



**Analytical and Procedural Requirements Required by Title II – The Regulatory
Accountability Act**

By James Goodwin, Senior Policy Analyst, Center for Progressive Reform

[Note: Listed items in italics denote requirements that already exist or that are substantially similar to requirements that already exist]

1. Documentation that the agency has considered the legal authority under which a rule may be proposed [all rules] (page 14, lines 14-18)
2. Documentation that the agency has considered other statutory considerations applicable to whether the agency can or should propose a rule or undertake other agency action [all rules] (page 14, lines 19-21)
3. Documentation that the agency has considered specific nature and significance of the problem the agency may address with a rule [all rules] (page 14, lines 22-23)
4. Documentation that the agency has considered whether the problem warrants new agency action [all rules] (page 15, lines 2-3)
5. Documentation that the agency has considered the countervailing risks that may be posed by alternatives for new agency action [all rules] (page 15, lines 3-4)
6. Documentation that the agency has considered whether existing rules have created or contributed to the problem the agency may address with a rule [all rules] (page 15, lines 5-7)
7. Documentation that the agency has considered whether existing rules could be amended or rescinded to address the problem in whole or part [all rules] (page 15, lines 7-9)
8. Documentation that the agency has considered reasonable alternatives for a new rule or other response identified by the agency or interested persons [all rules] (page 15, lines 10-12)
9. Documentation that the agency has considered the alternative of no federal response [all rules] (page 15, lines 15-16)
10. Documentation that the agency has considered the alternative of potential regional, State, local, or tribal regulatory action or other responses that could be taken in lieu of agency action [all rules] (page 15, lines 19-21)
11. Documentation that the agency has considered the alternative of potential responses that specify performance objectives rather than conduct or manners of compliance [all rules] (page 15, lines 23-25)
12. Documentation that the agency has considered the alternative of potential responses that establish economic incentives to encourage desired behavior [all rules] (page 16, lines 1-2)
13. Documentation that the agency has considered the alternative of potential responses that provide information upon which choices can be made by the public [all rules] (page 16, lines 3-4)

14. Documentation that the agency has considered the alternative of potential responses that incorporate other innovative alternatives rather than agency actions that specify conduct or manners of compliance [all rules] (page 16, lines 5-7)
15. Documentation that the agency has considered the potential direct costs and benefits associated with potential alternative rules and other responses [all rules] (page 16, lines 10-14)
16. Documentation that the agency has considered the potential indirect costs and benefits associated with potential alternative rules and other responses [all rules] (page 16, lines 10-14)
17. Documentation that the agency has considered the potential cumulative costs and benefits associated with potential alternative rules and other responses [all rules] (page 16, lines 10-14)
18. Documentation that the agency has estimated impacts on jobs that are associated with potential alternative rules and other responses [all rules] (page 16, lines 14-17)
19. Documentation that the agency has estimated impacts on economic growth that are associated with potential alternative rules and other responses [all rules] (page 16, lines 14-17)
20. Documentation that the agency has estimated impacts on innovation that are associated with potential alternative rules and other responses [all rules] (page 16, lines 14-17)
21. Documentation that the agency has estimated impacts on economic competitiveness that are associated with potential alternative rules and other responses [all rules] (page 16, lines 14-17)
22. Documentation that the agency has considered means to increase the cost-effectiveness of any Federal response [all rules] (page 16, lines 18-19)
23. Documentation that the agency has considered incentives for innovation [all rules] (page 16, line 20)
24. Documentation that the agency has considered incentives for consistency [all rules] (page 16, line 20)
25. Documentation that the agency has considered incentives for predictability [all rules] (page 16, line 21)
26. Documentation that the agency has considered incentives for lower costs of enforcement and compliance [all rules] (page 16, lines 21-22)
27. Documentation that the agency has considered incentives for flexibility [all rules] (page 16, line 23)
28. Publication of an advanced notice of proposed rulemaking [major and high-impact rules; certain other rules] (page 17, lines 1-7)
29. The advanced notice of proposed rulemaking must include a statement identifying the nature and significance of the problem the agency may address with a rule [major and high-impact rules; certain other rules] (page 17, lines 11-12)
30. The advanced notice of proposed rulemaking must include a statement identifying data and other evidence and information on which the agency expects to rely [major and high-impact rules; certain other rules] (page 17, lines 13-15)
31. The advanced notice of proposed rulemaking must include a statement identifying the legal authority under which a rule may be proposed [major and high-impact rules; certain other rules] (page 17, lines 16-20)

32. The advanced notice of proposed rulemaking must include a statement identifying preliminary information available to the agency concerning the listed rulemaking considerations [major and high-impact rules; certain other rules] (page 17, lines 21-23)
33. The advanced notice of proposed rulemaking must include a statement identifying the nature of and potential reasons to adopt the novel legal or policy position upon which the agency may base a proposed rule [certain major and high-impact rules; certain other rules] (page 17, lines 24-25; page 18, lines 1-4)
34. Solicitation of written data, views or argument from interested persons concerning the information and issues addressed in the advance notice [major and high-impact rules; certain other rules] (page 18, lines 5-6)
35. Provision for a period of not fewer than 60 days for interested persons to submit such written data, views, or argument to the agency [major and high-impact rules; certain other rules] (page 18, lines 8-10)
36. Consultation with the Administrator of the Office of Information and Regulatory Affairs [all rules] (page 18, lines 14-16)
37. *Publication of a notice of proposed rulemaking [all rules] (page 18, lines 16-18)*
38. *The notice of proposed rulemaking must include a statement of the time, place, and nature of public rule making proceedings [all rules] (page 18, lines 19-20)*
39. *The notice of proposed rulemaking must include a reference to the legal authority under which the rule is proposed [all rules] (page 18, lines 21-22)*
40. *The notice of proposed rulemaking must include the terms of the proposed rule [all rules] (page 18, lines 21-22)*
41. The notice of proposed rulemaking must include a summary of information known to the agency concerning the listed rulemaking considerations [all rules] (page 19, lines 4-6)
42. The notice of proposed rulemaking must include a summary of additional information the agency provided to and obtained from interested persons through the advanced notice of proposed rulemaking process [major and high-impact rules; certain other rules] (page 19, lines 7-9)
43. The notice of proposed rulemaking must include a summary of any preliminary risk assessment or regulatory impact analysis performed by the agency [all rules] (page 19, lines 10-12)
44. *The notice of proposed rulemaking must include information specifically identifying all data, studies, models, and other evidence or information considered or used by the agency in connection with its determination to propose the rule [all rules] (page 19, lines 13-17)*
45. The notice of proposed rulemaking must include a reasoned preliminary determination of need for the rule based on certain specified information [all rules] (page 19, lines 18-20)
46. The notice of proposed rulemaking must include an additional statement of whether a rule is required by statute [all rules] (page 19, lines 21-22)
47. The notice of proposed rulemaking must include a reasoned preliminary determination that the benefits of the proposed rule meet the relevant statutory objectives [all rules] (page 19, lines 23-24)
48. The notice of proposed rulemaking must include a reasoned preliminary determination that the benefits of the proposed rule justify the costs of the proposed rule [all rules] (page 19, lines 23- 25; page 20, lines 1-3)

49. The notice of proposed rulemaking must include a discussion of the alternatives to the proposed rule, and other alternative responses, considered by the agency [all rules] (page 20, lines 5-7)
50. The notice of proposed rulemaking must include a discussion of the costs and benefits of the alternatives to the proposed rule, and other alternative responses, considered by the agency [all rules] (page 20, lines 8-10)
51. The notice of proposed rulemaking must include a discussion of whether the alternatives to the proposed rule, and other alternative responses, considered by the agency meet relevant statutory objectives [all rules] (page 20, lines 11-12)
52. The notice of proposed rulemaking must include a discussion of why the agency did not propose any of the alternatives to the proposed rule, and other alternative responses, it considered [all rules] (page 20, lines 13-14)
53. The notice of proposed rulemaking must include a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule [all rules] (page 20, lines 15-17)
54. The notice of proposed rulemaking must include a statement of whether or not the agency proposes to amend or rescind any existing rules that have created or contributed to the problem the agency seeks to address with the proposed rule, and why [all rules] (page 20, lines 18-19)
55. *Placement in the docket of information provided to or considered by the agency, and steps to obtain information by the agency, in connection with its determination to propose the rule [all rules] (page 20, lines 20-25; page 21, lines 1-7)*
56. *After publication of the notice of proposed rulemaking, provision of not fewer than 60 days [not less than 120 days for major or high impact rules] for interested persons to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation [all rules] (page 22, lines 13-17; page 23, lines 6-9)*
57. If properly requested, the conduct of a hearing to determine whether any evidence or other information upon which the agency bases the proposed rule fails to comply with the Information Quality Act [all rules] (page 23, lines 10-15, 22-25; page 24, lines 1-6)
58. After publication of the notice of proposed rulemaking and the completion of the public participation period, conduct a formal rulemaking hearing [high-impact rules] (page 24, lines 18-25; page 25, line 1)
59. Prior to a formal rulemaking hearing, publication of a notice specifying the proposed rule to be considered at such hearing, the issues to be considered at the hearing, and the time and place for such hearing [high-impact rules] (page 26, lines 13-18)
60. Prior to adopting a final rule, consultation with the Administrator of the Office of Information and Regulatory Affairs to facilitate compliance with applicable rule making requirements [all rules] (page 26, lines 21-25)
61. Adoption of a final rule that is based on the best reasonably obtainable scientific, technical, economic, and other evidence and information concerning the need for, consequences of, and alternatives to the rule [all rules] (page 27, lines 1-4)
62. Adoption of a final rule that is the least costly rule considered during the rule making that meets relevant statutory objectives [all rules] (page 27, lines 5-8)
or if adopting a final rule that is not the least costly rule considered during the rule making that meets relevant statutory objectives,

demonstration that the additional benefits of the more costly rule justify its additional costs [all rules] (page 27, lines 9-12)
and explanation of the agency's reason for doing so based on interests of public health, safety or welfare that are clearly within the scope of the statutory provision authorizing the rule [all rules] (page 27, lines 9-16)

63. *Publication of a notice of final rulemaking [all rules] (page 27, lines 17-18)*
64. *The notice of final rulemaking should include a concise, general statement of the rule's basis and purpose [all rules] (page 27, lines 20-21)*
65. The notice of final rulemaking should include a reasoned final determination of need for a rule to address the problem the agency seeks to address with the rule [all rules] (page 27, lines 22-24)
66. The notice of final rulemaking should include a statement of whether a rule is required by statute [all rules] (page 27, line 25)
67. The notice of final rulemaking should include a summary of any final risk assessment or regulatory impact analysis prepared by the agency [all rules] (page 27, line 25; page 28, lines 1-2)
68. The notice of final rulemaking should include a reasoned final determination that the benefits of the rule meet the relevant statutory objectives [all rules] (page 28, lines 3-6)
69. The notice of final rulemaking should include a reasoned final determination that the benefits of the rule justify the rule's costs [all rules] (page 28, lines 3-6)
70. The notice of final rulemaking should include a reasoned final determination not to adopt any of the alternatives to the proposed rule considered by the agency during the rule making [all rules] (page 28, lines 7-10)
71. The notice of final rulemaking should include a reasoned final determination that no alternative considered achieved the relevant statutory objectives with lower costs [all rules]
or the notice of final rulemaking should include a reasoned determination that the agency's adoption of a more costly rule complies with applicable requirements [all rules] (page 28, lines 16-18)
72. The notice of final rulemaking should include a reasoned final determination that existing rules have not created or contributed to the problem the agency seeks to address with the rule [all rules] (page 28, lines 21-23)
or
a reasoned final determination that existing rules have created or contributed to the problem the agency seeks to address with the rule [all rules] (page 29, lines 1-3)
and the agency's planned course of action in response (page 29, lines 4-9)
73. The notice of final rulemaking should include a reasoned final determination that the evidence and other information upon which the agency bases the rule complies with the Information Quality Act [all rules] (page 28, lines 10-13)
74. The notice of final rulemaking should include the agency's plan for review of the rule no less than every ten years [major and high-impact rules] (page 28, lines 10-13)
75. *Placement in the docket of all information considered by the agency in connection with its adoption of the rule [all rules] (page 30, lines 3-9)*