

**Appendix E:**

**Evaluative Criteria for Compliance:**  
**Executive Order 12875**  
**(“Enhancing the Intergovernmental Partnership”)**

PROCEDURAL REQUIREMENTS..... 1  
ANALYTIC REQUIREMENTS..... 3  
DECISION MAKING REQUIREMENTS..... 4  
JUDICIAL REVIEW ..... 7

**CENTER FOR THE STUDY OF AMERICAN BUSINESS PROJECT ON REGULATORY OVERSIGHT**

**EXECUTIVE ORDER 12875:  
("ENHANCING THE INTERGOVERNMENTAL PARTNERSHIP")  
PROCEDURAL REQUIREMENTS**

QX#	EVALUATIVE CRITERION		EXECUTIVE ORDER CITATION
	Is the regulation exempt for any of the following reasons:		<p>§1. Reduction of Unfunded Mandates. (a) To the extent feasible and permitted by law, <u>no executive department or agency ("agency") shall promulgate any regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless:</u></p> <p>(1) <u>funds necessary to pay the direct costs incurred by the State, local, or tribal government in complying with the mandate are provided by the Federal Government;</u> or</p> <p>(2) <u>the agency, prior to the formal promulgation of regulations containing the proposed mandate, provides to the Director of the Office of Management and Budget a description of the extent of the agency's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, any written communications submitted to the agency by such units of government, and the agency's position supporting the need to issue the regulation containing the mandate.</u></p>
A1	a	The regulation is required by statute?	
A1	b	The regulation does not create an unfunded mandate?	
	If the regulation is not exempt:		
A2	a	Are funds necessary to pay the direct costs incurred provided by the federal government?	
	Did the agency, prior to formal promulgation of the regulation contained the unfunded mandate, provide to OMB:		
A2	b	1 A description of the extent of the agency's prior consultation with representatives of affected State, local, and tribal governments?	
A2	b	2 The nature of concerns and any written communications submitted to the agency by such governments?	
A2	b	3 The agency's position supporting the need to issue the regulation containing the mandate?	

**EVALUATIVE CRITERIA FOR COMPLIANCE: EXECUTIVE ORDER 12875**

---

**CENTER FOR THE STUDY OF AMERICAN BUSINESS PROJECT ON REGULATORY OVERSIGHT**

---

EXECUTIVE ORDER 12875:  
 (“ENHANCING THE INTERGOVERNMENTAL PARTNERSHIP”)  
 PROCEDURAL REQUIREMENTS

QX#	EVALUATIVE CRITERION	EXECUTIVE ORDER CITATION	
A3	<p>Did any State, local or tribal government apply for a waiver of statutory or regulatory requirements?</p> <p>If yes:</p>	<p>§2(b) <u>Each agency shall</u>, to the extent practicable and permitted by law, <u>consider any application by a State, local, or tribal government for a waiver of statutory or regulatory requirements</u> in connection with any program administered by that agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the State, local, and tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.</p> <p>(c) <u>Each agency shall</u>, to the fullest extent practicable and permitted by law, <u>render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency. If the application for a waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefor.</u></p>	
A3	a		<p>Did the agency render a decision upon a complete application within 120 days of receipt?</p>
A4	<p>Did the agency grant any such waiver?</p> <p>If no:</p>		
A4	a		<p>Did the agency provide the applicant with timely written notice of the decision and the agency’s reasons for denial?</p>

---

**EVALUATIVE CRITERIA FOR COMPLIANCE: EXECUTIVE ORDER 12875**

---

---

**CENTER FOR THE STUDY OF AMERICAN BUSINESS PROJECT ON REGULATORY OVERSIGHT**

---

EXECUTIVE ORDER 12875:  
 (“ENHANCING THE INTERGOVERNMENTAL PARTNERSHIP”)  
 ANALYTIC REQUIREMENTS

QX#	EVALUATIVE CRITERION	EXECUTIVE ORDER CITATION
A1	<p>Did any State, local or tribal government apply for a waiver of statutory or regulatory requirements?</p> <p>If yes:</p>	<p>§2(b): Each agency shall, to the extent practicable and permitted by law, consider any application by a State, local, or tribal government for a waiver of statutory or regulatory requirements in connection with any program administered by that agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the State, local, and tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.</p>
A2	a	
<p>In cases where the agency did not grant the waiver application:</p>		<p>(c) Each agency shall, to the fullest extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency. <u>If the application for a waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefor.</u></p>
A2	b	

---

**EVALUATIVE CRITERIA FOR COMPLIANCE: EXECUTIVE ORDER 12875**

---

---

**CENTER FOR THE STUDY OF AMERICAN BUSINESS PROJECT ON REGULATORY OVERSIGHT**

---

EXECUTIVE ORDER 12875: ("ENHANCING THE INTERGOVERNMENTAL PARTNERSHIP") DECISION MAKING REQUIREMENTS				
QX#	EVALUATIVE CRITERION			EXECUTIVE ORDER CITATION
D1	Did any State, local or tribal government apply for a waiver of statutory or regulatory requirements?  If yes:			§2(b): <u>Each agency shall, to the extent practicable and permitted by law, consider any application by a State, local, or tribal government for a waiver of statutory or regulatory requirements in connection with any program administered by that agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the State, local, and tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.</u>
D2	a	Did the agency consider any such application with a general view toward increasing opportunities for utilizing flexible policy approaches at the State, local or tribal level?  If yes:		
D2	b	Did the agency grant such application?  If no:		
D2	c	1	Did the agency deny such application on the ground that it was not consistent with applicable federal policy objectives and otherwise appropriate?  If yes:	

---

**EVALUATIVE CRITERIA FOR COMPLIANCE: EXECUTIVE ORDER 12875**

---

**CENTER FOR THE STUDY OF AMERICAN BUSINESS PROJECT ON REGULATORY OVERSIGHT**

EXECUTIVE ORDER 12875:  
 ("ENHANCING THE INTERGOVERNMENTAL PARTNERSHIP")  
 DECISION MAKING REQUIREMENTS

QX#	EVALUATIVE CRITERION							EXECUTIVE ORDER CITATION
D2	c	2						
Did the agency deny such application on the ground that it was not consistent with applicable federal policy objectives?  If yes:								
D2	d	1						
Did the agency identify statutory or regulatory policy objectives with which the application was determined to be not consistent and otherwise appropriate?  If the identified policy objectives were statutory:								
D2	d	2						
Does the agency lack the authority to waive such statutory policy objectives?  If no:								
D2	d	3						
What was the basis for the agency's decision not to grant the waiver?								

**EVALUATIVE CRITERIA FOR COMPLIANCE: EXECUTIVE ORDER 12875**

**CENTER FOR THE STUDY OF AMERICAN BUSINESS PROJECT ON REGULATORY OVERSIGHT**

EXECUTIVE ORDER 12875: ("ENHANCING THE INTERGOVERNMENTAL PARTNERSHIP") DECISION MAKING REQUIREMENTS									
QX#	EVALUATIVE CRITERION								EXECUTIVE ORDER CITATION
If the identified policy objective was regulatory:									
D2	e	1							Does the agency lack the authority to waive such regulatory policy objectives?  If no:
D2	e	2							What was the basis for the agency's decision not to grant the waiver?

**EVALUATIVE CRITERIA FOR COMPLIANCE: EXECUTIVE ORDER 12875**

---

**CENTER FOR THE STUDY OF AMERICAN BUSINESS PROJECT ON REGULATORY OVERSIGHT**

---

EXECUTIVE ORDER 12875:  
("ENHANCING THE INTERGOVERNMENTAL PARTNERSHIP")  
JUDICIAL REVIEW

QX#	EVALUATIVE CRITERION	EXECUTIVE ORDER CITATION
	None.	§6. Judicial Review. <u>This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.</u>

---

**EVALUATIVE CRITERIA FOR COMPLIANCE: EXECUTIVE ORDER 12875**

---