

Chapter 2 - Statutory and Executive Directives for Conducting Economic Analyses

Federal agencies are subject to statutes and executive orders (EOs) that direct them to conduct specific types of economic analyses. Many are potentially relevant for all U.S. Environmental Protection Agency (EPA) programs; others target individual programs. The scopes of the directives calling for economic analyses vary substantially. In some cases, a statute or EO may be limited in its applicability to those regulatory actions that exceed a specified threshold in significance or impact. To determine whether a regulatory action meets such a threshold and is covered by the statutory or EO provisions, the agency may need to conduct a preliminary economic analysis. Covered regulatory actions may need:

- Economic analysis (e.g., analysis of benefits and costs pursuant to EO 12866, "Regulatory Planning and Review");
- Procedural steps (e.g., consultation with affected state and local governments pursuant to EO 13132, "Federalism"); or
- A combination of both economic analysis and procedural steps.

This chapter identifies directives for conducting economic analyses that may apply to all EPA programs (see Table 2.1) and thresholds that trigger an economic analysis or additional procedural steps for a regulatory action.¹ It also summarizes general provisions calling for economic analyses in selected statutes and EOs and provides direction for analysts seeking guidance on compliance with them. References to applicable Office of Management and Budget (OMB) and EPA guidelines for each EO or statute are provided. For further information about the type and scope of analysis directed, the program's Office of General Counsel (OGC) attorney is a good resource.² This chapter does not address provisions of the statutes and EOs that do *not* call for economic analysis.

¹ Although not discussed here, analysts should carefully consider the relevant program-specific statutory requirements when designing and conducting economic analyses, recognizing that these requirements may mandate specific economic analyses.

² For OGC's reference guide on cross-cutting statutory and EO reviews that may apply to rules, see U.S. EPA (2003b, 2005).

Table 2.1 - Overview of Executive Orders and Statutes

Executive Order/Statute	Economic Threshold*	Guidance/ Information Available
EO 12866, Regulatory Planning and Review (1993) as amended by Executive Order 14094, "Modernizing Regulatory Review" (2023)	Specific	EPA, OMB
EO 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (1994)	General	EPA
EO 13045, Protection of Children from Environmental Health Risks and Safety Risks (1997)	Specific	EPA
EO 13132, Federalism (1999)	Specific	EPA
EO 13175, Consultation and Coordination with Indian Tribal Governments (2000)	General	EPA, OMB
EO 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (2001)	Specific	OMB
EO 13563, Improving Regulation and Regulatory Review (2011)	Specific	OMB
EO 13707, Using Behavioral Science Insights to Better Serve the American People (2015)	General	White House Memo
EO 14096, Revitalizing Our Nation's Commitment to Environmental Justice for All (2023)	General	EPA
Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)	Specific	EPA
Unfunded Mandates Reform Act of 1995 (UMRA)	Specific	EPA, OMB
Paperwork Reduction Act of 1995 (PRA)	Specific	EPA, OMB
The Foundations for Evidence-Based Policymaking Act of 2018	None	OMB

** Economic Threshold: "Specific" if EO or statute provides specific numeric threshold or detailed criteria; "General" if EO or statute provides only general description or statement.*

2.1 Executive Orders

2.1.1 Executive Order 12866,3 "Regulatory Planning and Review" as amended by Executive Order 14094, "Modernizing Regulatory Review"

Threshold: Significant regulatory actions as defined by the EO. A “significant regulatory action” is defined by Section 3(f)(1)-(4) as any regulatory action that is likely to result in a rule that may:

1. Have an annual effect on the economy of \$200 million or more (adjusted every 3 years by the Administrator of OIRA for changes in gross domestic product); or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities;⁴
2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
3. Materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or
4. Raise legal or policy issues for which centralized review would meaningfully further the President’s priorities or the principles set forth in this Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

EO 12866 does not distinguish between regulatory and deregulatory actions. Meeting one or more of the threshold criteria triggers the classification of a regulatory action as “significant.” OMB categorizes a regulatory action that meets the first criterion as significant under Section 3(f)(1) of Executive Order 12866 (as amended) (formerly referred to as “economically” significant).⁵ The determination of significance under Section 3(f)(1) is multi-faceted. Rules that have an annual effect that meets the \$200 million threshold (as adjusted every 3 years) are deemed significant under Section 3(f)(1). OMB clarified that they interpret the EO 12866 threshold as being based on the annual costs, benefits, or transfers of the regulatory action in any one year.⁶

The word “or” is important: \$200 million (updated every 3 years) in annual benefits, or costs, or transfers is sufficient to meet the threshold.⁷ Note that the threshold determination is not based on net effects, so if any category meets the threshold, the rule would be significant under 3(f)(1). For example, suppose Congress passes a new law that requires the EPA to collect user fees from an industry that manufactures chemicals. The user fees will be used to defray EPA’s costs associated with an existing obligation to conduct risk evaluations of new chemicals. Previously, funds to pay the EPA’s costs to conduct these evaluations were provided by Congress through its annual congressional appropriation. This new rule requires the EPA to recoup these costs from industry. Assume that the fees to be collected from industry total \$220 million per year. In this case, no new

3 EO 13563, “Improving Regulation and Regulatory Review,” issued in January 2011, supplements and reaffirms the provisions of EO 12866. It emphasizes the importance of reducing regulatory costs and burdens and maintaining flexibility and freedom of choice. See Section 2.1.7 in this chapter for more information on EO 13563.

4 EO 14094 increased the 12866 threshold from \$100 to \$200 million and added the inflation adjustment every three years.

5 See OMB 2023.

6 OMB 2023a.

7 OMB 2023a.

burden is being placed on society. The \$220 million is simply a transfer of payments from businesses to government; however, because the transfer is more than \$200 million annually, this action is 3(f)(1) significant. By contrast, a rule with \$120 million in benefits and \$120 million in costs would not be sufficient to meet the dollar threshold under Section 3(f)(1).

In addition, rules that "adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities" are also deemed 3(f)(1) significant. These criteria are independent of the \$200 million threshold to trigger the "significant under 3(f)(1)" designation.

It is important to note that meeting the \$200 million threshold can include consideration of unquantified effects as well as quantified effects. There may be impacts that are unquantified due to lack of data or valuation methods, but if the judgement of the EPA, or ultimately OMB, is that the combined quantified and unquantified annual effects are likely to exceed \$200 million, the regulation would be considered 3(f)(1) significant. OMB clarifies that the threshold determination should also consider effects that may seem "indirect" or "ancillary."⁸

In practice, while the threshold for 3(f)(1) significance is important, the level of analysis can vary. OMB clarifies, "Different regulations may call for different emphases in the analysis, depending on the nature and complexity of the regulatory issues and the sensitivity of the benefit and cost estimates to the key modeling choices."⁹

Per amendments made to EO 12866 by EO 14094, OMB will automatically update the threshold for 3(f)(1) significance every three years, indexed to GDP growth.¹⁰

Analyses contingent on threshold: Regulatory actions designated "significant" are subject to EO 12866 review by OMB. The process of making this determination is discussed in "EPA's Action Development Process: Guidance for EPA Staff on Developing Quality Actions."¹¹ For all significant regulatory actions, the agency shall provide to OMB a statement of the need for the regulatory action and an assessment of potential benefits and costs (Section 6(a)(3)(B)). The analysis of benefits and costs increases in complexity and detail for 3(f)(1) significant rules (i.e., those that fall under the definition in the first bullet above). For these rules, the EO directs that, in addition to assessing potential costs and benefits, agencies must include the underlying analysis informing that assessment, quantify benefits and costs to the extent feasible, assess the benefits and costs of potentially effective and reasonably feasible alternative approaches, and provide the underlying analysis of that alternatives assessment (Section 6(a)(3)(C)). OMB's Circular A-4 (discussed below) states that analysts should generally analyze at least three options for each key attribute or provision: the proposed or finalized option; at least one option that achieves additional benefits; and at least one option that costs less.¹²

Guidance: OMB's Circular A-4 (2023) provides guidance to federal agencies on the development of regulatory analysis for 3(f)(1) significant rules as directed by EO 12866 as well as for other regulatory analysis either required or undertaken at the agency's discretion. Circular A-4 is

⁸ OMB 2023a.

⁹ OMB 2023, p. 4.

¹⁰ EO 12866 did not provide for an inflation adjustment, resulting in the \$100 million threshold becoming more stringent as inflation increased over the years.

¹¹ U.S. EPA 2024.

¹² OMB 2023, p. 21.

intended to assist analysts in conducting high-quality and evidence-based regulatory analysis and to standardize the way benefits and costs of federal regulatory actions are measured and reported. Parts of Circular A-4 guidance are standardized for rules that are 3(f)(1) significant. For example, agencies are asked to provide a prominent standardized accounting statement, with one or more tables summarizing costs and benefits (including monetized; quantified, but not monetized; and unquantified), at a standardized consumption discount rate (updated every 3 years) for the main analysis along with reporting of the undiscounted annual stream of benefits and costs.¹³ In other respects, OMB notes that "you cannot conduct a good regulatory analysis according to a formula. Conducting high-quality analysis requires competent professional judgment."¹⁴ OMB published additional supporting information in a separate document entitled OMB Circular No. A-4: Explanation and Response to Public Input.¹⁵

The *Guidelines* provide more in-depth Agency guidance, building on the OMB's guidance with a focus on approaches and methods that are relevant to environmental regulations. Chapters 3 through 8 of this document provide more detailed guidance for fulfilling the EO 12866 benefit-cost analysis provisions, consistent with directions in OMB's Circular A-4. Chapters 9 and 10 provide guidance on addressing distributional effects of environmental regulation, with a focus on economic impact analysis examining compliance costs effects (e.g., profitability, employment, prices) in Chapter 9 and on environmental justice and life stage considerations in Chapter 10.¹⁶

2.1.2 Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" and Executive Order 14096, "Revitalizing Our Nation's Commitment to Environmental Justice for All"

Threshold: No specific threshold; EO 12898 directs each agency, to the greatest extent practicable and permitted by law, to "make achieving environmental justice part of its mission." EO 14096 supplements EO 12898 and calls on the federal government to "build upon and strengthen its commitment to deliver environmental justice."

Analyses contingent on threshold: EO 12898 directs agencies, to the greatest extent practicable and permitted by law, to "identify[] and address[], . . . disproportionately high and adverse human health or environmental effects of its programs, policies and activities on minority populations and low-income populations."¹⁷ Among other directives and consistent with EO 12898, EO 14096 calls on agencies to, as appropriate and consistent with applicable law, "identify, analyze, and address":

¹³ See Chapter 11 of this document, *Presentation of Analysis and Results*, for agency guidance on presenting economic analysis results.

¹⁴ OMB 2023, p. 4.

¹⁵ OMB 2023a.

¹⁶ In its *Statement of Regulatory Philosophy*, EO 12866 states that agencies should consider the distributional and equity effects of a rule (Section 1(a)).

¹⁷ See EO 12898 Sec. 1-101. EO 14096 uses the phrase "disproportionate and adverse" instead of "disproportionately high and adverse," as used in EO 12898. According to the White House Fact Sheet on EO 14096, these phrases have the same meaning. Removing the word "high" is intended in to eliminate potential

1. Disproportionate and adverse human health and environmental effects..., including those related to climate change and cumulative impacts of environmental and other burdens on communities with environmental justice concerns;
2. Historical inequities, systemic barriers, or actions related to any Federal regulation, policy, or practice that impair the ability of communities with environmental justice concerns to achieve or maintain a healthy and sustainable environment; and
3. Barriers related to Federal activities that impair the ability of communities with environmental justice concerns to receive equitable access to human health or environmental benefits, including benefits related to natural disaster recovery and climate mitigation, adaptation, and resilience.¹⁸

Guidance: The EPA's "Technical Guidance for Assessing Environmental Justice in Regulatory Analysis" is designed to outline analytic expectations and discuss technical approaches and methods that can be used by EPA analysts to evaluate the environmental justice (EJ) effects of regulatory actions.¹⁹ This technical guidance is also useful for understanding what role analysis can play in ensuring that EJ concerns are appropriately considered and addressed in the development of regulatory actions, to the extent practicable and permitted by law. Chapter 10 of this document addresses environmental justice analysis, including guidance on considering the distribution of exposure, health outcomes, benefits and/or costs when evaluating impacts on these specific populations.

2.1.3 Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks"

Threshold: Economically significant regulatory actions as described by EO 12866 (now referred to as 3(f)(1) significant, per above) that involve environmental health risk or safety risk that an agency has reason to believe may disproportionately affect children.

Analyses contingent on threshold: An evaluation of the health or safety effects of the planned regulation on children (section 5(a)) or an explanation of why not conducted. The agency shall also provide an explanation of why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives the agency is considering (Section 5(b)).

Guidance: The EPA has prepared guidance to assist EPA staff on the implementation of EO 13045.²⁰ The EPA's *Children's Health Valuation Handbook* discusses special issues related to estimation of the value of health risk reductions to children.²¹ The Office of Children's Health Protection also provides

misunderstanding that agencies should only be considering large disproportionate effects. See FACT SHEET: President Biden Signs Executive Order to Revitalize Our Nation's Commitment to Environmental Justice for All, The White House (Apr. 21, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/04/21/fact-sheet-president-biden-signsexecutive-order-to-revitalize-our-nations-commitment-to-environmental-justice-for-all/>. EO 14096 also includes a definition of "environmental justice" which expands on the demographic categories laid out in EO 12898, such as by including Tribal affiliation and individuals with disabilities. See EO 14096 Sec. 2(b).

18 See EO 14096 Sec. 3(a)(i), (iii), and (iv).

19 U.S. EPA 2016.

20 U.S. EPA 2024.

21 U.S. EPA 2003a.

online information with links to resource materials on guidance and tools.²² Guidance in Chapter 10 of this document addresses analyses of impacts on children.

2.1.4 Executive Order 13132, “Federalism”

Threshold: Rules that have “federalism implications” that either impose substantial compliance costs on state and local governments or preempt state or local law. According to EPA policy, rules are considered to impose substantial compliance costs if:

The action is likely to result in the expenditure by state and local governments, in the aggregate, of \$25 million or more in any one year; or

The action is likely to result in expenditures by small governments that equal or exceed 1% of their annual revenues.²³

Exception: An action that imposes substantial compliance costs (meets the \$25 million threshold or the 1% test) does not have a federalism implication if: (1) the action is expressly required by statute (without any discretion by the EPA); or (2) there are federal funds available to cover the compliance costs.

Analyses contingent on threshold: For actions with federalism implications, agencies shall conduct pre-proposal consultation with elected state/local officials or their representative national organizations. Rules must include a Federalism Summary Impact Statement in the preamble, and a signed Federalism Certification from the Agency’s designated official should be provided to OMB for rules subject to OMB review under EO 12866 along with any written communications that the EPA received from state or local officials.

Guidance: Specific guidance on EO 13132 can be found in the internal EPA document “Guidance on Executive Order 13132: Federalism”.²⁴

2.1.5 Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments”

Threshold: Regulations that have substantial direct effects on one or more American Indian tribe, on the relationship between the federal government and tribes, or on the distribution of power and responsibilities between the federal government and tribes and that: (1) impose substantial direct compliance costs on Indian tribal governments that are not required by statute, or (2) preempt tribal law.

Analyses contingent on threshold: To the extent practicable and permitted by law, EO 13175 directs the Agency to either provide the funds necessary to pay the Tribal governments’ direct compliance costs, if applicable, or prior to the formal promulgation of the regulation, to (1) consult with Tribal officials early in the process of developing the proposed regulation; (2) make any written communications submitted to the Agency by Tribal officials available to the Director of OMB; and (3) include in the preamble of the regulation a Tribal Summary Impact Statement. The

²² See <https://www.epa.gov/children/guidance-tools-and-glossary-key-terms> (accessed July 31, 2024).

²³ U.S. EPA 2008.

²⁴ U.S. EPA 2008.

Statement should include a description of the extent of the Agency's prior consultation with Tribal governments; a summary of the nature of the Tribe's concerns and the Agency's position supporting the need to issue the regulation; and a statement of the extent to which the concerns of Tribal governments have been met.

Guidance: OMB issued Guidance for Implementing EO 13175 in 2010 to provide direction for compliance and documentation,²⁵ and the White House issued Presidential Memoranda in 2009, 2021 and 2022 to support implementation of EO 13175.²⁶ The 2021 Presidential Memo (Tribal Consultation and Strengthening Nation-to-Nation Relationships) reaffirms the policy in the 2009 Presidential Memo (Tribal Consultation) and directs agencies to submit detailed plans of action to implement the policies and directives. The 2022 Presidential Memo (Uniform Standards for Tribal Consultation) establishes uniform minimum standards to be implemented across all agencies regarding how Tribal consultations are to be conducted. The EPA updated its Policy on Consultation and Coordination with Indian Tribes in 2023 to establish national guidelines and institutional controls for consultation across the EPA. This policy states, "The U.S. Environmental Protection Agency's policy is to consult on a government-to-government basis with federally recognized Tribal governments when EPA actions or decisions *may* affect Tribes." [emphasis added].²⁷ Chapter 10 of this document addresses environmental justice analyses focusing on people of color, low-income populations, and/or Indigenous populations.

2.1.6 Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use"

Threshold: Rules that are significant regulatory actions under EO 12866 and that are likely to have significant adverse effects on the supply, distribution, or use of energy.

Analyses contingent on threshold: Submission of a detailed Statement of Energy Effects to OMB. The Statement of Energy Effects must address any expected adverse effects on energy supply, distribution or use, the reasonable alternatives to the action, and the expected effects of such alternatives on energy supply, distribution, and use.

Guidance: OMB Issued Memoranda in 2001 (M-01-27 Guidance for Implementing EO 13211) and 2021 (M-21-12 on Furthering Compliance with Executive Order 13211).²⁸ M-21-12 affirms and amends M-01-27 to reflect changes in market conditions since 2001 with additional examples of qualifying "adverse effects" of regulatory actions.

²⁵ OMB 2010.

²⁶ The White House 2021 and 2022.

²⁷ U.S. EPA 2023, p. 1.

²⁸ OMB 2001 and OMB 2021.

2.1.7 Executive Order 13563, "Improving Regulation and Regulatory Review"

Threshold: Significant regulatory actions under EO 12866 as amended by EO 14094 (reaffirms EO 12866 and includes additional provisions).²⁹

Analyses contingent on threshold: As mentioned, EO 13563 supplements and reaffirms the provisions of EO 12866 (as amended). EO 13563 states, "Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation." It emphasizes the importance of reducing regulatory costs and burdens and maintaining flexibility and freedom of choice. The EO highlights the importance of scientific integrity, and retrospective analyses of existing rules.

Among other directives, agencies must use best available techniques to quantify costs and benefits, give the public meaningful opportunity to comment online, include relevant scientific and technical findings in the rulemaking docket, consider the combined effects of their regulations on particular sectors and industries and promote coordination across agencies. With regard to existing regulations, EO 13563 instructs agencies to periodically review their significant regulations with the goal of making their regulatory programs more effective or less burdensome. Per OMB guidance, agencies are particularly encouraged to identify actions for review that will significantly reduce existing regulatory burdens and promote economic growth and job creation. Chapter 5 includes a discussion of retrospective review and analysis; see Text Box 5.1 on Retrospective Analysis.

Guidance: OMB issued implementation guidance in three memos: M-11-10 February 2, 2011; M-11-19 April 25, 2011; M-11-25 June 14, 2011.³⁰

2.1.8 Executive Order 13707, "Using Behavioral Science Insights to Better Serve the American People"

Threshold: No specific threshold; the EO encourages agencies to "identify policies, programs, and operations where applying behavioral science insights may yield substantial improvements in public welfare, program outcomes, and program cost effectiveness..."

Analyses contingent on threshold: Agencies are encouraged to use behavioral science insights when designing policies and specifically when determining access to programs, presenting Information to the public, structuring choices within programs and designing incentives.

Guidance: The White House Social and Behavioral Sciences Team issued implementation guidance in a memo on September 15, 2016.³¹ Chapter 4 of this document includes a discussion of behavioral economics.

²⁹ OMB 2011a.

³⁰ See EO 13563 and OMB 2011a, 2011b, 2011c.

³¹ Executive Office of the President, Office of Science and Technology Policy. 2016.

2.2 Statutes

2.2.1 Regulatory Flexibility Act (RFA), as Amended by The Small Business Regulatory Enforcement Fairness Act (SBREFA) (5 U.S.C. 601-612)

Threshold: Regulations that may have a “significant economic impact on a substantial number of small entities,” (SISNOSE), including small businesses, governments and non-profit organizations. The RFA does not define the terms **significant** or **substantial**.

Analyses contingent on threshold: For rules that may have a SISNOSE, agencies are required to prepare an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) examining potential adverse economic impacts on small entities and complying with a number of procedural and analytical requirements to solicit and consider flexible regulatory options that minimize adverse economic impacts on small entities and address significant issues raised in public comments. The IRFA and FRFA, or summaries thereof, are published with the proposed and final rules, respectively,

Guidance: The EPA has issued specific guidance for complying with RFA/SBREFA requirements in the

"EPA Final Guidance for EPA Rulewriters: Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act".³² The guidance identifies approaches for determining whether a specific rule may have a SISNOSE but provides flexibility to use alternative methods or reach different conclusions where appropriate in the context of a specific rule. See also Chapter 9 of this document on economic impact analysis.

2.2.2 Unfunded Mandates Reform Act (UMRA) (2 U.S.C 48 P.L. 104-4)

Threshold one (Sections 202 and 205 of UMRA): Regulatory actions that include federal mandates “that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year.”³³ An action contains a federal mandate if it imposes an enforceable duty on state, local or tribal governments or the private sector.

Analyses contingent on threshold one: Section 202 of UMRA requires preparation of a written statement that includes the legal authority for the action; a BCA; a distributional analysis; estimates of macroeconomic impacts; a description of an agency’s pre-proposal consultation with elected representatives of the affected state, local or tribal governments; and a summary of concerns raised and how they were addressed. Section 205 of UMRA requires an agency to consider a reasonable number of regulatory alternatives and select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, or to publish with the final rule an explanation from the agency head of why such alternative was not chosen.

³² U.S. EPA 2006a

³³ Note that the threshold in this case is adjusted annually for inflation (since enactment). Generally, the EPA uses the U.S. Bureau of Economic Analysis gross domestic product implicit price deflator to adjust the \$100 million UMRA threshold for inflation each year (e.g., the UMRA threshold was \$186 million in 2024\$). Note that EO 14094 increased the 12866 threshold from \$100 to \$200 million and added an inflation adjustment every three years.

OMB's Circular A-4 (2023) notes that the analytical concepts under EO 12866 are similar to the analytical concepts under UMRA, and "an analysis produced pursuant to Executive Order 12866 will usually satisfy the analytic requirements for a written statement under the Unfunded Mandates Reform Act."

Threshold two (Section 203 of UMRA): Regulatory requirements that might "significantly" or "uniquely" affect small governments. Small governments include governments of cities, counties, towns, townships, villages, school districts or special districts with a population of less than 50,000.

Requirements contingent on threshold two: Agencies must solicit involvement from, and conduct outreach to, potentially affected elected officers of small governments (or their designated employees) during development and implementation.

Guidance: The EPA has issued "Interim Guidance on the Unfunded Mandates Reform Act of 1995" (1995), and OMB issued a memo on "Guidance for Implementing Title II of S.1" that provides general guidance on complying with requirements contingent on each of the two thresholds under UMRA.³⁴

2.2.3 The Paperwork Reduction Act (PRA) (44 U.S.C. 3501)

Threshold: Any action that requires or requests record-keeping, reporting or disclosure or includes other information collection activities imposed upon or posed to 10 or more persons,³⁵ other than federal agency employees.

Requirements contingent on threshold: The agency must submit an information collection request (ICR) to OMB for review and approval and meet other procedural requirements including public notice and opportunity for comment. The ICR should: (1) describe the information to be collected, (2) give the reason the information is needed and (3) estimate the time and cost for the public to respond to the request.

Guidance: Both guidance and templates for completing an ICR and associated Federal Register (FR) notices can be found on the EPA's intranet site, "ICR Center."³⁶

2.2.4 The Foundations for Evidence-Based Policymaking Act (5 U.S.C. 101 P.L. 115-435)

Threshold: No specific threshold.

Requirements contingent on threshold: The Foundations for Evidence-Based Policymaking Act of 2018 ("Evidence Act"), mandates federal evidence-building activities, where evidence is broadly defined and includes foundational fact finding, performance measurement, policy analysis and program evaluation.³⁷ The act does not specify what evidence-building activities agencies should conduct but instead calls on agencies to significantly rethink how they currently plan and organize

³⁴ U.S. EPA 1995 and OMB 1995

³⁵ Exceptions include "listening sessions with interested parties; asking non-standardized questions on a particular process, theme, or issue...; directly observing the experiences of program applicants and participants." (OMB 2022).

³⁶ See <https://work.epa.gov/icr> (accessed August 1, 2024, internal EPA website).

³⁷ OMB 2019.

evidence building, data management and data access functions to ensure they have the evidence they need for informed decision making. Prospective and retrospective economic analyses of agency programs and regulations are evidence-building activities under the Evidence Act and data used or produced in economic analyses may be subject to Title II of the Evidence Act (the Open Government Data Act), including the requirement of being open by default.

Guidance: In July 2019, OMB issued a memorandum on Phase 1 Implementation of the Foundations for Evidence-Based Policymaking Act of 2018: Learning Agendas, Personnel and Planning Guidance. OMB notes that in their annual evaluation plans, "agencies should also discuss any evaluation activities that relate to its proposed regulatory actions in the Unified Agenda of Federal Regulatory and Deregulatory Actions, recognizing that these activities often need to occur well before the development of economically significant regulatory actions".³⁸

38 OMB 2019, p. 34. In 2021, OMB Issued a guidance memorandum on "Evidence-Based Policymaking: Learning Agendas and Annual Evaluation Plans" (see OMB 2021a) that reaffirms and expands on previous OMB guidance on Learning Agendas and Annual Evaluation Plans, including OMB M-19-23.

Chapter 2 References

- 2 U.S.C. 48: Unfunded Mandates Reform Act (P.L. 104-4), March 22, 1995. Available at: <https://www.congress.gov/104/plaws/publ4/PLAW-104publ4.pdf> (accessed October 23, 2024).
- 5 U.S.C. 101: Foundations for Evidence-Based Policymaking Act (P.L. 115-435), January 22, 2019. Available at: <https://www.congress.gov/115/statute/STATUTE-132/STATUTE-132-Pg5529.pdf> (accessed October 23, 2024).
- 5 U.S.C. 601-612: The Regulatory Flexibility Act (P.L. 96-354), as amended by the Small Business Enforcement Fairness Act (P.L. 104-121), March 29, 1996. Available at: <https://www.govinfo.gov/content/pkg/PLAW-104publ121/pdf/PLAW-104publ121.pdf> (see page 11, Title II) (accessed October 23, 2024).
- 44 U.S.C. 3501: Paperwork Reduction Act (P.L. 104-13), May 22, 1995. Available at: <https://www.govinfo.gov/content/pkg/PLAW-104publ13/pdf/PLAW-104publ13.pdf> (accessed October 23, 2024).
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- Executive Order 13175: Consultation and Coordination with Indian Tribal Governments, November 6, 2000. Available at: <https://www.federalregister.gov/documents/2000/11/09/00-29003/consultation-and-coordination-with-indian-tribal-governments> (accessed October 23, 2024).
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