



## Regulatory Experimentation

### Committee on Rulemaking

#### Proposed Recommendation for Council | November 3, 2017

##### 1 Introduction:

2 Making sound regulatory decisions demands information and analysis. Several ACUS  
3 recommendations encourage agencies to gather data when making new rules and when reviewing  
4 existing rules.<sup>1</sup> This recommendation reinforces analytic requirements imposed on agencies by  
5 legislation,<sup>2</sup> executive order,<sup>3</sup> and judicial decisions.<sup>4</sup>

6 Agencies need information about the problem that the regulation will address: the cause  
7 of the problem, its severity, and so forth. But agencies also need information about potential  
8 solutions to the problem. What possible alternative rules or rule designs might help solve the  
9 problem? How effective are these alternatives in addressing the underlying problem? Are there  
10 constraints, barriers, or unanticipated consequences that arise in the use of these different

---

<sup>1</sup> See, e.g., Administrative Conference of the United States, Recommendation 2014-5, Retrospective Review of Agency Rules, 79 Fed. Reg. 75114 (Dec. 17, 2014), *available at* [https://www.acus.gov/sites/default/files/documents/Recommendation%25202014-5%2520%2528Retrospective%2520Review%2529\\_1.pdf](https://www.acus.gov/sites/default/files/documents/Recommendation%25202014-5%2520%2528Retrospective%2520Review%2529_1.pdf); Recommendation 85-2, Agency Procedures for Performing Regulatory Analysis of Rules, 1 CFR § 305.85-2(7)(c) (June 13, 1985), *available at* <https://www.acus.gov/recommendation/agency-procedures-performing-regulatory-analysis-rules>; Recommendation 79-4, Public Disclosure Concerning the Use of Cost-Benefit and Similar Analyses in Regulation, 44 FR 38826 (June 8, 1979), *available at* <https://www.acus.gov/recommendation/public-disclosure-concerning-use-cost-benefit-and-similar-analyses-regulation>

<sup>2</sup> See, P.L. 114-140 at § 4(a)(3) (Mar. 30, 2016); By-Laws and Operating Procedures of the Committee on Evidence Based Policymaking, *available at* <https://www.cep.gov/content/dam/cep/about/by-laws.pdf>

<sup>3</sup> See, e.g., Executive Order 12866 § 5, 58 Fed. Reg. 51735, 51739 (Oct. 4, 1993), (“...to...improve the effectiveness of existing regulations... each ... agency will periodically review its existing significant regulations to determine whether any such regulations should be modified or eliminated so as to make the agency’s regulatory program more effective in achieving the regulatory objectives...”); Executive Order 13563 § 6, 58 Fed. Reg. 3821, 3822 (Jan. 21, 2011) (requiring agencies to “consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned”); Executive Order 13771 § 2, 82 Fed. Reg. 9339 (Feb. 3, 2017) (requiring the repeal of two existing regulations for each new regulation proposed, and leaving in place prior requirements for the repeal of rules, including analyzing the costs and benefits of each action proposed for repeal); Executive Order 13777 § 3, 82 Fed. Reg. 12285, 12286 (Mar. 1, 2017) (requiring the establishment of Regulatory Reform Tasks forces that “shall evaluate existing regulations (as defined in section 4 of Executive Order 13771) and make recommendations to the agency head regarding their repeal, replacement, or modification, consistent with applicable law.”)

<sup>4</sup> See *Motor Vehicle Mfr.’s Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 53 (1983) (explaining that the agency must show that its action was the result of “reasoned decisionmaking.”)



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

11 alternatives? In terms of understanding possible alternatives and how well they might work in  
12 practice, agencies benefit from having information from experience with these alternatives.  
13 Learning from experience is the focus of this recommendation.

14 No uniform or tidy formula exists as to how agencies should generate, gather, and  
15 analyze the data necessary to facilitate the learning needed to support sound regulatory decisions.  
16 A variety of well-accepted and widely used methods exist from which agencies may choose,  
17 with the appropriate choices often varying agency by agency and even from situation to  
18 situation. Practical considerations such as resource and data availability will affect the choices  
19 agencies make about the methods of learning used to support regulatory decision making.<sup>5</sup> Still,  
20 it is possible to clarify some of the main choices of methods for learning from experience that are  
21 available to agencies and which they should be encouraged to consider using at different stages  
22 of the rulemaking lifecycle. These methods, which are not necessarily mutually exclusive, can  
23 be used before or after a rule is adopted--and they may potentially be considered on occasion as  
24 part of the final rule itself, which might be structured to encourage or allow for variation that can  
25 facilitate future learning by agency officials.

26 The discussion that follows in this preamble will proceed according to the rulemaking  
27 lifecycle, beginning with ways for agencies to learn from experience before a rule is adopted, so  
28 as to inform the agency of how the rule should be designed. Learning before a rule is adopted  
29 will be vital for agency decision-makers in all instances; however, agencies may also consider  
30 methods for learning that could be incorporated into or otherwise facilitated by the design of a  
31 final rule itself as well as that could be facilitated by actions, such as waivers, that agencies could  
32 take after a rule is issued.

33 At any stage of the rulemaking lifecycle, an agency learns from experience with varied  
34 solutions to regulatory problems. Variation generally arises either between time periods<sup>6</sup> or

---

<sup>5</sup> A general discussion of factors to consider in choosing methods and measurements in regulatory learning can be found in Cary Coglianese, *Measuring Regulatory Excellence*, in *Achieving Regulatory Excellence* (C. Coglianese, ed. 2017).

<sup>6</sup> Longitudinal analysis is a research design that involves repeated observations of the same subjects over a period, where variation in the intervention occurs over time (i.e., data before and after an intervention is introduced). See Cary Coglianese,



35 jurisdictions<sup>7</sup> where a regulatory obligation has been imposed with those time periods or  
36 jurisdictions without such a regulatory obligation. For example, a regulation that goes into effect  
37 in 2017 leaves the agency with two distinct time periods to analyze: the relevant years before  
38 2017, and 2017 and beyond. A rule that applies in Jurisdictions X and Y but not in Jurisdictions  
39 A and B leaves the agency with the ability to compare X and Y with A and B. The agency then  
40 can learn whether outcomes are improved in those time periods or jurisdictions with the  
41 regulatory obligation, compared with those without the obligation. However, agencies must be  
42 careful not to assume automatically that any differences in outcomes that they observe have been  
43 caused by the intervention of the regulation. Other factors that correlate with the observed  
44 outcomes might also vary across the same time periods or jurisdictions.

#### 45 **The Virtues and Drawbacks of Randomized and Observational Approaches**

46 To try to isolate the effects just of the regulatory intervention, agencies have two main  
47 analytical approaches: randomized approaches and observational approaches. True randomized  
48 approaches guarantee internal validity, but they do have drawbacks. For one, there is always a  
49 question as to whether the results of a randomized experiment are externally valid<sup>8</sup>: a perfectly  
50 designed randomized experiment may prove that a chemical causes cancer in rats, but there is  
51 always a question as to whether this means the same chemical causes cancer in humans.  
52 Regarding regulatory randomization, there is a further complication that implicates internal  
53 validity.<sup>9</sup> Because double, or even single, blindness<sup>10</sup> is not possible in regulatory

---

Measuring Regulatory Performance: Evaluating the Impact of Regulation and Regulatory Policy, Organisation for Economic Co-Operation and Development Expert Paper No, 1 39 (August 2012).

<sup>7</sup> Cross-sectional analysis means analysis of data collected at a specific point in time but where variation exists across at least two groups or jurisdictions, one subject to the intervention (such as a regulation) and one that is not. *See id.*

<sup>8</sup> External validity refers to the extent to which a study's results are generalizable to entities or individuals other than those included in the study.

<sup>9</sup> Internal validity refers to the extent to which the outcomes observed in a study can be said to have been caused by the intervention rather than by potential confounders.

<sup>10</sup> "Blindness" in this context means lack of awareness of being in the treatment or control group. "Double blindness" means neither the subjects nor the researchers know which subjects received the treatment, and which received the placebo. *See* Michael Abramowicz, Ian Ayres, and Yair Listokin, Randomizing Law, *University of Pennsylvania Law Review*, 948-950 (March 2011), available at [http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1096&context=penn\\_law\\_review](http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1096&context=penn_law_review)



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

54 randomization, regulated parties may engage in strategic behavior and researchers analyzing the  
55 data may exhibit biases that skew the results.

56           In addition to these methodological challenges, randomization can present legal, policy,  
57 and ethical obstacles. From a legal standpoint, subjecting similar parties to different rules may  
58 be thought to raise concerns under the Constitution's equal protection clause or the APA's  
59 arbitrary and capricious standard. Of course, an agency might present a valid argument that the  
60 rational basis, or non-arbitrary reason, for its action is to generate information necessary to make  
61 an informed decision.<sup>11</sup> From a policy standpoint, if some are subject to regulation and others are  
62 not, the agency may have artificially distorted a market, depending on what the rule requires.  
63 From an ethical standpoint, if the rule specifically sets up an experiment with the idea that after  
64 the experiment the rule will change, parties that have invested heavily in capital-intensive  
65 equipment will have unnecessarily incurred a sunk cost. Due to these legal, policy, and ethical  
66 challenges with regulatory randomization, in addition to the methodological ones discussed in  
67 the paragraph above, it may be appropriate for an agency to use it only under a limited set of  
68 circumstances.

69           Observational approaches are generally less ideal than randomized ones from the  
70 standpoint of drawing causal inferences, since internal validity is always a concern and must be  
71 accounted for in the design by using various statistical methods that attempt to mimic statistically  
72 what occurs with randomization.<sup>12</sup> However, they may in some circumstances have stronger  
73 external validity than randomization and they generally will not raise the same legal or policy  
74 concerns as randomization. With observational studies, the agency is either exploiting natural  
75 variation that would have arisen from the rule anyway, or is allowing for state-by-state  
76 flexibility, which generally does not garner significant criticism.

---

<sup>11</sup> See *id.* at 968

<sup>12</sup> Examples of such statistical methods are: difference-in-differences; propensity score matching; multivariate regression; instrumental variables; and regression discontinuity. See Cary Coglianese, *Measuring Regulatory Performance: Evaluating the Impact of Regulation and Regulatory Policy*, Organisation for Economic Co-Operation and Development Expert Paper No. 1 39-42 (August 2012).



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

77 As discussed in the sections that follow, agencies can choose at each stage of the  
78 rulemaking lifecycle--pre-rule, rule, and post-rule--between either randomized or observational  
79 methods. Agencies should factor the advantages and drawbacks discussed above in their  
80 decision making.

### 81 Pre-rule

82 In the pre-rule stage, an agency is gathering data to help inform a regulatory action it  
83 plans to take.

84 *Randomized Methods.* In addition to analyzing peer-reviewed studies that incorporate a  
85 randomized design, agencies can use pilot programs to learn from randomized study data. For  
86 example, if trying to determine whether a certain default rule of, say, saving for retirement  
87 should be required of all employers offering 401(k) plans, an agency could seek the cooperation  
88 of some large employers and ask them to randomly assign a default rule of opting into a certain  
89 saving plan versus one that defaults everyone into the plan but then allows them to opt out. That  
90 would be voluntary by the company but random (and not voluntary) by the individual. The  
91 agency might learn which default rule is better and then adopt that in a regulation that applies to  
92 everyone.

93 *Observational Methods.* Agencies can also set up observational studies, alone or in  
94 combination with the randomization approaches discussed above. Agencies might, for example,  
95 employ a cross-sectional research design by looking at variation in existing policies at the state  
96 level or perhaps in other countries, taking to heart Justice Louis Brandeis's observation that "a  
97 state may, if its citizens choose, serve as a laboratory; and try novel social and economic  
98 experiments without risk to the rest of the country."<sup>13</sup> In fact, Congress has, on numerous

---

<sup>13</sup> See *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932)



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

99 occasions, directed agencies to analyze state-by-state variation to help determine optimal  
100 policies.<sup>14</sup>

### 101 Written into rule

102 An agency can write a rule to facilitate learning or can take advantage of variation that  
103 stems naturally from the rule.

104 *Randomized Methods.* One potential approach an agency might consider when  
105 appropriate would be a randomized control trial (RCT).<sup>15</sup> This would entail writing a rule such  
106 that some entities or people that fall within the agency's regulatory scope are subject to one  
107 version of the rule and some are subject to another version of the rule or not subject to the rule at  
108 all. The agency's decision as to who falls within each category is made on a random basis. For  
109 example, one could imagine a test of speed limits in which the posted limits on different roads  
110 were randomly increased or decreased. The drivers on these roads could be informed of the  
111 regulatory intervention (i.e., the speed limit on that road) without necessarily knowing that they  
112 were participating in a randomized experiment.<sup>16</sup> Although this example falls outside the realm  
113 of federal rulemaking, federal agencies can think of ways to extrapolate from this example to  
114 design an RCT that fits within their regulatory authority.

115 Despite potential methodological, legal, and policy concerns discussed above, there may  
116 be circumstances in which these concerns can be adequately addressed and an RCT will be an  
117 appropriate way for an agency to generate variation that facilitates learning from experience. For  
118 example, it might be that there is such uncertainty involved with the rule that the only way the  
119 agency can resolve the uncertainty is to put in place the rule. The conditions for the appropriate

---

<sup>14</sup> See, e.g., P.L. 109-58 § 139 (“...the Secretary...shall conduct a study of State and regional policies that promote cost-effective programs to reduce energy consumption (including energy efficiency programs) that are carried out by utilities that are subject to State regulation.”)

<sup>15</sup> See Michael Abramowicz, Ian Ayres, and Yair Listokin, Randomizing Law, University of Pennsylvania Law Review (March 2011), available at [http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1096&context=penn\\_law\\_review](http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1096&context=penn_law_review)

<sup>16</sup> See *id.* at 951



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

120 use of an RCT in the regulatory context could be limited, but it is nonetheless one approach that  
121 agencies should consider in deciding on methods for learning as they write rules.

122 *Observational Methods.* For the reasons discussed above, agencies will generally find it  
123 more feasible to use observational approaches in their rulemaking than randomized ones. First, it  
124 should be noted that, in any rulemaking, there is variation in the sense that there was the world  
125 before the rule went into effect and the world in which the rule is in effect. Further, in the case  
126 of a rule that an agency has rescinded, there are three worlds: the world before the rule went into  
127 effect, the world in which the rule was in effect, and the world after the rule was rescinded. Such  
128 variation presents rich opportunities for observational studies. Keeping in mind this natural,  
129 temporal variation that arises with any rule, agencies can, at the outset of the rule, commit to  
130 setting up a longitudinal study. In doing so, they will need to collect data from regulated parties  
131 before the rule goes into effect, then collect data once the rule is in effect (and then a third time if  
132 the agency rescinds the rule), identify potential confounders, and then use statistical techniques  
133 such as multivariate regression to control for them.<sup>17</sup>

134 Additionally, agencies can deliberately introduce non-random variation into the rule by  
135 setting some federal minimum standard and permitting states to exceed that standard. Agencies  
136 then can commit to using the resulting state-by-state variation to set up a cross-sectional design.  
137 An example of such a cross-sectional design would be to compare firms separated by a very  
138 short distance in neighboring states that have adopted different rules. Using regression  
139 discontinuity, the agency would be able to approximate randomization (i.e. the assignment of  
140 firms to a state with one rule versus another would be effectively random).<sup>18</sup>

141

142

---

<sup>17</sup> See Administrative Conference of the United States, Recommendation 2014-5, Retrospective Review of Agency Rules, 79 Fed. Reg. 75114 (Dec. 17, 2014)

<sup>18</sup> See Jonah B. Gelbach and Jonathan Klick, University of Pennsylvania Law School, Institute for Law and Economics, Research Paper No. 14-39 (October 10, 2014), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2507324](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2507324)





## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

### 143 Post-Rule

144 Once a rule has been put in place, the agency has further opportunity to take advantage of  
145 variation.

146 *Randomized Methods.* Once a rule has been adopted, an agency can deregulate a segment  
147 of the market on a random basis to learn from variation. In 2004, the Securities and Exchange  
148 Commission (SEC) did this with respect to its “Uptick Rule.”<sup>19</sup> The SEC concluded that the rule  
149 did not substantially increase market efficiency and consequently rescinded the rule.<sup>20</sup>

150 *Observational Methods.* In addition to deregulating on a random basis, agencies can  
151 achieve variation once the rule is in place by considering conditional waivers and exemptions.  
152 For example, if a regulated entity can present some evidence to suggest that it can meet the  
153 purpose of the regulation using an alternative approach, the agency could grant a waiver to that  
154 entity with the condition that the entity uses that alternative approach.<sup>21</sup> After granting a certain  
155 number of waivers, the agency can then test the effectiveness of its rule by setting up a cross-  
156 sectional design in which it collects data and compares entities that have selected different  
157 approaches. Agencies may find it necessary to use statistical techniques to control for potential  
158 confounders. Over time, these kinds of studies may provide the agency with information that  
159 justifies amending an existing rule, and it may help identify rules that will benefit from  
160 retrospective review. Fairness, legal, and ethical concerns are minimized when using conditional  
161 waivers if the agency permits all regulated entities to seek a waiver based on presentation of  
162 evidence, and the agency widely publicizes its waiver availability.<sup>22</sup>

---

<sup>19</sup> See SEC Release No. 50104 (July 28, 2004), available at <https://www.sec.gov/rules/other/34-50104.htm>

<sup>20</sup> See Zack Gubler, Regulatory Experimentation 42, available at <https://www.acus.gov/report/regulatory-experimentation-draft-report> (Sep. 19, 2017)

<sup>21</sup> See Recommendation 1 of current ACUS draft recommendation on waivers and exemptions, available at <https://www.acus.gov/recommendation/waivers-and-exemptions-recommendation-revised>; See Aaron Nielson, Waivers, Exemptions, and Prosecutorial Discretion: An Examination of Agency Non-Enforcement Practices 30, available at [https://www.acus.gov/sites/default/files/documents/ACUS%20Waiver%20Report%20FINAL\\_0.pdf](https://www.acus.gov/sites/default/files/documents/ACUS%20Waiver%20Report%20FINAL_0.pdf)

<sup>22</sup> See Recommendation 5 of current ACUS draft recommendation on waivers and exemptions, available at <https://www.acus.gov/recommendation/waivers-and-exemptions-recommendation-revised>





## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

### 163 Common Issues

164 Each stage of the rulemaking lifecycle presents agencies with the opportunity to learn  
165 from variation. Agencies can learn from both randomized and observational approaches,  
166 keeping in mind the virtues and challenges of each. Whichever method an agency chooses, there  
167 are two issues that an agency will need to think about across any part of the regulatory lifecycle:  
168 data collection and public input.

### 169 Data Collection

170 Collecting data is essential to ensuring that correct lessons are drawn from analyzing  
171 regulations. Agencies must be mindful of the Paperwork Reduction Act when collecting data,  
172 which limits their ability to send a survey instrument to ten or more parties.<sup>23</sup> Agencies may find  
173 it helpful to work closely with OIRA as part of their data collection endeavors.

### 174 Public Input

175 Best practices call for some opportunity for the public to learn about and comment on the  
176 results of the learning the agency has undertaken. For pre-rule learning, the notice-and-comment  
177 process is the required means for engaging the public, but there are other methods of public input  
178 that might be useful, even at the pre-rule stage, for public input beyond just notice and  
179 comment.<sup>24</sup> If an agency is planning to revise a rule, a subsequent notice and comment  
180 rulemaking will provide that opportunity. If there were for whatever reason a sunset on the  
181 initial rule, that would again provide the public with the opportunity to offer input on a notice  
182 and comment rulemaking to keep or modify the rule. Additionally, interim final rules -- where  
183 an agency adopts a rule without notice and comment procedures, pursuant to the APA's good

---

<sup>23</sup> See 5 CFR § 1320.3

<sup>24</sup> See, e.g., Administrative Conference of the United States, Recommendation 2013-5, Social Media in Rulemaking, 78 FR 76269, available at [https://www.acus.gov/sites/default/files/documents/Social%20Media%20Rec\\_Final\\_12\\_9\\_13.pdf](https://www.acus.gov/sites/default/files/documents/Social%20Media%20Rec_Final_12_9_13.pdf)



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

184 cause exemption -- facilitates learning through experience by incorporating public notice and  
185 comment at some point following adoption of the rule.<sup>25</sup>

186 But even absent a new notice and comment rulemaking--even if the agency is keeping the  
187 rule "as is"--it may benefit and learn from outside input on the systematic learning effort it has  
188 undertaken, whether through peer review process, advisory committees, public hearings or  
189 meetings, or just a solicitation of comments. The decision as to which approach to use to solicit  
190 public input turns on numerous factors, including resource constraints; the scope of the issues in  
191 question and the need for expert analysis on those issues; the agency's internal expertise; the  
192 availability of, and the agency's awareness of, outside experts; the scope of the issues to be  
193 analyzed; and the extent to which the agency is aware of relevant experts in the field.<sup>26</sup>

---

<sup>25</sup> Administrative Conference of the United States, Recommendation 95-4, Procedures for Noncontroversial and Expedited Rulemaking, 60 Fed. Reg. 43,110 (1995).

<sup>26</sup> See Zack Gubler, Regulatory Experimentation 54, *available at* <https://www.acus.gov/report/regulatory-experimentation-draft-report> (Sep. 19, 2017)



194

**Appendix**

195           Examples of the main methods of learning discussed in the preceding sections can be  
196 summarized in Table 1:

197

**Table 1 Summary of Methods for Regulatory Learning**

	<b>Randomized</b>	<b>Observational</b>
<b>Pre-rule</b>	<ul style="list-style-type: none"><li>• Randomized voluntary pilot programs; studies that rely on randomization</li></ul>	<ul style="list-style-type: none"><li>• Pilot programs where intervention is not assigned randomly (such as with voluntary programs)</li><li>• Analysis of regulatory approaches in different jurisdictions and countries</li></ul>
<b>Written into rule</b>	<ul style="list-style-type: none"><li>• Randomized assignment of different regulatory obligations Control Trial (RCT)</li></ul>	<ul style="list-style-type: none"><li>• Rules that allow for state implementation and variation (e.g., cooperative federalism)</li><li>• Cooperative federalism;</li><li>• Analysis of temporal differences (i.e. “before and after” comparisons);</li><li>• Creation of regulatory thresholds that will facilitate later comparing observations of entities above/below a threshold</li><li>• Analysis of temporal differences (i.e., before and after rule adopted)</li></ul>
<b>Post rule</b>	<ul style="list-style-type: none"><li>• Regulated entities randomly selected for different types suspension of enforcement</li></ul>	<ul style="list-style-type: none"><li>• Granting of waivers that allow for the adopting of conditional upon adopting alternative approaches that can be studied.</li></ul>



198 RECOMMENDATION

199 **Learning from Flexibility**

200 1. To improve the quality of their rules, agencies should always seek opportunities to  
201 generate information to bring to bear on regulatory decision making. One way of generating  
202 information is through variation agencies intentionally introduce or foster, such as through pilot  
203 projects, demonstrations, or flexibility among states or regulated entities. Agencies should  
204 conduct learning in such ways that responsibly give due regard for legal, practical, and fairness  
205 considerations. They can learn from experience at one or more stages of the rulemaking  
206 lifecycle, from pre-rule analysis to retrospective review.

207 2. When agencies analyze variation to learn more about the effectiveness of policy options,  
208 they should make every effort to collect data and conduct reliable analysis. Only where  
209 appropriate, agencies should consider creating variation through a randomized control trial.

210 3. Congress should ensure that the agencies have adequate resources and authority to  
211 implement these recommendations.

212 **Structuring Sunset Provisions**

213 4. If an agency chooses to establish and learn from a temporary rule, the sunset period  
214 provided in such a rule should afford the agency enough time for evaluation and enough time to  
215 engage in notice and comment rulemaking in the event it chooses to adopt the rule on a  
216 permanent basis.

217 **Data Collection and the Paperwork Reduction Act**

218 5. When gathering data, agencies should be mindful of the potential applicability of the  
219 Paperwork Reduction Act, and agencies and OMB should use flexibilities within the Act and  
220 OMB's implementing regulations (e.g., a streamlined comment period for collections associated  
221 with proposed rules) where permissible and appropriate.