

Comment from Government Member Miriam E. Vincent on *Public Engagement in Agency Rulemaking Under the Good Cause Exemption*

October 7, 2024

**Line 81:**

There is a difference between a "notice of something" that notifies the public and a Notice-category document. In this context, it is unlikely that the documents discussed would be classified as "Notice-category" under 1 CFR 5.9, so would NOT publish in the Notices section of the Federal Register.

Given that distinction (which agencies often fail to recognize), I recommend adding the following footnote (or something similar):

"Notice(s)", as used throughout this recommendation, does not imply that the document would publish in the Federal Register Notices section. The Office of the Federal Register classifies documents under 1 CFR 5.9 once it receives a document for publication.

**Line 119 (“The agency should”):**

remove this text because it repeats the list introduction.

**Lines 119-120:**

This language implies that an agency has the option of publishing a direct final rule somewhere other than the "Rule" category - which it does not have. I recommend removing the phrase "the "Rules and Regulations" section of".

If the committee decides including the section is essential to understanding this recommendation, then the text should read:

"Publish the direct final rule in the Federal Register (where it will appear in the "Rules and Regulations" section).

**Line 121 (“The direct final rule should”):**

To keep the parallel structure of this list, change this text to read

"Ensure that the direct final rule contains"

**Line 125 (“The agency should solicit”):**

Remove "The agency should", which duplicates the introductory text to this list.

**Line 127:**

see my comment on "Rules and Regulations" in 6.a.

**Line 129:**

For parallel structure, change "the rule should" to read "make the rule"

**Line 130:**

I recommend changing this to 45 or 60 days after. Agencies frequently have trouble getting the required documents drafted and through agency clearance in time to publish 30 days after the comment period closes. If the agency fails to publish a withdrawal in time, the OFR will codify the direct final rule.

**Line 161 (“Agencies should use the”):**

Remove the phrase "The agency should" in all list items below, since that duplicates the content of the introductory text.

**Lines 163-164 (“in the ‘Rules and Regulations’ section of”):**

see my comment for 6.a.

**Line 164:**

following "Federal Register" add (from 6.d.)  
", which includes a commitment to act on any significant adverse comments within a fixed period of time or to provide for a sunset date for the rule"

**Lines 169-170:**

see my comment for 6.a.

**Line 173:**

add a best practice that agencies publish final rules that adopt the interim rule (with or with changes).

without this addition, the recommendation implies that agencies should issue a final rule only for major or significant rules; however, unless an agency adopts the interim final rule, the regulations will remain classified as interim.

**Lines 174-176:**

Remove this paragraph (see comment to 9.a.)

If suggested edits to 9.a. are rejected, then change "Federal Register" to

"published interim final rule" or "interim final rule published in the Federal Register".

**Lines 178-179:**

immediately after "final rules" add "that adopt the interim rule (with or without changes)"