider using blogs on their websites to inform potentially interested persons about significant regulatory changes. Blogs allow agencies to tailor notice to the interests and needs of particular groups and provide notice in ways that are accessible to those groups.
18. Agencies should consider hosting public meetings or participating in conferences or other meetings convened by outside organizations to share information and answer questions about significant regulatory changes. Agencies must, however, balance the advantages of such meetings against the cost in terms of staff time and administration.
19. When agencies host public meetings to share information about significant regulatory changes, they should generally provide a means for potentially interested persons to attend or participate remotely. By so doing, they can expand access for members of historically underserved communities, potentially interested persons who live far from where the agency holds meetings, and potentially interested persons who face other accessibility issues.
20. Agencies should consider training and equipping front-line agency employees, including those in field offices, to answer questions about significant regulatory changes.
21. Agencies should consider identifying and working with state and local governments and intermediary organizations (e.g., trade associations, professional associations, community organizations, and advocacy groups) that can assist in providing effective notice to potentially interested persons.



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Oversight and Assessment

22. Agencies should consider designating an officer or office to coordinate and support the development, implementation, and evaluation of notice plans. This officer or office should:
 - a. Be responsible for evaluating the effectiveness of the agency's notice plan;
 - b. Keep abreast of technological developments for improving notice strategies, such as new social media platforms or improved methods for indexing and organizing documents on the agency's website;
 - c. Evaluate practices that other agencies use to provide notice of significant regulatory changes; and
 - d. Make recommendations for improving the agency's practices and procedures for providing effective notice of significant regulatory changes to potentially interested persons.
23. Agencies should share information with each other about their experiences with and practices for improving notice of significant regulatory changes.