

making was published, the agency shall prepare a written statement containing—

(1) an identification of the provision of Federal law under which the rule is being promulgated;

(2) a qualitative and quantitative assessment of the anticipated costs and benefits of the Federal mandate, including the costs and benefits to State, local, and tribal governments or the private sector, as well as the effect of the Federal mandate on health, safety, and the natural environment and such an assessment shall include—

(A) an analysis of the extent to which such costs to State, local, and tribal governments may be paid with Federal financial assistance (or otherwise paid for by the Federal Government); and

(B) the extent to which there are available Federal resources to carry out the intergovernmental mandate;

(3) estimates by the agency, if and to the extent that the agency determines that accurate estimates are reasonably feasible, of—

(A) the future compliance costs of the Federal mandate; and

(B) any disproportionate budgetary effects of the Federal mandate upon any particular regions of the nation or particular State, local, or tribal governments, urban or rural or other types of communities, or particular segments of the private sector;

(4) estimates by the agency of the effect on the national economy, such as the effect on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness of United States goods and services, if and to the extent that the agency in its sole discretion determines that accurate estimates are reasonably feasible and that such effect is relevant and material; and

(5)(A) a description of the extent of the agency's prior consultation with elected representatives (under section 1534 of this title) of the affected State, local, and tribal governments;

(B) a summary of the comments and concerns that were presented by State, local, or tribal governments either orally or in writing to the agency; and

(C) a summary of the agency's evaluation of those comments and concerns.

(b) Promulgation

In promulgating a general notice of proposed rulemaking or a final rule for which a statement under subsection (a) is required, the agency shall include in the promulgation a summary of the information contained in the statement.

(c) Preparation in conjunction with other statement

Any agency may prepare any statement required under subsection (a) in conjunction with or as a part of any other statement or analysis, provided that the statement or analysis satisfies the provisions of subsection (a).

(Pub. L. 104-4, title II, §202, Mar. 22, 1995, 109 Stat. 64.)

§ 1533. Small government agency plan

(a) Effects on small governments

Before establishing any regulatory requirements that might significantly or uniquely affect small governments, agencies shall have developed a plan under which the agency shall—

(1) provide notice of the requirements to potentially affected small governments, if any;

(2) enable officials of affected small governments to provide meaningful and timely input in the development of regulatory proposals containing significant Federal intergovernmental mandates; and

(3) inform, educate, and advise small governments on compliance with the requirements.

(b) Authorization of appropriations

There are authorized to be appropriated to each agency to carry out the provisions of this section and for no other purpose, such sums as are necessary.

(Pub. L. 104-4, title II, §203, Mar. 22, 1995, 109 Stat. 65.)

§ 1534. State, local, and tribal government input

(a) In general

Each agency shall, to the extent permitted in law, develop an effective process to permit elected officers of State, local, and tribal governments (or their designated employees with authority to act on their behalf) to provide meaningful and timely input in the development of regulatory proposals containing significant Federal intergovernmental mandates.

(b) Meetings between State, local, tribal and Federal officers

The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to actions in support of intergovernmental communications where—

(1) meetings are held exclusively between Federal officials and elected officers of State, local, and tribal governments (or their designated employees with authority to act on their behalf) acting in their official capacities; and

(2) such meetings are solely for the purposes of exchanging views, information, or advice relating to the management or implementation of Federal programs established pursuant to public law that explicitly or inherently share intergovernmental responsibilities or administration.

(c) Implementing guidelines

No later than 6 months after March 22, 1995, the President shall issue guidelines and instructions to Federal agencies for appropriate implementation of subsections (a) and (b) consistent with applicable laws and regulations.

(Pub. L. 104-4, title II, §204, Mar. 22, 1995, 109 Stat. 65.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (b), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

DELEGATION OF AUTHORITY TO ISSUE GUIDELINES AND INSTRUCTIONS

Memorandum of President of the United States, Aug. 25, 1995, 60 F.R. 45039, provided:

Memorandum for the Director of the Office of Management and Budget

By the authority vested in me as President by the Constitution and laws of the United States, including section 204(c) of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) [2 U.S.C. 1534(c)] and section 301 of title 3 of the United States Code, I hereby delegate to the Director of the Office of Management and Budget the authority vested in the President to issue the guidelines and instructions to Federal agencies required by section 204(c) of that Act.

You are authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

§ 1535. Least burdensome option or explanation required

(a) In general

Except as provided in subsection (b), before promulgating any rule for which a written statement is required under section 1532 of this title, the agency shall identify and consider a reasonable number of regulatory alternatives and from those alternatives select the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, for—

(1) State, local, and tribal governments, in the case of a rule containing a Federal inter-governmental mandate; and

(2) the private sector, in the case of a rule containing a Federal private sector mandate.

(b) Exception

The provisions of subsection (a) shall apply unless—

(1) the head of the affected agency publishes with the final rule an explanation of why the least costly, most cost-effective or least burdensome method of achieving the objectives of the rule was not adopted; or

(2) the provisions are inconsistent with law.

(c) OMB certification

No later than 1 year after March 22, 1995, the Director of the Office of Management and Budget shall certify to Congress, with a written explanation, agency compliance with this section and include in that certification agencies and rulemakings that fail to adequately comply with this section.

(Pub. L. 104-4, title II, §205, Mar. 22, 1995, 109 Stat. 66.)

§ 1536. Assistance to Congressional Budget Office

The Director of the Office of Management and Budget shall—

(1) collect from agencies the statements prepared under section 1532 of this title; and

(2) periodically forward copies of such statements to the Director of the Congressional Budget Office on a reasonably timely basis after promulgation of the general notice of proposed rulemaking or of the final rule for which the statement was prepared.

(Pub. L. 104-4, title II, §206, Mar. 22, 1995, 109 Stat. 66.)

§ 1537. Pilot program on small government flexibility

(a) In general

The Director of the Office of Management and Budget, in consultation with Federal agencies,

shall establish pilot programs in at least 2 agencies to test innovative, and more flexible regulatory approaches that—

(1) reduce reporting and compliance burdens on small governments; and

(2) meet overall statutory goals and objectives.

(b) Program focus

The pilot programs shall focus on rules in effect or proposed rules, or a combination thereof.

(Pub. L. 104-4, title II, §207, Mar. 22, 1995, 109 Stat. 67.)

§ 1538. Annual statements to Congress on agency compliance

No later than 1 year after March 22, 1995, and annually thereafter, the Director of the Office of Management and Budget shall submit to the Congress, including the Committee on Governmental Affairs of the Senate and the Committee on Government Reform and Oversight of the House of Representatives, a written report detailing compliance by each agency during the preceding reporting period with the requirements of this subchapter.

(Pub. L. 104-4, title II, §208, Mar. 22, 1995, 109 Stat. 67.)

CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999. Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

SUBCHAPTER III—REVIEW OF FEDERAL MANDATES

§ 1551. Baseline study of costs and benefits

(a) In general

No later than 18 months after March 22, 1995, the Advisory Commission on Intergovernmental Relations (hereafter in this subchapter referred to as the “Advisory Commission”), in consultation with the Director, shall complete a study to examine the measurement and definition issues involved in calculating the total costs and benefits to State, local, and tribal governments of compliance with Federal law.

(b) Considerations

The study required by this section shall consider—

(1) the feasibility of measuring indirect costs and benefits as well as direct costs and benefits of the Federal, State, local, and tribal relationship; and

(2) how to measure both the direct and indirect benefits of Federal financial assistance and tax benefits to State, local, and tribal governments.

(Pub. L. 104-4, title III, §301, Mar. 22, 1995, 109 Stat. 67.)