

GAO

Report to the Chairman, Subcommittee
on Oversight of Government
Management, the Federal Workforce, and
the District of Columbia, Committee on
Governmental Affairs, U.S. Senate

May 2004

UNFUNDED MANDATES

Analysis of Reform Act Coverage



G A O

Accountability ★ Integrity ★ Reliability



Highlights of [GAO-04-637](#), a report to the Chairman, Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia

Why GAO Did This Study

The Unfunded Mandates Reform Act of 1995 (UMRA) was enacted to address concerns about federal statutes and rules that require state, local, and tribal governments or the private sector to expend resources to achieve legislative goals. UMRA generates information about the nature and size of potential federal mandates to assist Congress and agency decision makers in their consideration of proposed legislation and rules. However, concerns about actual or perceived federal mandates continue. To provide information and analysis regarding UMRA's implementation, GAO was asked to (1) describe the applicable procedures, definitions, and exclusions under UMRA for identifying federal mandates in statutes and rules, (2) identify statutes and final rules that contained federal mandates under UMRA, and (3) provide examples of statutes and final rules that were not identified as federal mandates, but that affected parties might perceive as "unfunded mandates," and the reasons these statutes and rules were not federal mandates under UMRA. GAO focused on statutes enacted and final rules issued in 2001 and 2002 to address the second and third objectives.

www.gao.gov/cgi-bin/getrpt?GAO-04-637.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Patricia A. Dalton at (202) 512-6806 or daltonp@gao.gov.

UNFUNDED MANDATES

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What GAO Found

UMRA generally requires congressional committees and the Congressional Budget Office (CBO) to identify and estimate the costs of federal mandates contained in proposed legislation and federal agencies to do so for federal mandates contained in their rules. Identification of mandates is a complex process with multiple definitions, exclusions, and cost thresholds. Also, some legislation and rules may be enacted or issued via procedures that do not trigger UMRA reviews.

In 2001 and 2002, 5 of 377 statutes enacted and 9 of 122 major or economically significant final rules issued were identified as containing federal mandates at or above UMRA's thresholds. Of the other federal actions in those 2 years, at least 43 statutes and 65 rules contained new requirements on nonfederal parties that might be perceived as "unfunded mandates." For 24 of those statutes and 26 of those rules, CBO or federal agencies had determined that the estimated direct costs or expenditures would not meet or exceed applicable thresholds. For the remaining examples of statutes, most often UMRA did not require a CBO review prior to their enactment. The remaining rules most often did not trigger UMRA because they were issued by independent regulatory agencies. Despite the determinations made under UMRA, some statutes and rules not triggering UMRA's thresholds appeared to have potential financial impacts on affected nonfederal parties similar to those of the actions that were identified as containing mandates at or above the act's thresholds.

Proposed Legislation Must Pass Multiple Steps to Be Identified as Containing Federal Mandates at or Above UMRA's Cost Thresholds

Provision is contained in authorizing legislation reported by an authorizing committee and not added after initial CBO UMRA review.



Automatic CBO Review

Provision is not one of seven UMRA exclusions.

Provision is an enforceable duty on state, local, or tribal governments or the private sector, and it is not an UMRA exception.

Direct cost estimate is feasible.

Direct cost estimate for all provisions in legislation meets or exceeds threshold.

Source: GAO.

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Abbreviations

CBO	Congressional Budget Office
DOD	Department of Defense
DOJ	Department of Justice
DOL	Department of Labor
DOT	Department of Transportation
EPA	Environmental Protection Agency
FCC	Federal Communications Commission
FEMA	Federal Emergency Management Agency
GSA	General Services Administration
HHS	Department of Health and Human Services
JCT	Joint Committee on Taxation
NASA	National Aeronautics and Space Administration
NCSL	National Conference of State Legislatures
NRC	Nuclear Regulatory Commission
OIRA	Office of Information and Regulatory Affairs
OMB	Office of Management and Budget
PCAOB	Public Company Accounting Oversight Board
RISC	Regulatory Information Service Center
SEC	Securities and Exchange Commission
TSA	Transportation Security Administration
UMRA	Unfunded Mandates Reform Act of 1995
USDA	United States Department of Agriculture
VA	Department of Veterans Affairs

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United States General Accounting Office
Washington, D.C. 20548

May 12, 2004

The Honorable George V. Voinovich
Chairman
Subcommittee on Oversight of Government Management,
the Federal Workforce, and the District of Columbia
Committee on Governmental Affairs
United States Senate

Dear Mr. Chairman,

The Unfunded Mandates Reform Act of 1995 (UMRA) was enacted to address concerns expressed by state and local governments about federal statutes and regulations that require these nonfederal parties to expend resources to achieve legislative goals without being provided federal funding to cover the costs.¹ Although UMRA was intended to “curb the practice of imposing unfunded Federal mandates,”² the act does not prevent Congress or federal agencies from doing so.³ Rather, UMRA generates information about the nature and size of potential federal mandates on other levels of government and the private sector to assist Congress and agency decision makers in their consideration of proposed legislation and regulations. UMRA requires congressional committees and the Congressional Budget Office (CBO) to identify and provide information on potential federal mandates in certain legislation and federal agencies to identify the costs and benefits of federal mandates contained in certain regulations.

Concerns about actual or perceived federal mandates continue. In the fall of 2003, for example, the presence of an intergovernmental mandate as defined by UMRA was one of the issues raised by senators opposing the Internet Tax Nondiscrimination Act (S. 150).⁴ The proposed legislation

¹Pub. L. No. 104-4, 2 U.S.C. §§658-658g, 1501-71.

²Pub. L. No. 104-4 pmb1.

³Although UMRA defines a federal mandate, it includes no specific definition of an unfunded mandate. Therefore, as in the act, we generally refer to the identification of federal mandates, rather than unfunded mandates, in this report.

⁴ The Senate passed an amended version of this legislation in April 2004. The House passed a related version of this legislation, H.R. 49, in September 2003.

would have permanently extended and expanded a federal moratorium prohibiting state and local governments from levying new taxes on Internet access and electronic commerce and also eliminated the “grandfather” protection for existing access taxes granted under the previous statutory moratorium, which expired November 1, 2003.⁵ Pursuant to UMRA, CBO estimated that repealing the grandfather clause would result in revenue losses for as many as 10 states and several local governments totaling from \$80 million to \$120 million annually, beginning in 2007, and that a change in the definition of Internet access under the legislation could result in additional substantial revenue losses for states and local governments. In recent months, criticisms of the No Child Left Behind Act of 2001 because of perceived “unfunded mandate” implications have also received increasing attention.⁶ No Child Left Behind contains a number of new or expanded requirements, such as the design and implementation of statewide achievement tests, imposed upon states and local educational agencies that receive federal assistance.

You asked us to provide information and analysis regarding UMRA’s implementation and identify options for refining the act. As agreed with your staff, this report addresses the first portion of that request, in which you asked us to describe and provide examples of how federal statutes and rules with potentially significant financial implications for state, local, and tribal governments or the private sector may be enacted or issued without being identified as federal mandates under UMRA.⁷ Specifically, you asked us to: (1) describe the applicable procedures, definitions, and exclusions for identifying federal mandates in statutes and rules under UMRA, (2) identify statutes and final rules that contained federal mandates under UMRA, and (3) provide examples of statutes and final rules that were not identified as federal mandates, but that affected parties might perceive as “unfunded mandates,” and the reasons these statutes and rules were not federal mandates under UMRA. In the body of this report, we address the three objectives separately for title I, which covers the legislative process, and title II, which covers the regulatory process.

⁵Pub. L. No. 105-277.

⁶Pub. L. No. 107-110.

⁷We are continuing our work on the other parts of the request, to be reported separately.

We reviewed UMRA and related guidance documents, analyses, and reports on the act's implementation, interviewed persons knowledgeable about the implementation of UMRA in OMB, CBO, and other congressional offices, and examined and analyzed sets of statutes and final rules. As agreed with your staff, we focused on statutes enacted and final rules published during 2001 and 2002. We conducted our review from August 2003 through February 2004 in Washington, D.C., in accordance with generally accepted government auditing standards. We have not previously reported on the implementation of title I. We reported on the implementation of title II in February 1998, concluding that UMRA appeared to have had a limited direct impact on agencies' rulemaking actions.⁸

Results in Brief

The identification and analysis of federal mandates on state, local, and tribal governments or the private sector is a complex process under UMRA. Proposed legislation and regulations must pass through multiple steps and meet multiple conditions before being identified as containing mandates at or above UMRA's thresholds, and there are some important differences in the provisions regarding legislation compared to those for regulations. For example, under title I of the act, CBO prepares mandate statements identifying and estimating the costs of mandates in legislation that meets certain criteria, whether or not those estimated costs meet or exceed UMRA's thresholds (\$50 million for intergovernmental and \$100 million for private sector mandates, in any of the first 5 fiscal years the mandate would be effective).⁹ Under title II, however, federal agencies are only required to prepare mandate statements for regulations containing intergovernmental or private sector mandates that would result in expenditures of \$100 million or more in any year. Also, for proposed legislation a point of order can be raised on the floor of the House or Senate against consideration of any UMRA-covered mandate that lacks a CBO estimate or any unfunded intergovernmental mandate exceeding UMRA's threshold.

For both legislation and regulations, there are two general ways that provisions would not be identified as federal mandates at or above UMRA's thresholds. First, some legislation and regulations may be enacted or issued via procedures that do not trigger UMRA reviews by CBO or

⁸U.S. General Accounting Office, *Unfunded Mandates: Reform Act Has Had Little Effect on Agencies' Rulemaking Actions*, [GAO/GGD-98-30](#) (Washington, D.C.: Feb. 4, 1998).

⁹The dollar thresholds in UMRA are in 1996 dollars and are adjusted annually for inflation.

agencies. For example, UMRA does not require CBO to review potential mandates in appropriations bills, and UMRA does not apply to final rules that agencies issue without having published a notice of proposed rulemaking or to any rules issued by independent regulatory agencies. Second, even if the statute or rule is reviewed, UMRA limits the identification of federal mandates through multiple definitions, exclusions, and costs thresholds. For example, if the requirements on nonfederal parties arise from participation in a voluntary federal program or are a condition of federal financial assistance, as was the case with No Child Left Behind, those requirements are not considered federal mandates under UMRA.

In 2001 and 2002, 5 of 377 statutes enacted and 9 of 122 major or economically significant final rules issued were identified as containing federal mandates at or above UMRA's thresholds. All 5 statutes and 9 rules contained private sector mandates as defined by UMRA. One final rule—an Environmental Protection Agency (EPA) standard on arsenic in drinking water—also contained an intergovernmental mandate. At least with regard to legislation, CBO reports and testimonial evidence indicated that the existence of UMRA might hinder the introduction of intergovernmental mandates or lead lawmakers to reduce the costs of some of those mandates before enactment.

Of the other federal actions in those years, at least 43 statutes and 65 rules resulted in new costs or other negative financial impacts on nonfederal parties that might be perceived by those parties to have “unfunded mandates” implications. We analyzed each of these examples to identify how they were treated under UMRA's mandate identification process. For 24 of the statutes and 26 of the rules, CBO or federal agencies had determined that the estimated direct costs or expenditures, as defined by UMRA, would not meet or exceed the applicable thresholds. For the remaining examples of statutes, most often UMRA did not require a CBO review prior to their enactment. The remaining rules most often did not trigger UMRA because they were issued by independent regulatory agencies not covered by the act.

Despite the determinations made under UMRA, some of the statutes and rules that had not triggered UMRA's requirements appeared to have potential financial impacts on affected nonfederal parties similar to those of actions that had been flagged as containing federal mandates at or above the thresholds. Examples in the intergovernmental area included the Economic Growth and Tax Relief Reconciliation Act of 2001¹⁰ and No Child Left Behind, both of which did not meet UMRA's definition of a mandate. Among other examples, the Sarbanes-Oxley Act of 2002 was not identified as containing a federal mandate at or above the UMRA threshold because total costs were uncertain.¹¹ However, the direct costs of one provision were estimated at \$80 million annually, while the costs of other provisions could not be estimated. The Department of Commerce estimated that a rule restricting fishing off Alaska to protect sea lions could reduce industry gross revenues by \$225 million to \$401 million per year. However, the rule did not trigger UMRA's requirements because it did not require expenditures of \$100 million or more in any year and there was no notice of proposed rulemaking.

This report provides descriptive information and analysis regarding UMRA's implementation, focusing specifically on the coverage and identification of federal mandates under UMRA. We are making no specific recommendations for executive action nor identifying any specific matters for consideration by Congress at this time. As requested, we will be continuing our work on other aspects of UMRA.

On April 22, 2004, we provided a draft of this report to the Director of the Office of Management and Budget (OMB) for his review and comment. On April 29, 2004, an OMB representative notified us that OMB had no comments on our report.

¹⁰Pub. L. No. 107-16.

¹¹Pub. L. No. 107-204.

Background

Many federal statutes, and the regulations that implement them, impose requirements on state, local, and tribal governments or private sector parties in order to achieve certain legislative goals. Such statutes and their regulations can provide substantial benefits, as well as imposing costs. OMB's 2003 final report on the costs and benefits of federal regulations estimated that the total annual quantified benefits of major rules issued from October 1, 1992, to September 30, 2002, ranged from \$146 billion to \$230 billion, while the total annual quantified costs ranged from \$36 billion to \$42 billion.¹²

Title I of UMRA focuses on the legislative process, and title II focuses on the regulatory process. For both legislation and regulations, UMRA was intended to provide more information on and prompt more careful consideration of the costs and benefits of federal mandates that affect nonfederal parties. UMRA generally defines a federal mandate as any provision in legislation, statute, or regulation that would impose an enforceable duty on state, local, or tribal governments or the private sector or that would reduce or eliminate the amount of funding authorized to cover the costs of existing mandates. However, as discussed in the body of this report, some other definitions, exclusions, and thresholds in the act vary according to whether the mandate is in legislation or a rule and whether a provision imposes an intergovernmental or private sector mandate.

If legislation or a rule contains a federal mandate, as defined by UMRA, a major consequence is that other requirements in the act are triggered. Under title I, when a committee of authorization of the Senate or the House of Representatives reports a bill or joint resolution that contains any federal mandates to the full legislative body, the committee is required to provide the bill or resolution to the Director of CBO and identify the mandates it contains. UMRA then requires CBO to analyze each of these bills and resolutions—and, on request, other legislative proposals—for the presence of such mandates and to estimate their associated costs. CBO prepares UMRA statements that are to be included in the authorizing committees' reports. The CBO mandate statements must also include an

¹²Office of Management and Budget, Office of Information and Regulatory Affairs, *Informing Regulatory Decisions: 2003 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities* (Washington, D.C.: 2003).

assessment of whether the legislation authorizes or otherwise provides funding to cover the costs of any new federal mandates.

UMRA's specific enforcement mechanism for the requirements of title I is a point of order, which a member of Congress may raise to indicate that a rule of procedure has been or will be violated.¹³ Generally, a point of order is available under UMRA if there is no CBO UMRA statement for the legislation or if the legislation contains an unfunded intergovernmental mandate with costs over UMRA's threshold or if it was not feasible to estimate the costs of the intergovernmental mandate. However, points of order are not available under UMRA for private sector mandates that exceed the cost threshold or if the private sector mandates' costs are not feasible to estimate.¹⁴ UMRA's rules are not self-enforcing and a point of order must be actively raised to hinder the passage of unfunded federal mandates. Specifically raising an UMRA point of order may serve to heighten the profile of "unfunded mandate" implications in the challenged legislation. As of March 2004, 13 points of order had been raised in the House of Representatives and no points of order had been raised in the Senate under UMRA. Only 1 of these 13, regarding the minimum wage in the Contract with America Advancement Act in 1996, resulted in the House voting to reject consideration of a proposed provision.

For rules that contain federal mandates, title II of UMRA requires the agencies to prepare written statements containing specific descriptions and estimates, including a qualitative and quantitative assessment of the anticipated costs and benefits of the mandate. For such rules, agencies are to "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" or explain why that alternative was not selected.¹⁵ UMRA requires OMB to

¹³The point of order is a parliamentary term used in committee or on the floor of either chamber of Congress to object to an alleged violation of a rule and to demand that the chair enforce the rule. When raised in the House of Representatives, the point of order is voted on by the full House. When raised in the Senate, the Presiding Officer makes an initial ruling on an UMRA point of order, but the ruling can be appealed to the full Senate and overruled by a simple majority. If a point of order is sustained against a measure, amendment, or motion, it may not be considered; if sustained against a provision in a measure, the provision is immediately deleted.

¹⁴ See 2 U.S.C. §658d of UMRA for more specific information on the availability of a point of order.

¹⁵2 U.S.C. §1535.

collect the written statements prepared by the agencies on federal mandates in rules and periodically forward them to CBO. UMRA also requires OMB to submit annual reports to Congress detailing agencies' compliance with title II. OMB's Office of Information and Regulatory Affairs (OIRA) has the primary responsibility for monitoring agencies' compliance with this title.

CBO and OMB regularly produce reports on, respectively, activities under titles I and II of UMRA.¹⁶ CBO has prepared an annual report on its activities under title I each year since UMRA's enactment. Included in these reports is information on two requirements placed on CBO by title I, identifying (1) proposed legislation that would have imposed federal mandates on another level of government or the private sector and (2) the subset of the legislation examined by CBO that was found to contain mandates with costs at or above the relevant thresholds. Although not required by UMRA to do so, CBO also reviews all statutes enacted to identify mandates enacted into law for its annual reports. Since 2001, OMB has fulfilled its requirement to report to Congress on compliance with title II in the same document used to fulfill a statutory requirement for reporting to Congress on the costs and benefits of federal regulations. OMB's reports provide information on the rules that agencies have identified as containing federal mandates and also discuss agencies' efforts to consult with state, local, and tribal governments in the development of significant rules.

Scope and Methodology

To describe the applicable procedures, definitions, and exclusions for identifying federal mandates in statutes and rules under UMRA, we reviewed the act, other related guidance documents, and CBO and OMB reports on the implementation of UMRA. We also interviewed persons knowledgeable about the implementation of UMRA in OMB, CBO, and other congressional offices. To identify statutes and final rules that were and were not identified as containing federal mandates under UMRA and analyze the reasons for those determinations, we focused our review on statutes enacted and final rules published during 2001 and 2002, as agreed with your staff.

¹⁶Title III of UMRA included requirements for the Advisory Commission on Intergovernmental Relations (ACIR) to report on various issues related to federal mandates, but Congress terminated funding for the commission in 1996.

For our review and analysis of the implementation of title I, we relied on information provided to us by the CBO officials responsible for preparing UMRA statements on proposed legislation and the annual CBO reports on UMRA. At our request, CBO identified from that 2-year period the 5 statutes that contained federal mandates at or above UMRA's cost thresholds and 43 examples of statutes that were not so identified but nevertheless contained provisions having impacts on nonfederal parties. We did not ask CBO to compile a comprehensive list of all statutes in those years that might have impacts on nonfederal parties. For our review and analysis of the implementation of title II, we reviewed all 122 major and/or economically significant final rules—generally, those that would have an annual effect on the economy of \$100 million or more or raise other significant economic or policy issues—that federal agencies issued during 2001 and 2002. Parallel to the information on statutes provided by CBO, we focused on identifying two sets of final rules—those that were identified as containing federal mandates at or above UMRA's threshold and those that were not but included provisions affecting nonfederal parties that might be perceived by those parties as potential “unfunded mandates.” To determine whether the statutes and final rules we examined were perceived by affected parties as potentially having “unfunded mandate” implications, we shared them with the following national organizations representing nonfederal levels of government: National Association of Counties, National Conference of State Legislatures (NCSL), National Governors Association, the National League of Cities, and the U.S. Conference of Mayors.¹⁷ We then analyzed the statutes and rules to identify how they had been treated under UMRA, in particular identifying the application of procedural, definitional, and other provisions of UMRA that guide the identification of federal mandates.

The scope of our review was limited to a 2-year period and, within that period, only to examples of legislation enacted and rules that were finalized (i.e., we did not include all legislation considered by Congress or rules that were proposed but not finalized). Therefore, the examples we reviewed might not illustrate all possible ways that a statute or rule with a perceived mandate could be enacted or issued without being identified as a federal mandate under UMRA. However, the representatives from external public sector organizations who reviewed the statutes and rules we examined generally concurred that they were perceived as potential “unfunded

¹⁷We also shared our lists with organizations representing the private sector, but received no formal responses from them.

mandates” and that we did not exclude any major examples that they believed should have been included. It is also important to recognize that perceived “unfunded mandates” could result from nonstatutory, nonregulatory federal actions, such as Homeland Security threat level adjustments, which are not covered by UMRA and therefore were outside the scope of our specific objectives. (See app. I for a more detailed description of our objectives, scope, and methodology.)

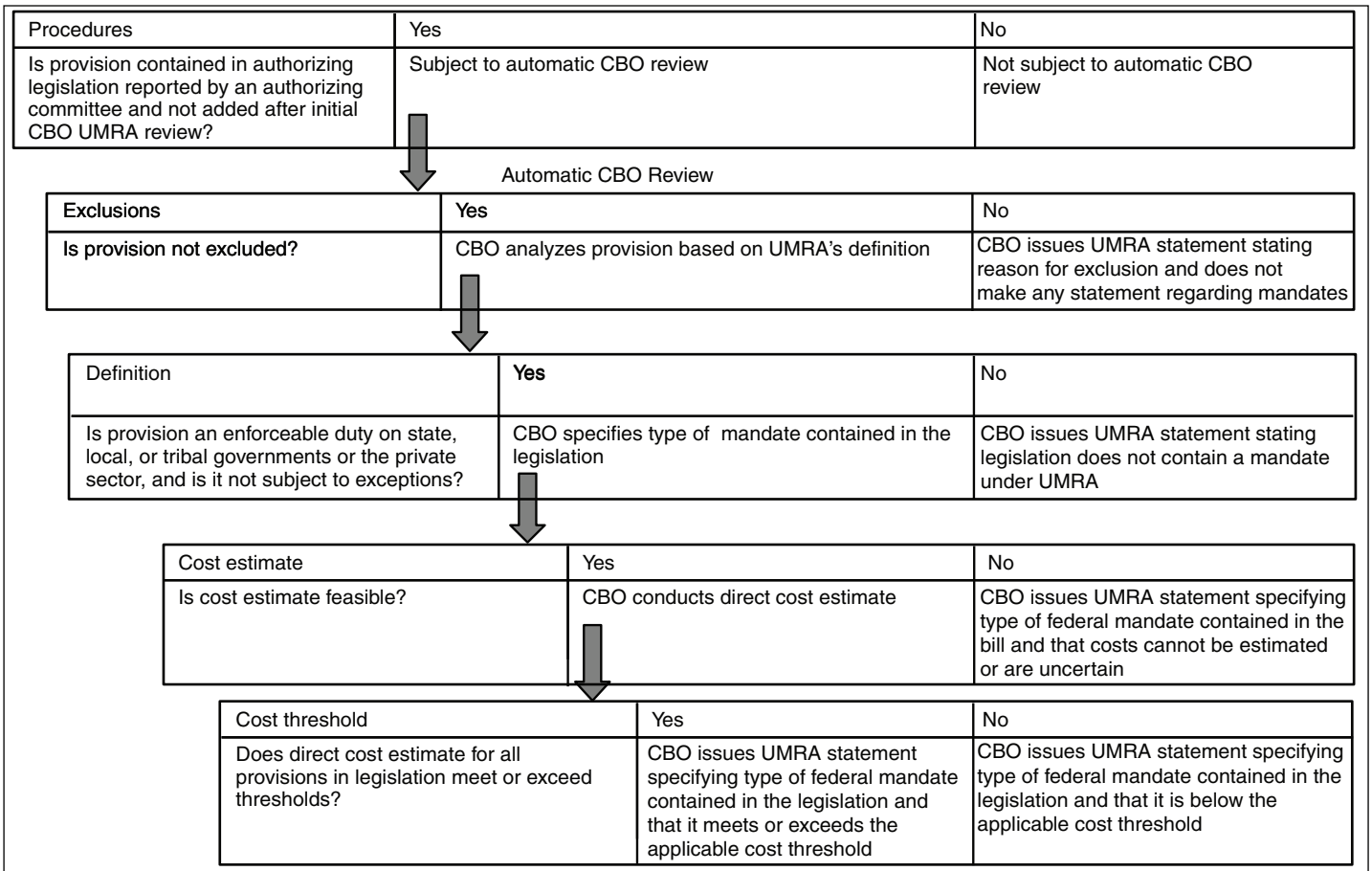
Identification of Federal Mandates in Statutes under Title I

Statutory provisions that impose requirements on nonfederal parties might not be identified as federal mandates under UMRA because some legislative actions do not trigger a review and even if the provisions are subject to review, UMRA circumscribes the definition of a federal mandate. When legislation containing “mandates” does undergo UMRA’s formal scrutiny, it has to meet three definitional requirements, not fall into any of seven exclusions, and impose costs at or above certain thresholds to be identified as containing federal mandates exceeding the cost thresholds under UMRA. In 2001 and 2002, 5 of the 377 statutes enacted were identified as containing provisions that were federal mandates exceeding the thresholds. From the remaining statutes, CBO identified 43 examples that had some kind of impact on nonfederal parties but were not identified during the legislative process as containing federal mandates at or above UMRA’s thresholds. For 24 of those examples, this was because their estimated direct costs were below the thresholds. There is some evidence that the existence of UMRA served to hinder the introduction of intergovernmental mandates, or led to their modification before enactment in the past. There is also evidence that suggests that some of CBO’s cost estimates under UMRA may have led lawmakers to reduce the cost of some mandates before enactment.

Legislation Must Undergo a Multistep Process to Be Identified as Containing Federal Mandates at or Above Applicable Cost Thresholds

The type of legislation that a provision is contained in and how the legislation is considered determines if it is subject to automatic review by CBO. If provisions are subject to automatic CBO review, they are analyzed based on UMRA’s definitional requirements and exclusions. The feasibility of developing a cost estimate and the level of the cost estimate is then compared to applicable thresholds. Figure 1 depicts this general sequence of conditions that must be met before a statutory provision would be identified as a federal mandate at or above UMRA’s cost thresholds.

Figure 1: A Multistep Process Has to Be Followed for CBO to Identify Federal Mandates in Proposed Legislation



Source: GAO.

The following sections discuss these procedures, exclusions, definitions, and cost thresholds in more detail.

UMRA Procedures Do Not Require All Legislative Provisions to Be Automatically Reviewed by CBO

Provisions that are (1) not contained in authorizing bills, or (2) not reported by an authorizing committee are not automatically subject to CBO review before going to the floor (see fig. 1), and thus a CBO UMRA statement may not be issued. For example, appropriations bills are not automatically subject to CBO review under UMRA. In addition, even if a provision is contained in an authorizing bill, it still must be “reported” by that committee—as opposed to going directly to the full House or Senate or

“discharged” by the committee without a vote to send it to the full House or Senate—to be subject to automatic CBO review.

CBO was not required to review seven bills that contained federal mandates during 2001 and 2002 that ultimately became law because they either were appropriations bills or were authorizing bills not reported by authorizing committees. For example, a provision prohibiting states from issuing a permit or lease for certain oil and gas drilling in the Great Lakes was not reviewed by CBO prior to enactment because it was contained in the Energy and Water Development Appropriations Act of 2002.¹⁸

Although UMRA does not require an automatic CBO review of provisions not contained in authorizing bills or bills not reported by authorizing committees, CBO told us that it initiates an informal review of provisions in appropriations bills and the results of these informal reviews are communicated to appropriations committee clerks when CBO finds potential mandates in these bills. During these informal reviews, CBO does not estimate costs unless CBO already has cost data from an earlier review or unless Congress requests it. CBO will also review any legislation on request.

UMRA does not require automatic CBO review of provisions added after CBO’s initial review. Amendments containing mandates may be added to legislation after CBO issues its statement about whether the legislation contains any federal mandates. UMRA states, however, that “the committee of conference shall insure to the greatest extent practicable” that CBO prepare statements on amendments offered subsequent to its initial review that contain federal mandates.¹⁹ According to CBO’s annual report for 2002, three laws were enacted in 2002 that contained federal mandates not reviewed by CBO prior to enactment because they were added after CBO reviewed the legislation. For example, a provision requiring insurers of commercial property to offer terrorism insurance was added to the Terrorism Risk Insurance Act of 2002 after CBO’s UMRA review, and thus not identified as a private sector mandate under UMRA prior to enactment.²⁰

¹⁸ Pub. L. No. 107-66.

¹⁹ 2 U.S.C. §658c(d).

²⁰ Pub. L. No. 107-297.

When Provisions Are Reviewed,
They Are Subject to Many
Definitional Requirements and
Exclusions

There is one other important caveat regarding legislative provisions for which a CBO UMRA review is not required. The Joint Committee on Taxation (JCT), rather than CBO, has jurisdiction over proposed tax legislation and produces revenue estimates for all such legislation considered by either the House or the Senate. In addition, JCT examines legislative provisions that affect the tax code for federal mandates and estimates their costs. According to a JCT legislative counsel, a statement regarding the existence of federal mandates should be included in the House or Senate committee report. Also, according to CBO, JCT estimates of revenue impacts are included in CBO cost estimates for legislation.

A provision must meet the formal definition of a mandate and not be classified as an “exception” to be identified as a federal mandate. UMRA defines a federal mandate as a provision that would impose an enforceable duty upon state, local, or tribal governments (intergovernmental mandate) or upon the private sector (private sector mandate). Exceptions are defined as enforceable duties that are conditions of federal financial assistance or arise from participation in a voluntary federal program.

UMRA does include as intergovernmental mandates certain conditions on federal assistance programs and reductions in the authorization of appropriations for federal financial assistance and the control of borders under certain conditions.²¹ A provision would also meet the definition of an intergovernmental mandate if it relates to an existing federal program of \$500 million or more (annually) to state, local, and tribal governments if the provision would increase the stringency of conditions of funding, place caps or reduce the funding and the state, local, or tribal governments cannot modify their financial or programmatic responsibilities regarding the federal program.

A private sector mandate is also a provision that would reduce or eliminate the amount of authorization of appropriations for federal financial

²¹Specifically, UMRA includes reductions in appropriations to state, local, or tribal governments for complying with previously imposed duties unless they are reduced or eliminated by the amount of reduction; or the control of borders by the federal government; or reimbursement to state, local, or tribal governments for various costs associated with illegal aliens, when such a reduction or elimination would result in increased costs to state, local, or tribal governments for costs associated with illegal aliens; except if the state, local, or tribal governments have not cooperated with the federal government to locate, apprehend, and deport illegal aliens.

assistance that would be provided to the private sector for the purposes of ensuring compliance with such an enforceable duty.

UMRA also excludes certain provisions from its application. Specifically, UMRA does not apply to any provision in legislation that:

1. enforces Constitutional rights of individuals;
2. establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability;
3. requires compliance with accounting and auditing procedures with respect to grants or other money or property provided by the federal government;
4. provides for emergency assistance or relief at the request of any state, local, or tribal government or any official of a state, local, or tribal government;
5. is necessary for the national security or the ratification or implementation of international treaty obligations;
6. the President designates as emergency legislation and that Congress so designates in statute; or
7. relates to the old age, survivors, and disability insurance program under title II of the Social Security Act (including taxes imposed by sections 3101(a) and 3111(a) of the Internal Revenue Code of 1986 relating to old-age, survivors, and disability insurance).

If provisions are excluded, CBO will state the reason for the exclusion and make no statement regarding mandates in those provisions.

If a provision is not excluded and meets the definition of a federal mandate without exception under UMRA, CBO identifies the provision as a federal mandate under UMRA, and then determines if a cost estimate is feasible. For intergovernmental mandates, if a cost estimate is feasible, the direct costs (to state, local, or tribal governments) of all mandates contained within the legislation must equal or exceed \$50 million (in 1996 dollars) in any of the first 5 fiscal years that the relevant mandates would be effective for CBO to determine that the mandate meets or exceeds UMRA's cost

threshold. The same requirements apply for private sector mandates, except that the cost threshold is \$100 million (in 1996 dollars) or more. CBO adjusts both the intergovernmental and private sector cost thresholds annually for inflation. If an intergovernmental mandate exceeds the cost threshold, a point of order is available under UMRA. However, if a private sector mandate exceeds the cost threshold, a point of order is not available. If an intergovernmental or private sector mandate is below the applicable threshold, CBO states that a mandate (intergovernmental or private) exists with costs estimated to be below the threshold. Although this highlights the provision as mandate, it does not provide for a point of order under UMRA.

Cost Estimates May Not Be Feasible or Complete

Developing a cost estimate for federal mandates must be feasible, and their direct costs must meet or exceed applicable cost thresholds for CBO to identify them as such under UMRA. However, in some instances, it is not feasible to develop a cost estimate.

CBO indicated in its annual report for 2002 that common reasons why a cost estimate may not be feasible include (1) the costs depend on future regulations, (2) essential information to determine the scope and impact of the mandate is lacking, (3) it is unclear whom the bill's provisions would affect, and (4) language in UMRA is ambiguous about how to treat extensions of existing mandates. If a cost estimate for legislation is not feasible, CBO specifies the kind of mandate it contains, but that the agency cannot estimate its costs. This does not prevent the legislation from moving through the legislative process, but in the case of an intergovernmental mandate, UMRA would still allow a member of Congress to raise a point of order.

CBO reported that it could not estimate the costs of mandates in nine bills that ultimately were enacted during 2001 and 2002. Of these nine laws, seven contained intergovernmental mandates and two contained both private sector and intergovernmental mandates. For example, CBO could not estimate the costs of provisions requiring manufacturers of medical devices to comply with certain labeling and notification conventions and to submit their registrations electronically contained in the Medical Device User Fee and Modernization Act of 2002.²² CBO stated that since many of the requirements in the act would depend on the future actions of the

²²Pub. L. No. 107-250.

Secretary of Health and Human Services, CBO could not determine whether their direct costs would exceed UMRA's threshold.

Even if costs can be estimated, UMRA focuses only on the direct costs imposed by federal mandates in legislation. According to UMRA, such costs are limited to spending that results directly from the mandates imposed by the legislation, rather than from the legislation's broad effects on the economy. The direct costs of a federal mandate also include any new revenues that state and local governments are prohibited from raising. While CBO has estimated the indirect costs of some federal mandates, CBO is limited to including only direct costs when determining if the aggregate total costs of federal mandates in legislation meet or exceed the applicable cost thresholds under UMRA. CBO testified in July 2003 that, "federal mandates often have secondary effects, including the effects on prices and wages when the costs of a mandate imposed on one party are passed along to other parties, such as customers or employees." CBO told us that if it determined that indirect costs (including secondary effects) would be significant, it would include the estimate in its UMRA statement, but that its determination of whether a mandate meets or exceeds the applicable thresholds is based only on direct costs. Therefore, although information on indirect costs may be available, legislation with significant total costs (direct and indirect) on nonfederal parties may not be identified as exceeding the cost thresholds under UMRA.

CBO may conclude that legislation contains a federal mandate and is funded because the legislation authorizes funds to be appropriated to carry out or comply with the mandates. However, if the appropriation subsequently provided is less than the amount authorized, the federal mandate's costs may be at or above the threshold.

UMRA contains a mechanism designed to help curtail mandates with insufficient appropriations, but it has never been utilized. UMRA provides language that could be included in legislation that would allow agencies tasked with administering funded mandates to report back to Congress on the sufficiency of those funds.²³ Congress would then have a certain time

²³2 U.S.C. § 658d(a)(2)(B).

period to decide whether to continue to enforce the mandate, adopt an alternate plan, or let it expire, meaning the provision comprising the mandate would no longer be enforceable. A CBO official did not recall any legislation ever containing this provision, and our database search has also resulted in no legislation found containing this provision.²⁴

CBO Identified Few Laws in 2001 and 2002 as Containing Federal Mandates at or Above UMRA's Cost Threshold, But UMRA May Have an Indirect Effect

Although few laws have been identified as containing federal mandates at or above applicable cost thresholds, there is some evidence that UMRA has a discouraging effect on the enactment of intergovernmental mandates and the magnitude of costs to nonfederal parties in proposed legislation.

Of 377 laws enacted in 2001 and 2002, CBO identified at least 44 containing a federal mandate under UMRA. Of these 44, CBO identified 5 containing mandates at or above the cost thresholds, and all were private sector mandates (see tables 1 and 2 below). From 1996 to 2000, CBO identified 18 mandates (2 intergovernmental and 16 private sector) with costs at or above cost thresholds that became law.

Table 1: Legislation Enacted in 2001 and 2002 that CBO Identified as Containing Federal Mandates Under UMRA

	2001		2002			Both Years		
Number of laws enacted	108		269			377		
Type of mandate(s)	Intergovernmental	Private ^a sector	Intergovernmental	Private sector	Both types	Intergovernmental	Private ^a sector	Both types
Laws with mandate	12	At least 1	8	11	12	20	At least 12	12
Laws with mandate at or above cost threshold	0	1	0	4	0	0	5	0

Source: CBO.

^aCBO's annual report for 2001 did not separately report the number of laws that contained private sector mandates, but did report 1 law containing a private sector mandate above the cost threshold. Adding the 11 laws that CBO identified as containing private sector mandates in 2002 yields at least 12 laws during 2001 and 2002 that contained private sector mandates (exclusive of laws that contained both private sector and intergovernmental mandates).

²⁴ Search conducted on Lexis on January 22, 2004, for bills and committee reports containing this provision.

Table 2: Laws Enacted in 2001 and 2002 that CBO Identified as Containing Federal Mandates Meeting or Exceeding UMRA's Cost Threshold

Law	Mandate	Cost information
Aviation and Transportation Security Act of 2001 (Pub. L. No. 107-71)	Imposes a user fee to fund aviation-security programs; requires security enhancements on aircraft; imposes additional security procedures	CBO estimated that the direct costs to air carriers (net of savings) would range from \$313 million in 2002 to \$1.0 billion in 2006.
Bipartisan Campaign Reform Act of 2002 (Pub. L. No. 107-155)	Bans "soft-money" collections by national political parties Changes procedures for collection and use of campaign contributions	CBO estimated that net direct costs to the private sector (including national political parties and broadcasters) could exceed \$300 million in a Presidential election year.
Farm Security and Rural Investment Act of 2002 (Pub. L. No. 107-171)	Requires that some foods carry labels indicating their country of origin Establishes new minimum prices for fluid milk in different regions	CBO estimated that increased costs to milk handlers could total \$1.3–1.5 billion annually. Most of this cost would be passed to consumers. CBO estimated that the costs to retailers and suppliers to provide origin labeling could be as high as \$1 billion annually.
Job Creation and Worker Assistance Act of 2002 (Pub. L. No. 107-147)	Extends the requirement that health insurers cover mental health and medical benefits equally Limits nonaccrual accounting Alters treatment of indebtedness for S corporations	CBO estimated that the direct costs of extending the requirement to cover mental health would be \$270 million in 2002 for the private sector (group health plans) and would increase premiums for group health insurance. CBO estimated the direct costs of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) continuation to be \$200 million in 2002.
Anton's Law of 2002 (Pub. L. No. 107-318)	Requires automobile manufacturers to install a lap and shoulder-belt harness in the center-rear seating position of certain vehicles	CBO estimated that auto manufacturers would spend as much as \$1 billion to install new belts.

Source: CBO.

UMRA May Have Discouraged the Enactment of Proposed Unfunded Intergovernmental Mandates and Helped Reduce the Costs of Some Mandates

UMRA may have indirectly discouraged the passage of legislation identified as containing intergovernmental mandates at or above UMRA's cost threshold. Since 1996 only three proposed intergovernmental mandates with annual costs above the applicable threshold had become law (an increase in the minimum wage in 1996, a reduction in federal funding for Food Stamps in 1997, and a preemption of state laws on premiums for prescription drug coverage in 2003).

Between 1996 and 2002, CBO reported that 21 private sector mandates with costs over the applicable threshold were enacted. Of these, 8 involved taxes, 4 concerned health insurance, 4 dealt with regulation of industries, 2 affected workers' take home pay, 1 imposed new requirements on sponsors of immigrants, 1 changed procedures for the collection and use of

campaign contributions, and 1 imposed fees on airline travel to fund aviation security.

UMRA may have also aided in lessening the costs of some mandates. From 1996 through 2000, CBO identified 59 proposed federal mandates with costs above applicable thresholds. Subsequent to CBO identification, 9 were amended before enactment to reduce their costs below the applicable thresholds, while 18 mandates were enacted with costs above the threshold, and 32 were never enacted. Although CBO has not done an analysis to determine the role of UMRA in reducing the costs of mandates ultimately enacted, it did state in its report that “it was clear that information provided by CBO played a role in the Congress’s decision to lower costs.”

There is also some testimonial evidence regarding the effectiveness of UMRA on legislation. CBO stated in its July 2003 congressional testimony that “both the amount of information about the cost of federal mandates and Congressional interest in that information have increased considerably. In that respect, title I of UMRA has proved to be effective.” The Chairman of the House Rules Committee was quoted in 1998 as saying that UMRA “has changed the way that prospective legislation is drafted... Anytime there is a markup [formal committee consideration], this always comes up.” Although points of order are rarely used, they may be perceived as an unattractive consequence of including a mandate above cost thresholds in proposed legislation. The director of policy and federal relations at the National League of Cities stated, “This is like a shoal out in the water. You know it is there, so you steer clear of it.”²⁵

²⁵See *Congressional Quarterly Weekly Reports*, p. 2318 (Washington, D.C.: Sept. 5, 1998).

Nonfederal Parties Perceived Some Enacted Provisions as Having Unfunded Mandate Implications

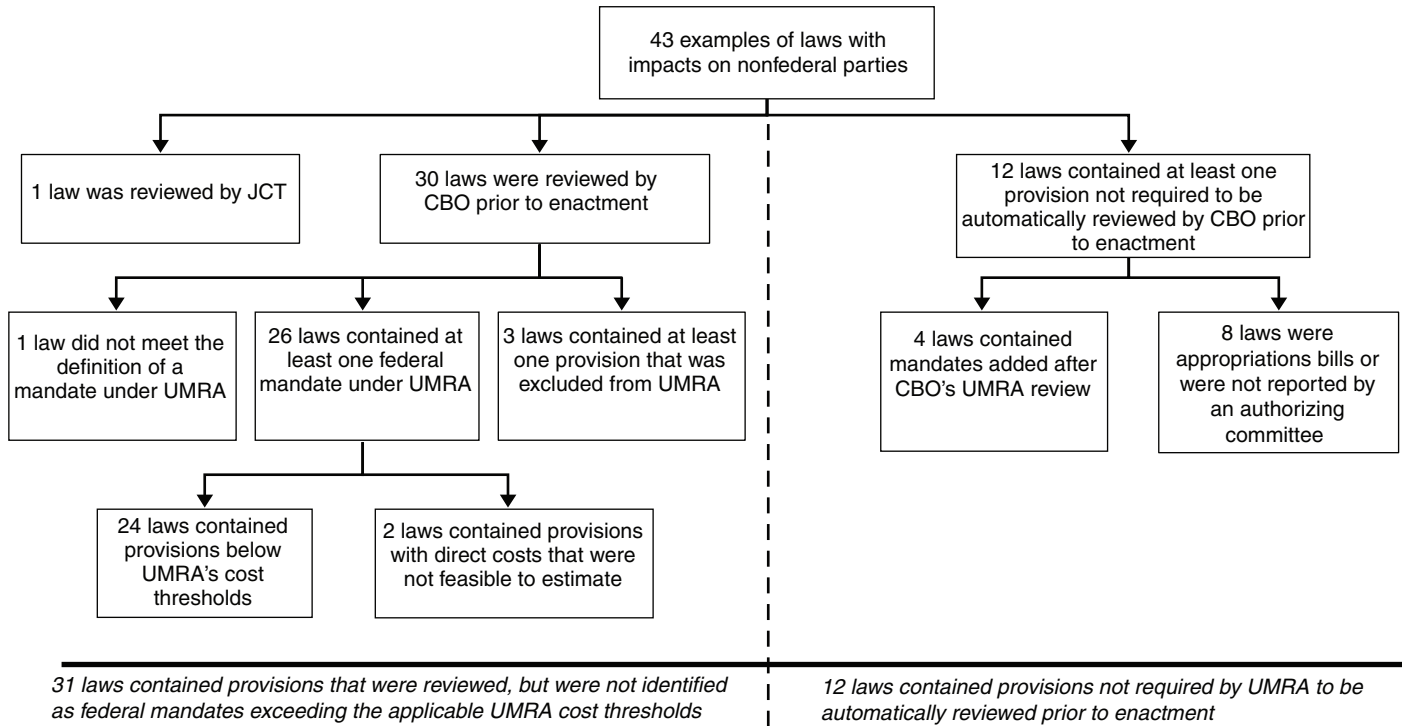
Overall, CBO's annual reports from 2001 and 2002 showed that most proposed legislation did not contain federal mandates as defined by UMRA. Further, most of the proposed legislation with mandates would not have imposed costs exceeding the thresholds set by UMRA.²⁶ We asked CBO to compile a list of examples from among those laws enacted in 2001 and 2002 that it perceived as having impacts on nonfederal parties but were not identified as containing federal mandates meeting or exceeding UMRA's cost thresholds. We then analyzed these 43 examples to illustrate the application of UMRA's procedures, definitions, and exclusions on legislation that was not identified as containing mandates at or above UMRA's threshold, but might be perceived to have "unfunded mandates" implications. We shared CBO's list of 43 examples with national organizations representing nonfederal levels of government, and they generally agreed that those laws contained provisions perceived by their members as mandates.²⁷

For 12 of the 43 examples, an automatic UMRA review was not required of at least some provisions prior to enactment because of the legislative process used to enact the bill, for example, not being reported by an authorizing committee. Out of the remaining 31 laws that did undergo a cost estimate, 24 were found to contain mandates with costs below applicable thresholds, 3 contained provisions that were excluded, 2 contained provisions with direct costs that were not feasible to estimate, 1 contained a provision that did not meet UMRA's definition of a mandate, and 1 was reviewed by JCT and found not to contain any federal mandates (see fig. 2). It should be noted that the number of laws in any of the categories listed do not necessarily correlate with the magnitude of perceived or actual impact on affected nonfederal parties.

²⁶For more detailed information on all legislation from 2001 and 2002 identified by CBO as including federal mandates, see CBO's annual reports on its activities under UMRA (www.cbo.gov).

²⁷ We also shared this list with organizations representing the private sector, but received no response.

Figure 2: How Certain Examples of Laws with Impacts on Nonfederal Parties Were Treated Under UMRA



Source: CBO.

Of the 12 examples of laws with provisions that CBO was not required to review prior to enactment, CBO later determined how they would have been characterized under UMRA: 5 laws contained mandates with direct costs below UMRA's thresholds, 4 laws contained mandates with direct costs that could not be estimated, 1 was excluded under UMRA for national security so would not be reviewed for the presence of mandates, 1 did not meet the definition of a mandate, and 1 had some provisions with costs below the threshold and some provisions excluded (again, for national security).²⁸ (See app. II for more detailed information on the 43 examples.)

²⁸ Among the four laws containing mandates for which direct costs could not be estimated, some provisions had cost(s) estimated to be below the applicable cost threshold and others had cost(s) that were uncertain.

Some Legislation Had Potentially Significant Impacts on Nonfederal Parties

Although cost estimates of the full impact (including direct and indirect costs) are not available for all 43 examples discussed previously, table 3 describes 10 laws among the 43 that we consider important to highlight and/or have multiple uncertainties surrounding the magnitude of their potential impacts on nonfederal parties.

Table 3: Selected Examples of Statutes with Potentially Significant Impacts on Nonfederal Parties

GAO ID	Rule	Description of potential impacts on nonfederal parties	Reason(s) the statute was not identified as containing a federal mandate exceeding costs thresholds
L1	Economic Growth and Tax Relief Reconciliation Act of 2001 (Pub. L. No. 107-16)	Increases tax credits and phases out the estate and generation-skipping transfer tax, which impacts state tax revenues.	Did not meet the definition of a mandate (no enforceable duty on state, local, or tribal governments or the private sector). JCT determined that the act did not contain any intergovernmental mandates or revenue raising provisions in excess of UMRA thresholds.
L7	USA PATRIOT Act of 2001 (Pub. L. No. 107-56)	Multiple provisions preempting state and local laws in regard to disclosure of financial and consumer reporting information, and liability laws relating to education agencies and institutions. Restricts states' authority to issue licenses for operating motor vehicles to transport hazardous materials, and prohibits certain parties from shipping or receiving biological toxins in interstate or foreign commerce.	Some provisions were not reviewed prior to enactment because mandates were added after CBO review. Some provisions were excluded for national security. After enactment, CBO estimated that provisions that were mandates had costs below thresholds.
L18	No Child Left Behind Act of 2001 (Pub. L. No. 107-110)	Imposes various requirements including state standards and assessments, progress requirements, and other provisions, and provides grants associated with these requirements.	Did not meet the definition of a mandate because the requirements were a condition of federal financial assistance.
L22	Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Pub. L. No. 107-188)	Contains multiple provisions requiring assessments of water supplies and other measures including extending prescription drug application fees, and registration requirements for food processors.	Provisions were not reviewed prior to enactment because an authorizing committee did not report them. After enactment, CBO stated some provisions were funded, some were estimated to be below thresholds, and the costs of others were uncertain.
L25	Sarbanes-Oxley Act of 2002 (Pub. L. No. 107-204)	Established the Public Company Accounting Oversight Board (PCAOB), and required new financial disclosures of public companies.	CBO stated the costs of several provisions were uncertain, but the operations of the PCAOB and another standard-setting body would be \$80 million per year and would be funded by fees assessed on public companies.

(Continued From Previous Page)

GAO ID	Rule	Description of potential impacts on nonfederal parties	Reason(s) the statute was not identified as containing a federal mandate exceeding costs thresholds
L32	Medical Device User Fee and Modernization Act of 2002 (Pub. L. No. 107-250)	Allows the assessment of user fees from manufactures of medical devices to defray the cost to the Food and Drug Administration of administering the approval of devices. Requires medical device manufacturers to comply with certain labeling and notification conventions and to submit their registrations electronically.	CBO stated that some costs were below the threshold and others were uncertain because they depended on the future actions of a government agency.
L34	Help America Vote Act of 2002 (Pub. L. No. 107-252)	Places a number of requirements on state and local governments regarding federal elections including standards for voting systems, computerized databases, and procedural development for provisional voting. The act also authorized grants for these requirements.	Some provisions excluded because they enforced the constitutional rights of individuals. For some other provisions, CBO stated that any costs to state, local, or tribal governments would be incurred voluntarily from participating in grant programs.
L36	Homeland Security Act of 2002 (Pub. L. No. 107-296)	Contains provisions including the preemption of state and local laws in regard to disclosure of information, and requirements for training for airlines.	CBO estimated some costs would be below the threshold and others were uncertain. A mandate requiring air carriers to provide flight attendants with a method of communicating with pilots was added after CBO review, and thus its costs were not estimated prior to enactment. After enactment, CBO stated the costs of this mandate were uncertain.
L37	Terrorism Risk Insurance Act of 2002 (Pub. L. No. 107-297)	Requires commercial property insurers to offer terrorism insurance, and requires insurers and policyholders to pay assessments.	CBO estimated some costs were below thresholds, while others were uncertain. The mandate requiring insurers to offer terrorism insurance was added after CBO review, and thus its costs were not estimated. After enactment, CBO stated that the costs of this mandate were uncertain.
L41	Veterans Benefits Act of 2002 (Pub. L. No. 107-330)	Establishes a temporary exemption of some National Guard members from certain financial obligations.	CBO stated the costs of this mandate were uncertain since the number of National Guard members called to active duty in the future is uncertain. CBO stated other costs were below applicable thresholds.

Source: GAO.

The following paragraphs provide more detailed descriptions regarding 2 of these 10 examples. One law contained a definitional exception and was not identified as containing any mandates. The other law was identified as containing both intergovernmental and private sector mandates.

The No Child Left Behind Act is a well-known example that has intergovernmental implications, but was not identified as a federal

mandate under UMRA. No Child Left Behind provides federal grants for a host of education programs, requires states to design and implement standards and assessments, and provides financial penalties for states that fail to achieve certain standards over 2 consecutive years. CBO stated that the bill does not contain any federal mandates as defined by UMRA because any costs incurred by state, local, or tribal governments would result from complying with conditions of financial aid, a definitional exception under UMRA.

Though it does not meet the UMRA definition of a federal mandate, No Child Left Behind is still perceived as an “unfunded mandate” by some interested parties. In a recent radio advertisement, the president of the National Education Association described this act as a “huge unfunded federal mandate.”²⁹ In response to our query, NCSL listed No Child Left Behind as one of the most important statutes that was not identified as a federal mandate, but should have been. A recent newspaper article identified 15 states with resolutions, bills, or studies that “protest” in one form or another against the act.³⁰ According to the article, some states claim that significant impacts resulting from No Child Left Behind may include the loss of funds if schools fail to make enough progress, extra costs for tutoring and teacher training, and costs associated with possible longer school days and summer school, all of which may be required to meet standards set by the act.

Another example among the 10 laws is the Sarbanes-Oxley Act of 2002. CBO identified this law as containing both intergovernmental and private sector mandates. The intergovernmental mandate’s costs were estimated to not exceed the cost threshold, but the private sector mandates’ costs were uncertain, and could possibly exceed UMRA’s thresholds. Among the mandates contained in the law were provisions such as: (1) allowing PCAOB to assess fees on public companies, (2) establishing new standards for auditors and audit committees of public companies, (3) requiring public corporations to make enhanced financial disclosures to the Securities and

²⁹National Education Association radio advertisement, *First Order of Business* (Washington, D.C.: January 2004).

³⁰See, *Washington Post*, “More States Are Fighting ‘No Child Left Behind Law’” (Washington, D.C.: Feb. 19, 2004): A3.

Exchange Commission (SEC), (4) requiring notices of blackout periods³¹ from pension plan administrators to investors, and (5) prohibiting insider trades during pension fund blackout periods if stock was acquired based on connection of service as a director or executive officer.

CBO indicated that the only costs associated with Sarbanes-Oxley's federal mandates that the agency could estimate were for the notification of blackout periods by pension administrators, and the costs of operating PCAOB. CBO estimated the costs of providing notification of blackout periods fell below the UMRA thresholds but provided no quantified estimate, and CBO estimated the cost of running PCAOB and an associated standard-setting body to be approximately \$80 million per year which would be funded from fees assessed on public companies. CBO stated it was uncertain if the rest of the mandates contained in Sarbanes-Oxley exceeded UMRA's cost threshold of \$115 million adjusted for inflation.

Identification of Federal Mandates in Rules under Title II

Procedurally, the identification of federal mandates under title II of UMRA is simpler than under title I. Although regulatory agencies generally are to assess the intergovernmental and private sector effects of all their actions, under UMRA title II they only need to publicly identify and prepare UMRA "written statements" on those rules that the agencies believe include a federal intergovernmental or private sector mandate that may result in expenditures of \$100 million or more (adjusted for inflation) in any year. However, there are 14 definitional exceptions, exclusions, or other restrictions applicable to the identification of federal mandates in rules, compared to 10 that are applicable to identifying mandates in legislation. Agencies identified 9 of the 122 major and economically significant final rules published in 2001 and 2002 as containing federal mandates as defined by UMRA. However, based on our review of the published rules, we determined that 65 of the remaining rules imposed new requirements on nonfederal parties. Agencies cited, or could have cited, a variety of reasons that these 65 rules did not contain federal mandates under UMRA. Nevertheless, at least 29 of the 65 rules appeared to have significant financial impacts on affected nonfederal parties of \$100 million or more in any year.

³¹Blackout periods are the specified time periods when trades (purchase, sale, acquisition, or transfer of any equity security) are prohibited.

UMRA Procedures for Rules Are Less Complex than for Legislation, But More Restrictions Apply to Identifying Federal Mandates

UMRA's process of identifying and reporting on rules with federal mandates is more straightforward than that for legislation. UMRA generally directs agencies to assess the effects of their regulatory actions on other levels of government and the private sector. However, the agencies only need to identify and prepare written UMRA statements on those rules that the agencies have determined include a federal mandate that may result in expenditures by nonfederal parties of \$100 million or more (adjusted for inflation) in any year. Thus, unlike CBO's reviews of proposed legislation, one cost threshold applies to both intergovernmental and private sector mandates in rules, and there is no public identification of potential federal mandates in rules before agencies determine whether such mandates exceed the threshold. As is the case for legislation, UMRA contains many definitions and exclusions that affect the extent to which agencies' rules are considered to have federal mandates at or above the threshold.

The three definitional provisions and seven general exclusions from UMRA that we previously identified as applicable to legislation also apply to federal rules. However, there are four additional restrictions to the identification of federal mandates in rules (i.e., in an UMRA statement):

- UMRA's requirements do not apply to provisions in rules issued by independent regulatory agencies.³²
- Preparation of an UMRA statement, and related estimate or analysis of the costs and benefits of the rule, is not required if the agency is "otherwise prohibited by law" from considering such an estimate or analysis in adopting the rule.

³²According to the Paperwork Reduction Act, these include agencies such as the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Federal Communications Commission, the Federal Trade Commission, the Nuclear Regulatory Commission, the Securities and Exchange Commission, and "any other similar agency designated by statute as a Federal independent regulatory agency or commission" (44 U.S.C. 3502(5)).

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- The requirement to prepare an UMRA statement does not apply to any rule for which the agency does not publish a general notice of proposed rulemaking in the *Federal Register*. This means that UMRA does not cover interim final rules and any rules for which the agency claimed a “good cause” or other exemption available under the Administrative Procedure Act of 1946 to issue a final rule without first having to issue a notice of proposed rulemaking.³³
 - UMRA’s threshold for federal mandates in rules is limited to *expenditures*, in contrast to title I which refers more broadly to direct costs. Thus, a rule’s estimated annual effect might be equal to or greater than \$100 million in any year—for example, by reducing revenues or incomes in a particular industry—but not trigger UMRA if the rule does not compel nonfederal parties to spend that amount. Under title I, though, the direct costs of a mandate in legislation also include any amounts that state and local governments are prohibited from raising in revenues to comply with the mandate. However, as in reviews of legislation, indirect costs of rules are not considered when determining whether a mandate meets or exceeds UMRA’s threshold.

Two of these restrictions on UMRA’s scope in the regulatory process are essentially procedural. If a rule’s path to issuance was through an independent regulatory agency or a final rule with no prior proposed rule, any “mandate” included in the rule would not be subject to identification and review under UMRA.

OIRA Monitors Agencies’ Compliance with Title II Requirements

OIRA is responsible for the centralized review of significant regulatory actions published by executive branch agencies, other than independent regulatory agencies. Under Executive Order 12866, which was issued in September 1993, agencies are generally required to submit their significant draft rules to OIRA for review before publishing the rules. As part of this regulatory review process, OIRA monitors agencies’ compliance with UMRA. In the submission packages for their draft rules, federal agencies are to designate whether they believe the rule may constitute an unfunded

³³5 U.S.C. 553. See also U.S. General Accounting Office, *Federal Rulemaking: Agencies Often Published Final Actions Without Proposed Rules*, [GAO/GGD-98-126](#) (Washington, D.C.: Aug. 31, 1998).

mandate under UMRA. According to OIRA representatives, consideration of UMRA is then incorporated as part of these regulatory reviews, and draft rules are expected to contain appropriate UMRA certification statements.³⁴

OIRA's guidance to agencies notes that the analytical requirements under Executive Order 12866 are similar to the analytical requirements under UMRA, and thus the same analysis may permit agencies to comply with both analytical requirements.³⁵ However, OIRA representatives pointed out that UMRA might also require agency consultations with state and local governments on certain rules, and this is something that OIRA will look for evidence of when it does its regulatory reviews. The officials also pointed out that UMRA provides OIRA a statutory basis for requiring agencies to do an analysis similar to that required by the executive order (which can be rescinded or amended at the discretion of the President).

Agencies Identified Few Final Rules Published in 2001 and 2002 as Containing Federal Mandates

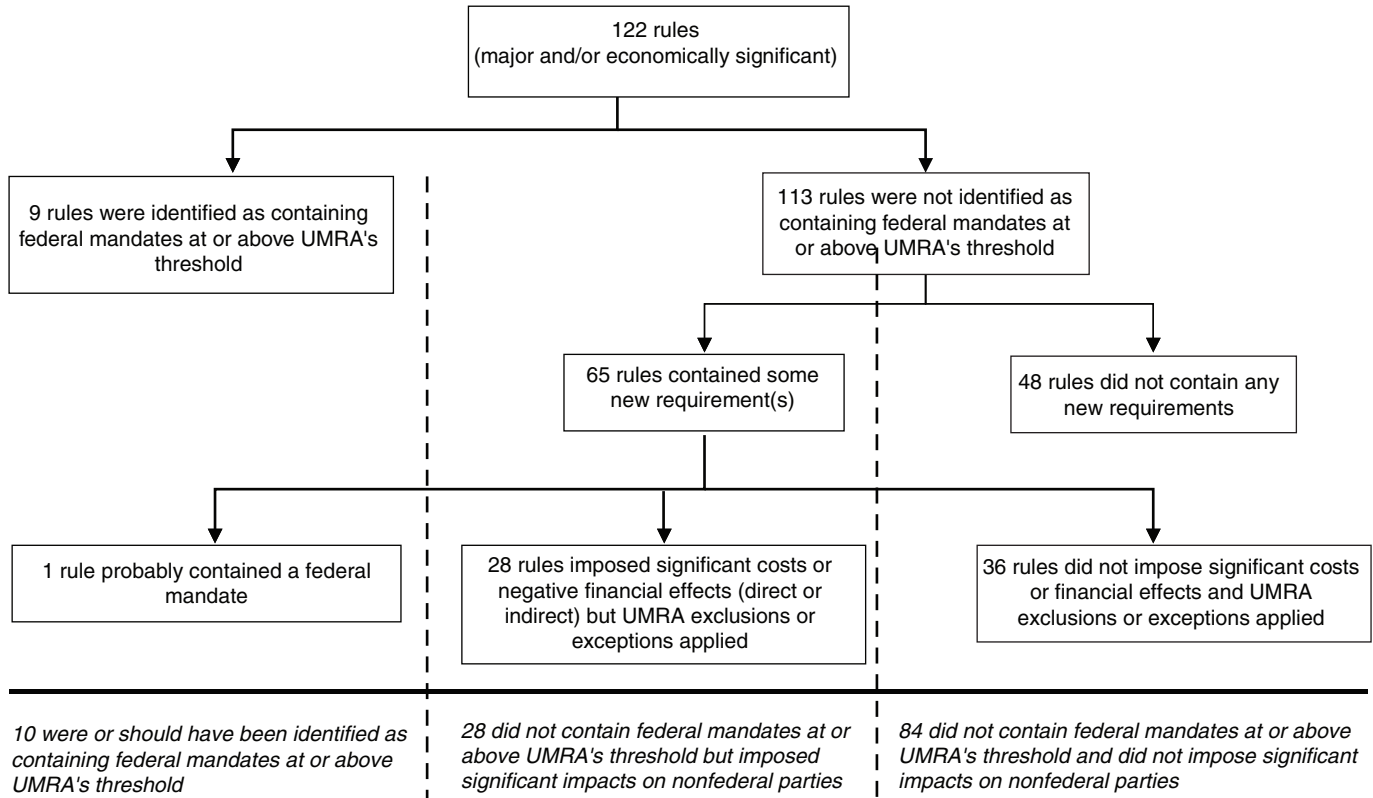
Federal agencies identified 9 of the 122 major and/or economically significant final rules that federal agencies published in 2001 or 2002 as containing federal mandates under UMRA (see fig. 3).³⁶

³⁴ OIRA also checks for related statements and certifications from agencies on the Regulatory Flexibility Act (5 U.S.C. 601-612), which requires agencies to assess the impact of forthcoming regulations on "small entities," Executive Order 13132 which requires agencies to assess the federalism implications of their regulations, and other requirements that might be triggered by the nature of the draft rule.

³⁵ As pointed out in our previous report on UMRA ([GAO/GGD-98-30](#)), the committee reports for the Senate bill that ultimately resulted in UMRA indicate that Congress was aware that, in many respects, the bill duplicated existing requirements, including those already required under Executive Order 12866.

³⁶ Although we refer broadly to "final rules," these also included other regulatory actions with legal effect (such as interim rules, temporary rules, and some notices), in contrast to proposed rules that do not have legal effect.

Figure 3: Few Final Rules Published in 2001 and 2002 Contained Federal Mandates Under UMRA



Source: GAO.

Only one of the nine rules that agencies identified as containing federal mandates under UMRA—EPA’s enforceable standard for the level of arsenic in drinking water systems—included an intergovernmental mandate. The remaining rules imposed private sector mandates:

- four Department of Energy rules that amended energy conservation standards for several categories of consumer products, including clothes washers and heat pumps;
- three EPA rules that adopted emission standards to reduce air pollution from various sources, including paper and pulp mills and heavy-duty highway engines and vehicles; and

-
- a Department of Transportation (DOT) rule that established a new federal motor vehicle safety standard that required tire pressure monitoring systems, controls, and displays.

In each of these final rules, the agencies addressed the applicable UMRA analytical and reporting requirements. (See app. III for more detailed information on these rules.) The limited number of rules identified as federal mandates during 2001 and 2002 is consistent with the findings in our 1998 report on UMRA and in OMB's annual reports on agencies' compliance with title II.³⁷

Most Often Rules with Financial Effects on Nonfederal Parties Did Not Trigger UMRA's Requirements Because They Did Not Require Expenditures at or Above UMRA's Threshold

Of the 113 major and/or economically significant rules not identified as including federal mandates under UMRA, we determined that 48 contained no new requirements that would impose costs or have a negative financial effect on state, local, and tribal governments or the private sector. Often, these were economically significant or major rules because they involved substantial transfer payments from the federal government to nonfederal parties. For example, the Department of Agriculture (USDA) published a final rule that expanded loans, loan deficiency payments, and working assistance loans for certain agricultural commodities, such as cotton and honey, and was expected to increase federal outlays by about \$1.1 billion annually. The Department of Health and Human Services (HHS) published a notice updating the Medicare payment system for home health agencies that was estimated to increase federal expenditures to those agencies by \$350 million in fiscal year 2002.

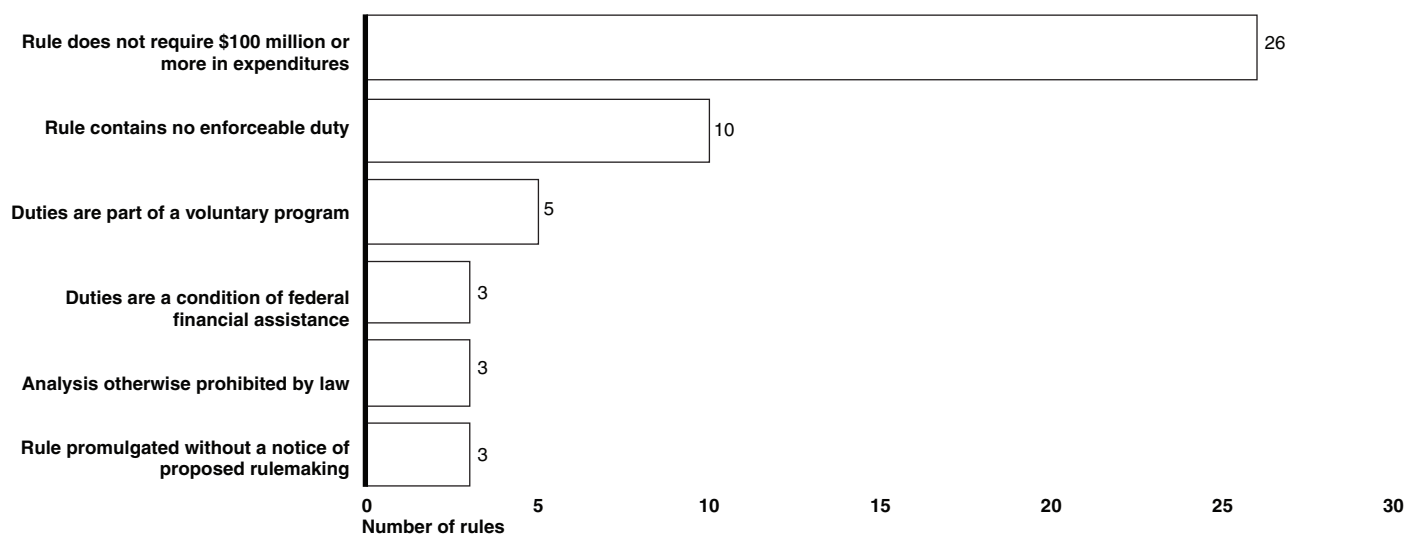
However, we determined that 65 of the 113 rules contained new requirements that would impose costs or result in other negative financial effects on state, local, and tribal governments or the private sector. We shared this list of rules with national organizations representing other levels of government affected by these rules.³⁸ Representatives of those organizations generally confirmed that all of the 65 rules were perceived by their members to have at least some "unfunded mandates" implications.

³⁷See [GAO/GGD-98-30](#).

³⁸We also shared our lists with organizations representing the private sector, but received no formal responses from them.

In 41 of the 65 published rules, the agencies cited a variety of reasons for determining that these rules did not trigger UMRA's requirements (see fig. 4). There were 26 rules in which the agencies stated that the rule would not compel expenditures at or above the UMRA threshold and 10 rules in which the agencies stated that rules imposed no enforceable duty. For 24 of the 65 rules, the agency did not provide a reason. However, independent regulatory agencies, which are not covered by UMRA, published 12 of these 24 rules, and there is no UMRA requirement for covered agencies to identify the reasons that their rules do not contain federal mandates.

Figure 4: Agencies' Reasons for Determining that Their Rules Did Not Trigger UMRA's Requirements



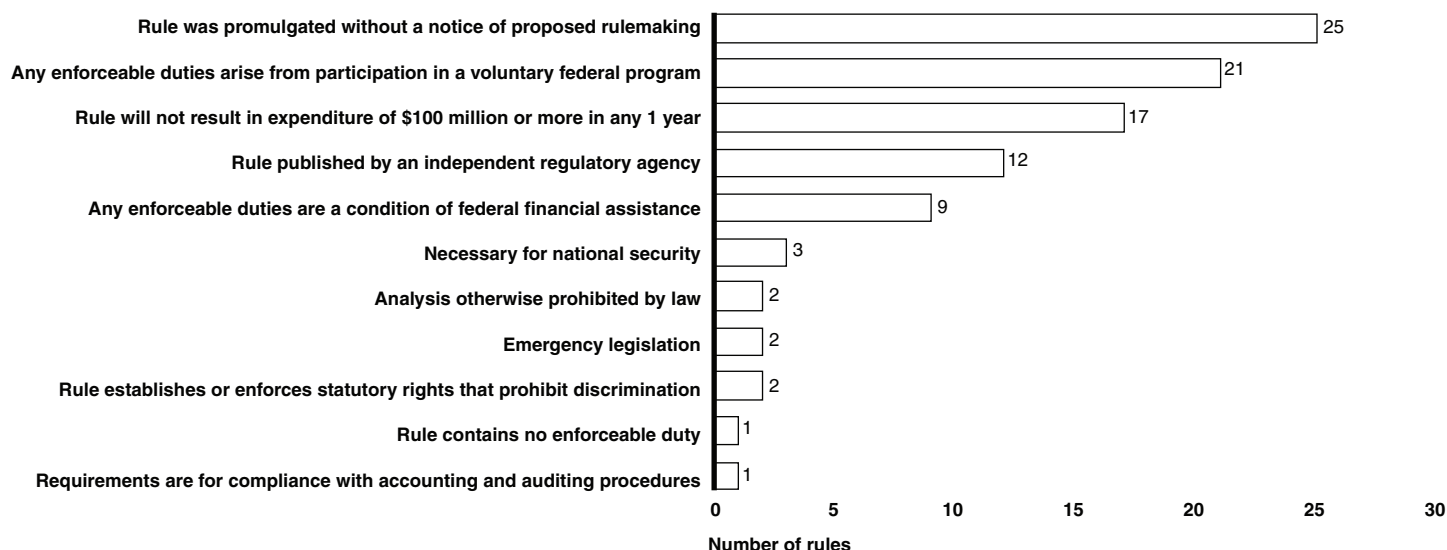
Source: GAO.

Note: Agencies cited more than one reason for nine of the rules.

Our review of the 65 rules indicated that agencies did not cite all of the applicable reasons they could have for determining that the rules did not trigger UMRA's requirements (see fig. 5). For example, although in only 3 of the 65 rules did the agencies identify the absence of a notice of proposed rulemaking as the reason the rule did not trigger UMRA, this reason applied to another 25. Similarly, although 5 rules cited the exclusion that any enforceable duties would occur as a consequence of participation in a voluntary federal program, another 21 rules could have claimed this exclusion. Between what agencies cited or could have cited, 47 of the 65 rules (72 percent) had more than one applicable reason. (For each of the

65 rules, app. IV identifies the reasons that agencies cited or could have cited for their rules not triggering UMRA.)

Figure 5: Reasons that Agencies Could Have Claimed for Their Rules Not Triggering UMRA



Source: GAO.

Note: More than one unclaimed reason applied to 29 rules.

Some Rules that Did Not Trigger UMRA Had Potentially Significant Effects on Nonfederal Parties

At least 29 of the 65 rules with new requirements appeared to result in significant costs or other negative financial effects on state, local, and tribal governments or the private sector. In these 29 rules, the agencies either explicitly stated that they expected the rule could impose significant costs or published information indicating that the rule could result, directly or indirectly, in financial effects on nonfederal parties at or above the UMRA threshold. (Appendix V provides more detailed information on each of the 29 rules that were not identified as federal mandates under UMRA, but that could impose significant costs or have other negative financial effects on state, local, and tribal governments or the private sector.)

These 29 rules not identified as federal mandates under UMRA, but with significant financial impacts on nonfederal parties, can be roughly categorized as follows:

-
- 9 that imposed costs on individuals—a category included in UMRA’s definition of the private sector—exceeding \$100 million in any year;³⁹
 - 5 that reduced the level of federal payments to nonfederal parties by more than \$100 million in any year;
 - 4 with substantial indirect costs or economic effects on nonfederal parties;
 - 4 from independent regulatory agencies that imposed substantial fees or other costs on regulated entities;
 - 3 published by DOT on aviation security in the aftermath of the September 11, 2001, terrorist attacks, which the agency noted “may impose significant costs,” although it did not prepare quantified estimates;
 - 2 with voluntary options that might increase Medicaid costs to states by over \$125 million in some years;
 - 1 amending the Federal Acquisition Regulations that could result in nonfederal costs ranging from \$92 million to \$377 million annually, depending on the “uncertainty of manufacturers to distribute these costs over the general population;” and
 - 1 USDA rule imposing private-sector costs to limit retained water in raw meat and poultry products.

Table 4 provides more detailed information about selected examples from among the 29 rules.

³⁹UMRA section 421(9) defines the private sector as including all persons or entities in the United States, including individuals, partnerships, associations, corporations, and educational and nonprofit institutions, but not including state, local, or tribal governments.

Table 4: Selected Examples of Final Rules with Significant Impacts on Nonfederal Parties that Did Not Trigger UMRA

GAO ID	Rule	Description of potential impacts on nonfederal parties	Reason(s) the rule did not trigger UMRA
R1	EPA final rule on identification of dangerous levels of lead in most pre-1978 housing and child-occupied facilities	The rule set standards for the identification of lead-based paint hazards, residential lead dust cleanup levels, and amendments to dust and soil sampling requirements. EPA estimated that the total costs of actions that might be taken based on these hazard standards (over a 50-year span) would be \$69 billion for the final dust and soil standards, \$20 billion for paint interventions, and \$14 billion for testing.	EPA determined that the rule “in and of itself” did not mandate any action (no enforceable duty) or directly impose any costs (require expenditures of \$100 million or more in any year).
R11	HHS final rule on revision to Medicaid upper payment limit requirements	The rule revised Medicaid’s upper payment limits for hospital services, nursing facility services, intermediate care facility services for the mentally retarded, and clinic services. The revisions would potentially reduce the federal share of payments made by states to these facilities by nearly \$55 billion over 10 years.	The rule did not require states to spend \$100 million or more in any year.
R20	Department of Commerce emergency interim rule to implement Steller sea lion protection measures in fisheries of the exclusive economic zone off Alaska	The rule restricted times and places for fishing. The agency estimated that, as a result of these restrictions, there could be a reduction in fishing industry gross revenues of \$225 million to \$401 million per year.	The rule did not require the private sector to spend \$100 million or more in any year, and there was no notice of proposed rulemaking.
R107	SEC final rule accelerating filing deadlines for annual and quarterly reports and adding requirements for additional reporting and disclosure	SEC stated that these amendments would increase costs to some affected reporting companies. In the proposed rule, SEC estimated that the initial costs could range from \$29.9 million to \$11.9 billion, and the on-going annual costs could range from \$75.5 million to \$686.8 million.	The rule was issued by an independent regulatory agency.
R115	HHS notice on Medicare program monthly actuarial rates and monthly supplementary medical insurance premium rate	Increased the cost of premiums for individuals enrolled in Medicare’s Supplemental Medical Insurance (SMI), with an estimated cost to enrollees of over \$2 billion for 2003.	The agency said that this notice had “no consequential effect” on state, local, or tribal governments and that the private sector costs fell below UMRA’s threshold as well. Also, there was no notice of proposed rulemaking, and SMI is a voluntary federal program.

Source: GAO.

We determined that 1 of the 29 rules, a USDA rule on retained water in raw meat and poultry products, probably was a federal mandate under UMRA. The rule establishes a requirement of zero retained water, unless the water retention is unavoidable in processes necessary to meet food safety

requirements. USDA did not mention UMRA in the rule but estimated that, if extensive modifications to chilling systems were needed throughout the poultry industry, the fixed costs could run to “well over \$100 million.” USDA provided only a “lower bound” estimate of \$110 million in private-sector costs for the first year of implementation (representing the costs of reducing retained water in the range of 1 percent to 1.5 percent). While that estimate was under the \$113 million UMRA threshold (adjusted for inflation) in 2001, the agency did not quantify median or upper bound cost estimates, which reference to a lower bound estimate implies. Because the lower bound estimate was so close to the UMRA threshold, it is reasonable to assume that a median or upper bound estimate would probably have equaled or exceeded the threshold, and the rule would have been a private sector mandate under UMRA. No other UMRA exclusion appeared to apply to this rule. However, to address the requirements of Executive Order 12866 the agency provided an analysis of the costs and benefits of the rule, as well as an analysis of the regulatory alternatives considered. As noted earlier, OIRA guidance points out that the same analysis may permit agencies to comply with both the executive order’s and UMRA’s requirements.

For the remaining 36 of the 65 rules, either the agencies provided no information on the potential costs and economic impacts on nonfederal parties or the costs imposed on them were under the UMRA threshold. For example, a Federal Emergency Management Agency interim final rule on a grant program to assist firefighters included some cost-sharing and other requirements on the part of grantees participating in this voluntary program. In return for cost-sharing of \$50 million to \$55 million per year, grantees could obtain, in aggregate, federal assistance of approximately \$345 million. Similarly, USDA’s interim rule on the noninsured crop disaster assistance program imposed new reporting requirements and service fees on producers estimated to cost at least \$15 million. But producers were expected to receive about \$162 million in benefits.

Even when the requirements of UMRA did not apply, agencies generally provided some quantitative information on the potential costs and benefits of the rule to meet the requirements of Executive Order 12866. Rules published by independent regulatory agencies were the major exception because they are not covered by the executive order. In general, though, the type of information that UMRA was intended to produce was developed and published by the agencies even if they did not identify their rules as federal mandates under UMRA.⁴⁰

Conclusions

UMRA was intended to restrain the imposition of unfunded federal mandates on state, local, and tribal governments and the private sector, primarily by providing more information and focusing more attention on potential federal mandates in legislation and regulations. There is some evidence that the information provided under UMRA and the spotlight that information places on potential mandates may have helped to discourage or limit federal mandates. CBO's annual reports indicate that, at least with regard to the legislative process, UMRA sometimes does have such an indirect preventive effect.

However, there are multiple ways that both statutes and final rules containing what affected parties perceive as "unfunded mandates" can be enacted or published without being identified as federal mandates with costs or expenditures at or above the thresholds established in UMRA. Our review demonstrated that many statutes and final rules with potentially significant financial effects on nonfederal parties were enacted or published without being identified as federal mandates at or above UMRA's thresholds. Further, if judged solely by their financial consequences for nonfederal parties, there was little difference between some of these statutes and rules and the ones that had been identified as federal mandates with costs or expenditures exceeding UMRA's thresholds. Although the examples cited in our review were limited to a 2-year period, our findings on the limited effect and applicability of UMRA are similar to the data reported in previous GAO, CBO, and OMB reports on the implementation of UMRA. The findings raise the question of whether UMRA's procedures, definitions, and exclusions adequately capture and

⁴⁰One exception might be that OMB's guidance to agencies for regulatory analyses prepared under Executive Order 12866 does not include instructions regarding distributional effects of regulations that are as specific as those called for in UMRA. See 2 U.S.C. §1532(a)(3).

subject to scrutiny federal statutory and regulatory actions that might impose significant financial burdens on affected nonfederal parties.

This report provides descriptive information and analysis regarding UMRA's implementation, focusing specifically on the coverage and identification of federal mandates under UMRA. We are making no specific recommendations for executive action nor identifying any specific matters for consideration by Congress at this time. As requested, we will be continuing our work on other aspects of UMRA.

As agreed with your office, unless you publicly announce the contents of this report earlier, we will not distribute it until 30 days from the date of this letter. We will then send copies of this report to the Director of OMB and will provide copies to others on request. It will also be available at no charge on GAO's Web site at <http://www.gao.gov>.

If you or your staff have any questions concerning this report, please contact me at (202) 512-6806 or daltonp@gao.gov. Key contributors to this report were Curtis Copeland, Naved Qureshi, Michael Rose, and Tim Bober.



Patricia A. Dalton
Director
Strategic Issues

Objectives, Scope, and Methodology

In this report, you asked us to describe and provide examples of how federal statutes and rules with potentially significant financial implications for state, local, and tribal governments or the private sector may be enacted or issued without being identified as federal mandates under titles I and II of UMRA, which respectively address the legislative and regulatory processes. Our specific reporting objectives were to:

1. Describe the applicable procedures, definitions, and exclusions for identifying federal mandates in statutes and rules under UMRA.
2. Identify statutes and final rules that contained federal mandates under UMRA.
3. Provide examples of statutes and final rules that were not identified as federal mandates, but that affected parties might perceive as “unfunded” mandates, and the reasons these statutes and rules were not federal mandates under UMRA.

As agreed with your staff, we focused on statutes enacted and final rules published during 2001 and 2002 to address the second and third objectives.

To address the first objective, regarding the procedures, definitions, and exclusions applicable to the identification of federal mandates under titles I and II of UMRA, we reviewed the act and other related guidance documents and reports on the implementation of UMRA. These other related documents included the various annual reports on UMRA prepared by CBO and OMB, materials used in a congressional parliamentary process training seminar on unfunded mandates and points of order, and OMB’s March 1995 guidance to federal agencies on the implementation of title II. We also interviewed persons knowledgeable about the implementation of UMRA in congressional offices, CBO, and OMB.

To address the second and third objectives regarding statutes that were and were not identified as federal mandates under title I of UMRA, we consulted with the CBO officials responsible for preparing UMRA statements on individual bills. The CBO officials identified the 5 statutes enacted during 2001 and 2002 that contained federal mandates at or above UMRA’s cost thresholds. At our request, they also identified 43 examples of statutes enacted during that 2-year period that they believed, based on professional judgment, had potential intergovernmental or private sector impacts but had not been identified as containing mandates at or above UMRA’s thresholds. (We did not ask CBO to compile a comprehensive list

of all statutes passed by the 107th Congress that may have had intergovernmental or private sector impacts.) To assure that this set of examples was relevant for our purposes and to confirm CBO's characterization of the potential impacts of these statutes and the reasons why provisions were or were not identified as federal mandates, we reviewed available source material on each of these statutes. In particular, we examined the detailed descriptions and information on each statute that were contained in CBO mandate statements, cost estimates, annual reports, and testimony, as well as other relevant information on each statute from the Legislative Information System of Congress.

To address the second and third objectives regarding final rules that were and were not identified as federal mandates under title II of UMRA, we conducted a content analysis of all 122 major and/or economically significant final rules that agencies published in 2001 or 2002 to identify the rules that could have significant financial effects on nonfederal parties and determine why they were or were not considered federal mandates.¹ We chose not to review other rules because, by definition, they were less likely to have significant effects on nonfederal parties, although arguably some could have had a significant effect. To arrive at our final set of 122 rules, we relied primarily on the list of 119 major rules published during the 2-year period, as identified in GAO's compilation of reports on federal agency major rules.² Our Office of General Counsel takes several steps to assure the completeness of the list of major rules; however, to generally corroborate that this list of major rules included those that could have significant effects on nonfederal parties, we also compared GAO's major rules list to the rules identified as "economically significant" by the

¹The terms "major" and "economically significant" rules are defined, respectively, by the Congressional Review Act and Executive Order 12866. However, both definitions are similar and refer generally to rules that will have an annual effect on the economy of \$100 million or more or raise other significant policy issues.

²The Congressional Review Act requires agencies to submit their major rules to Congress and to us before those rules can take effect. We are required to prepare a report on each major rule to assure that the agency has complied with procedural requirements regarding cost-benefit analysis, regulatory flexibility analysis, and specified sections of UMRA. Pursuant to the Congressional Review Act, we provide these reports on major rules to the standing committees of jurisdiction of both Houses of Congress. The database is publicly available at www.gao.gov under GAO Legal Products.

Regulatory Information Service Center (RISC).³ As a result of this exercise, we supplemented our initial list with 3 additional rules.⁴ We then reviewed the *Federal Register* notices that agencies published for all 122 of these rules to confirm that they were major and/or economically significant and to identify whether, and to what extent, they imposed requirements on nonfederal parties. On the basis of our comparisons and reviews, we concluded that these data were sufficiently reliable for our purposes.

Because we were asked to identify rules that affected parties might perceive as intergovernmental or private sector mandates, even if not technically identified as such under UMRA, our initial screening used a broader definition of a potential mandate than delineated in UMRA. For this screening, we used the information in the published rules to make a team consensus judgment on whether a nonfederal party (state, local, and tribal governments or the private sector) might consider provisions of the rule to impose requirements or mandates that had at least some costs or negative financial effects. In particular, we focused on identifying rules that imposed new requirements and costs (direct or indirect) on affected parties. For each rule identified as including a potential “mandate,” team members then independently reviewed the text of each rule to code the reasons agencies may have cited that their rules were not federal mandates under UMRA, as well as other reasons available under UMRA that might have applied to these rules. The team members generally concurred in their initial coding, and, based on team discussions, we were able to resolve any differences and determine a team consensus judgment on the appropriate coding for each rule.

To provide corroboration that the examples of statutes CBO identified and final rules we identified to address objective three were perceived by

³RISC is part of the General Services Administration, but works closely with OMB to provide the President, Congress, and the public with information on federal regulatory policies. Its major project has been to coordinate the development and publication of the *Unified Agenda of Federal Regulatory and Deregulatory Actions*, which is published twice a year.

⁴Discrepancies between the two lists were expected because, although most rules defined as “major” under the Congressional Review Act are also defined as “economically significant” under Executive Order 12866, there is not an exact match. The major rules include those published by independent regulatory agencies not covered by the executive order, and rules from nonindependent agencies may be identified as economically significant for purposes of OMB regulatory reviews without necessarily triggering the \$100 million impact threshold that would define them as major.

affected parties as having “unfunded mandate” implications, we shared our draft lists of examples with national organizations representing other levels of government.⁵ These organizations included the National Association of Counties, National Conference of State Legislatures, National Governors Association, the National League of Cities, and the U.S. Conference of Mayors. Their representatives generally concurred that the statutes and rules we focused on were perceived by their members to have “mandate” implications and that we had not left out any major examples from our time period that they believed were important.

One limitation of our review was that, in agreement with your staff, we focused on statutes enacted and final rules published during 2001 and 2002. Those statutes and rules may not reveal all of the ways in which provisions with significant cost effects might not be identified as federal mandates. Neither CBO nor we reviewed the many bills that were not enacted and rules that were proposed, but not finalized, during 2001 and 2002. However, our findings and the specific examples we identified were sufficient to illustrate how statutes and rules with potentially significant effects on nonfederal parties might not be identified as federal mandates under UMRA. In addition, our findings for this review were consistent with those in prior GAO, CBO, and OMB reports on the implementation of UMRA. In general, we also recognize that perceived “unfunded mandates” could also result from other nonstatutory, nonregulatory federal actions, such as Homeland Security threat level adjustments. However, UMRA does not cover such nonstatutory or nonregulatory actions, so they were out of the scope of this review.

We conducted our review from August 2003 through February 2004 in Washington, D.C., in accordance with generally accepted government auditing standards. On April 22, 2004, we provided a draft of this report to the Director of the Office of Management and Budget (OMB) for his review and comment. On April 29, 2004, an OMB representative notified us that OMB had no comments on our report. We also provided the draft to CBO officials for their technical review. We incorporated their comments and suggestions as appropriate.

⁵We also shared our lists with organizations representing the private sector, but received no formal responses from them.

Examples of Statutes with Impacts on Nonfederal Parties that Were Not Mandates at or Above UMRA Thresholds

CBO provided us the following examples of laws enacted in 2001 and 2002 that it believed had impacts on nonfederal parties, but were not identified as federal mandates at or above applicable cost thresholds (see table 5). A number of groups representing nonfederal parties generally agreed that these examples were statutes perceived to have “unfunded mandate” implications.

Table 5: Examples of Statutes with Impacts on Nonfederal Parties that Were Not Identified as Federal Mandates at or above Applicable Cost Thresholds

GAO ID	Law	CBO’s description of potential impacts, or requirements on state, local, and tribal governments or the private sector	Reason(s) CBO did not identify one or more provisions as unfunded federal mandates at or above the costs thresholds under UMRA
L1	Economic Growth and Tax Relief Reconciliation Act of 2001 (Pub. L. No. 107-16)	(Intergovernmental) Increases the unified tax credit and reduces the tax rates to phase out the estate and generation-skipping transfer tax.	Did not meet the definition of a mandate (no enforceable duty on state, local, or tribal governments or the private sector). JCT determined that the act did not contain any intergovernmental mandates or revenue raising provisions in excess of UMRA thresholds.
L2	Supplemental Appropriations Act, 2001 (Pub. L. No. 107-20)	(Intergovernmental) Places new reporting requirements on the District of Columbia.	CBO did not review provision prior to enactment. Not contained in an authorizing bill. Contained in an appropriations bill. CBO estimated costs were below threshold.
L3	ILSA Extension Act of 2001 (Pub. L. No. 107-24)	(Private Sector) Requires the President to impose certain sanctions on U.S. entities or foreign companies that have invested more than a specified amount of money in developing the petroleum and natural gas resources of Libya or Iran. The act allows the President discretion to make exceptions in applying such sanctions.	CBO estimated costs were below threshold.
L4	Authorization for Use of Military Force (Pub. L. No. 107-40)	(Private Sector) The act is intended to constitute specific statutory authorization to use U.S. armed forces within the meaning of the War Powers Resolution.	Excluded for national security. CBO did not review provision prior to enactment because an authorizing committee did not report it.
L5	Air Transportation Safety and System Stabilization Act (Pub. L. No. 107-42)	(Private sector) Sets forth certain insurance requirements, including limiting air carrier liability for losses to no more than \$100 million in the aggregate for all claims arising as a result of an act of terrorism.	CBO did not review provision prior to enactment because an authorizing committee did not report it. Did not meet definition of a mandate.

Appendix II
Examples of Statutes with Impacts on
Nonfederal Parties that Were Not Mandates
at or Above UMRA Thresholds

(Continued From Previous Page)

GAO ID	Law	CBO's description of potential impacts, or requirements on state, local, and tribal governments or the private sector	Reason(s) CBO did not identify one or more provisions as unfunded federal mandates at or above the costs thresholds under UMRA
L6	Defense Production Act Amendments of 2001 (Pub. L. No. 107-47)	(Private Sector) Provides the President the authority to require preferential performance on contracts and orders to meet approved national defense requirements, and to allocate materials, services, and facilities as necessary to promote the national defense in a major national emergency.	Excluded for national security.
L7	USA PATRIOT Act of 2001 (Pub. L. No. 107-56)	<p>(Intergovernmental) Prohibits state, local, tribal, or territorial governments from disclosing that they have reported a suspicious financial transaction to a federal agency.</p> <p>(Intergovernmental) Preempts state liability laws and regulations relating to consumer reporting agencies that disclose consumer reports for counterterrorism purposes.</p> <p>(Intergovernmental) Requires education agencies and institutions to disclose records to the Attorney General in a terrorism investigation or prosecution; preempts state liability laws relating to those agencies.</p> <p>(Intergovernmental) Restricts states' authority to issue licenses for operating motor vehicles to transport hazardous materials.</p> <p>(Private Sector) Prohibits certain parties from shipping or receiving biological toxins in interstate or foreign commerce.</p>	<p>CBO did not review some provisions prior to enactment because some mandates were added to the bill after it was reviewed by CBO. After enactment, CBO estimated that provisions that were mandates had costs below thresholds.</p> <p>For provisions reviewed prior to enactment, CBO estimated costs for some to be below threshold, and some other provisions were excluded for national security.</p>
L8	Energy and Water Development Appropriations Act, 2002 (Pub. L. No. 107-66)	(Intergovernmental) Prohibits states from issuing a permit or lease for certain oil and gas drilling in the Great Lakes.	<p>CBO did not review provisions prior to enactment.</p> <p>Not contained in an authorizing bill. Contained in an appropriations bill.</p> <p>CBO estimated costs were below threshold.</p>
L9	Internet Tax Nondiscrimination Act (Pub. L. No. 107-75)	(Intergovernmental) Extends the prohibition on collecting certain types of state and local taxes.	CBO estimated costs were below threshold.
L10	Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2002 (Pub. L. No. 107-76)	(Private Sector) Requires some tobacco producers to have their product graded by the government for a fee.	CBO estimated costs were below threshold.

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Examples of Statutes with Impacts on
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GAO ID	Law	CBO's description of potential impacts, or requirements on state, local, and tribal governments or the private sector	Reason(s) CBO did not identify one or more provisions as unfunded federal mandates at or above the costs thresholds under UMRA
L11	Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2002 (Pub. L. No. 107-77)	<p>(Intergovernmental) Expands an existing requirement that transportation officials report to the Immigration and Naturalization Service certain information about people traveling to the United States; authorizes the Attorney General to extend that requirement to cover any public or private carrier transporting people by land to the United States.</p> <p>(Private Sector) Increases the entry fee for certain passengers arriving by airplane and authorizes the Attorney General to charge and collect a \$3 entry fee on commercial vessel passengers; authorizes the Attorney General to require arrival and departure manifests in advance for land travel (train or bus) as well as travel by air or water.</p>	<p>CBO did not review provisions prior to enactment.</p> <p>Not contained in an authorizing bill. Contained in an appropriations bill.</p> <p>CBO estimated costs were below threshold.</p>
L12	Department of Transportation and Related Agencies Appropriations Act, 2002 (Pub. L. No. 107-87)	<p>(Intergovernmental) Requires the Washington Metropolitan Area Transit Authority to change the name of the National Airport station and to change all signage and related documentation.</p> <p>(Intergovernmental) Perhaps contained grants that were perceived as "under funded."</p>	<p>CBO estimated costs were below threshold.</p>
L13	District of Columbia Appropriations Act, 2002 (Pub. L. No. 107-96)	(Intergovernmental) Places new reporting and other requirements on the District of Columbia.	<p>CBO did not review provisions prior to enactment.</p> <p>Not contained in an authorizing bill. Contained in an appropriations bill.</p> <p>CBO estimated costs were below threshold.</p>
L14	An act to amend chapter 90 of Title 5, United States Code, relating to Federal long-term care insurance (Pub. L. No. 107-104)	(Intergovernmental) Preempts state authority to tax certain federal long-term care policies.	CBO estimated costs were below threshold.
L15	National Defense Authorization Act for Fiscal Year 2002 (Pub. L. No. 107-107)	<p>(Intergovernmental) Allows the Secretary of Defense, under some circumstances, to waive compliance with state or territorial fish and game laws at military installations or facilities.</p> <p>(Intergovernmental) Preempts certain California state laws that would prohibit or restrict the construction or approval of a road or highway on an easement within the Camp Pendleton Marine Corps base.</p>	CBO estimated costs were below threshold.

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Examples of Statutes with Impacts on
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GAO ID	Law	CBO's description of potential impacts, or requirements on state, local, and tribal governments or the private sector	Reason(s) CBO did not identify one or more provisions as unfunded federal mandates at or above the costs thresholds under UMRA
L16	Intelligence Authorization Act for Fiscal Year 2002 (Pub. L. No. 107-108)	(Intergovernmental) Establishes the Commission on Preparedness and Performance of the Federal Government for the September 11 Acts of Terrorism and gives it authority to subpoena testimony and evidence.	CBO estimated costs were below threshold.
L17	Best Pharmaceuticals for Children Act (Pub. L. No. 107-109)	(Private Sector) Extends the time period that drug manufacturers are prohibited from marketing generic versions of certain drugs by 6 months; repeals waiver of user fees for all applications for pediatric supplements; and requires drug manufacturers to revise labeling of drugs based upon findings of pediatric studies.	CBO estimated costs were below threshold.
L18	No Child Left Behind Act of 2001 (Pub. L. No. 107-110)	(Intergovernmental) Calls for designing and implementing statewide standards and assessments and various other requirements.	Did not meet UMRA's definition of a mandate because the requirements were a condition of federal financial assistance.
L19	District of Columbia Family Court Act of 2001 (Pub. L. 107-114)	(Intergovernmental) Places new reporting and administrative requirements on the mayor and court system of the District of Columbia.	CBO estimated costs were below threshold.
L20	Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub. L. No. 107-173)	(Private Sector) Requires manifests for arriving and departing commercial vessels or aircraft. (Private Sector) Increases fees for certain visas.	CBO estimated costs were below threshold.
L21	Clergy Housing Allowance Clarification Act of 2002 (Pub. L. No. 107-181)	(Private Sector) Restricted the amount of rental-allowance income that members of the clergy may exclude for tax purposes to no more than the fair rental value of the home (including furnishings) plus utilities.	Not reported by an authorizing committee. CBO did not review provision prior to enactment. CBO estimated costs were below threshold.

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Examples of Statutes with Impacts on
Nonfederal Parties that Were Not Mandates
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GAO ID	Law	CBO's description of potential impacts, or requirements on state, local, and tribal governments or the private sector	Reason(s) CBO did not identify one or more provisions as unfunded federal mandates at or above the costs thresholds under UMRA
L22	Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Pub. L. No. 107-188)	<p>(Intergovernmental) Preempts state laws that conflict with quarantine requirements for communicable diseases.</p> <p>(Intergovernmental) Requires assessments of water supplies in communities of more than 3,300 people.</p> <p>(Intergovernmental) Extends prescription drug application fees.</p> <p>(Intergovernmental and Private Sector) Requires registration with the federal government of the possession, use, and transfer of listed agents and toxins.</p> <p>(Private Sector) Requires that certain facilities engaged in manufacturing, possessing, packing, or holding food for consumption in the United States register with the Department of Agriculture.</p> <p>(Private Sector) Requires that if food has been refused admission into the United States, owners or consignees of the food must affix a label stating such on the container.</p> <p>(Private Sector) Requires importers of certain drugs and their devices to register annually with the federal government.</p> <p>(Private Sector) Allows prescription drug application fees to be raised under certain conditions.</p>	<p>CBO did not review provisions prior to enactment.</p> <p>Not reported by an authorizing committee.</p> <p>CBO estimated the costs of preemption of state laws was below the threshold, the costs of the water assessments were funded, and other costs were uncertain.</p>
L23	Terrorist Bombings Convention Implementation Act of 2002 (Pub. L. No. 107-197)	<p>(Private Sector) The act would establish a sentence of life in prison or death for those who are convicted of participating in bombings in public places, government facilities, public transportation systems, or infrastructure facilities. In addition, the act would establish minimum prison sentences and criminal fines for those who provide or collect funds with the intent that such funds be used to carry out terrorism crimes.</p>	<p>Excluded for treaty implementation.</p>

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Examples of Statutes with Impacts on
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GAO ID	Law	CBO's description of potential impacts, or requirements on state, local, and tribal governments or the private sector	Reason(s) CBO did not identify one or more provisions as unfunded federal mandates at or above the costs thresholds under UMRA
L24	Approving the site at Yucca Mountain, Nevada, for the development of a repository for the disposal of high-level radioactive waste and spent nuclear fuel, pursuant to the Nuclear Waste Policy Act of 1982 (Pub. L. No. 107-200)	(Intergovernmental) Approves the placement of a nuclear waste site in Nevada (additional costs to Nevada and neighboring states could result from existing federal mandates).	CBO estimated costs were below threshold.
L25	Sarbanes-Oxley Act of 2002 (Pub. L. No. 107-204)	<p>(Intergovernmental) Allows the Public Company Accounting Oversight Board to conduct operations and maintain offices in any state without regard to any conflicting state law.</p> <p>(Private sector) Establishes the Public Company Accounting Oversight Board to regulate the accounting industry and a standard-setting body to write national standards for accounting practices; the two regulatory bodies will assess fees on public companies to cover their costs.</p> <p>(Private sector) Requires that auditors and audit committees of public companies comply with new standards.</p> <p>(Private sector) Prohibits insider trades of stock during pension fund blackout periods if the stock was acquired in connection with service as a director or executive officer.</p> <p>(Private sector) Requires pension plan administrators to notify plan participants, beneficiaries, and the insurer of employer securities of an impending blackout period.</p> <p>(Private sector) Requires that public corporations make enhanced financial disclosures to the Securities and Exchange Commission.</p>	<p>CBO did not review intergovernmental provision prior to enactment because it was added to the bill after it was reviewed by CBO.</p> <p>CBO estimated the costs of notification of blackout periods by pension plan administrators were below applicable thresholds, and other costs were uncertain.</p>

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Examples of Statutes with Impacts on
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(Continued From Previous Page)

GAO ID	Law	CBO's description of potential impacts, or requirements on state, local, and tribal governments or the private sector	Reason(s) CBO did not identify one or more provisions as unfunded federal mandates at or above the costs thresholds under UMRA
L26	Trade Act of 2002_(Pub. L. No. 107-210)	(Private Sector) Requires each land, air, or vessel carrier to provide by electronic transmission cargo manifest information in advance of entry into the United States or clearance by Customs. (Private Sector) Increases compliance cost of existing requirement to provide health insurance for certain separated workers.	CBO estimated costs were below threshold.
L27	An Act to rename Wolf Trap Farm Park as "Wolf Trap National Park for the Performing Arts", and for other purposes. (Pub. L. No. 107-219)	(Intergovernmental) Renames "Wolf Trap Farm Park" and requires Virginia to erect signs referring to the park by its new full name.	CBO estimated costs were below threshold.
L28	An act to amend the Public Health Service Act to redesignate a facility as the National Hansen's Disease Programs Center, and for other purposes. (Pub. L. No. 107-220)	(Intergovernmental) Places requirements on manufacturers of medical devices.	CBO estimated costs were below threshold.
L29	John F. Kennedy Center Plaza Authorization Act of 2002 (Pub. L. No. 107-224)	(Intergovernmental) Allows the mayor of the District of Columbia to dispose of property without City Council approval; allows the U.S. Secretary of Transportation to require the District to reconfigure streets in the Kennedy Center construction area; may require the District to transfer air or property rights to the construction project.	CBO estimated costs were below threshold.
L30	Foreign Relations Authorization Act, Fiscal Year 2003 (Pub. L. No. 107-228)	(Private Sector) Requires exporters or their agents not covered under current regulations to file their export declarations through the Automated Export System.	CBO estimated costs were below threshold.
L31	National Construction Safety Team Act (Pub. L. No. 107-231)	(Private Sector) Requires private-sector entities, if subpoenaed, to provide testimony and evidence related to matters the National Construction Safety Team would be empowered to investigate.	CBO estimated costs were below threshold.

Appendix II
Examples of Statutes with Impacts on
Nonfederal Parties that Were Not Mandates
at or Above UMRA Thresholds

(Continued From Previous Page)

GAO ID	Law	CBO's description of potential impacts, or requirements on state, local, and tribal governments or the private sector	Reason(s) CBO did not identify one or more provisions as unfunded federal mandates at or above the costs thresholds under UMRA
L32	Medical Device User Fee and Modernization Act of 2002 (Pub. L. No. 107-250)	(Private Sector) Gives the Secretary the authority to assess and collect user fees from manufacturers of medical devices to defray the cost to FDA of reviewing applications for approval to market those devices. (Private Sector) Requires manufacturers of medical devices to comply with certain labeling and notification conventions and to submit their registrations electronically.	CBO stated some costs were below applicable thresholds and others were uncertain.
L33	Health Care Safety Net Amendments of 2002 (Pub. L. No. 107-251)	(Intergovernmental) Preempts state statutes of limitations in cases in which the beneficiary of a medical loan fails to make payments. States have flexibility to offset costs.	CBO estimated costs were below threshold.
L34	Help America Vote Act of 2002 (Pub. L. No. 107-252)	(Intergovernmental) Places a number of new requirements on state and local governments, specifically setting new standards for voting systems used in federal elections, requiring each state to develop a computerized database of all registered voters in the state, and requiring local election jurisdictions to develop procedures for provisional voting. The act also authorizes grant programs to reimburse state and local governments for costs incurred in complying with these requirements.	Some provisions excluded because they enforced the constitutional rights of individuals. For some other provisions, CBO stated that any costs to state, local, or tribal governments would be incurred voluntarily from participating in grant programs.
L35	21st Century Department of Justice Appropriations Authorization Act (Pub. L. No. 107-273)	(Intergovernmental) Eliminates federal interest payments to states related to costs for incarcerating illegal aliens. (Private Sector) Limits access to body armor by violent felons. (Private Sector) Waives copyright infringement rules for educators who teach long-distance classes over the Internet and thus restricts copyright owners from receiving compensation for such use by educators. (Private Sector) Provides that contract disputes between motor vehicle manufacturers and dealers can be resolved by arbitration only after both parties agree to arbitration as a means of settling the dispute.	CBO estimated costs were below threshold.

Appendix II
Examples of Statutes with Impacts on
Nonfederal Parties that Were Not Mandates
at or Above UMRA Thresholds

(Continued From Previous Page)

GAO ID	Law	CBO's description of potential impacts, or requirements on state, local, and tribal governments or the private sector	Reason(s) CBO did not identify one or more provisions as unfunded federal mandates at or above the costs thresholds under UMRA
L36	Homeland Security Act of 2002 (Pub. L. No. 107-296)	<p>(Intergovernmental) Preempts state or local laws to the extent that they require disclosure or information records.</p> <p>(Intergovernmental) Preempts state liability laws in cases involving alleged negligence related to smallpox vaccines.</p> <p>(Private sector) Requires that air carriers provide additional training to flight and cabin crews.</p> <p>(Private sector) Requires airline carriers to provide flight attendants with a method of communicating with pilots.</p> <p>(Private sector) Requires manufacturers and importers of explosive materials to furnish samples to the Bureau of Alcohol, Tobacco, and Firearms; imposes new licensing and reporting requirements for people handling explosive materials.</p>	<p>CBO did not review a private sector provision prior to enactment because it was added to the bill after it was reviewed by CBO.</p> <p>CBO stated some costs were below applicable thresholds and others were uncertain.</p>

Appendix II
Examples of Statutes with Impacts on
Nonfederal Parties that Were Not Mandates
at or Above UMRA Thresholds

(Continued From Previous Page)

GAO ID	Law	CBO's description of potential impacts, or requirements on state, local, and tribal governments or the private sector	Reason(s) CBO did not identify one or more provisions as unfunded federal mandates at or above the costs thresholds under UMRA
L37	Terrorism Risk Insurance Act of 2002 (Pub. L. No. 107-297)	<p>(Private sector) Requires that insurers and policyholders of commercial property and casualty insurance pay assessments and surcharges for repayment of the federal financial assistance provided in connection with acts of terrorism.</p> <p>(Private sector) Requires insurers of commercial property to offer terrorism insurance.</p> <p>(Intergovernmental) Nullifies any terrorism exclusion in a contract for property and casualty insurance; that nullification preempts any previous state approval of insurance with terrorism exclusions.</p> <p>(Intergovernmental) Preempts any state definition of an "act of terrorism" that is inconsistent with the federal definition; requires insurers to disclose books and records to the Secretary of the Treasury, notwithstanding state laws to the contrary.</p> <p>(Intergovernmental) Creates an exclusive federal cause of action for losses resulting from an act of terrorism; preempts all state causes of action.</p>	CBO estimated some costs were below thresholds, while others were uncertain. The mandate requiring insurers to offer terrorism insurance was added after CBO review, and thus its costs were not estimated. After enactment, CBO stated that the costs of this mandate were uncertain.
L38	Real Interstate Driver Equity Act of 2002 (Pub. L. No. 107-298)	(Intergovernmental) Exempts ground transportation carriers that provide prearranged service from state licensing and fee requirements as long as the carriers are properly licensed in their home states and meet federal interstate transportation requirements.	CBO estimated costs were below threshold.
L39	Intelligence Authorization Act for Fiscal Year 2003 (Pub. L. No. 107-306)	<p>(Intergovernmental and Private Sector) Requires public and private sector entities, if subpoenaed, to provide testimony and evidence to the National Commission on Terrorist Attacks upon the United States.</p> <p>(Intergovernmental) Preempts state and local laws that would require a government body to disclose information.</p>	CBO estimated costs were below threshold.

Appendix II
Examples of Statutes with Impacts on
Nonfederal Parties that Were Not Mandates
at or Above UMRA Thresholds

(Continued From Previous Page)

GAO ID	Law	CBO's description of potential impacts, or requirements on state, local, and tribal governments or the private sector	Reason(s) CBO did not identify one or more provisions as unfunded federal mandates at or above the costs thresholds under UMRA
L40	An act to amend the Consumer Product Safety Act to provide that low-speed electric bicycles are consumer products subject to such act (Pub. L. No. 107-319)	(Intergovernmental) Preempts state laws and regulations governing low-speed electric bicycles that are more stringent than regulations established by the Consumer Product Safety Commission.	CBO estimated costs were below threshold.
L41	Veterans Benefits Act of 2002 (Pub. L. No. 107-330)	(Intergovernmental and Private Sector) Establishes a temporary exemption of some National Guard members who are performing homeland security activities from certain financial obligations.	CBO stated some costs were below applicable thresholds and others were uncertain.
L42	Indian Financing Amendments Act of 2002 (Pub. L. No. 107-331)	(Intergovernmental) Extinguishes outstanding legal claims of the Cherokee, Choctaw, and Chickasaw nations. (Private Sector) Prohibits anyone from condemning certain land owned in fee by the Pechanga band until the Secretary of the Interior renders a final decision on the band's pending application to transfer that land into a trust and until final decisions have been made about all appeals relating to that application. (Private Sector) Limits the fees payable to attorneys under contract with the Cherokee, Choctaw, and Chickasaw nations to 10 percent of the funds allocated by the government to each of those nations.	CBO estimated costs were below threshold.

Appendix II
Examples of Statutes with Impacts on
Nonfederal Parties that Were Not Mandates
at or Above UMRA Thresholds

(Continued From Previous Page)

GAO ID	Law	CBO's description of potential impacts, or requirements on state, local, and tribal governments or the private sector	Reason(s) CBO did not identify one or more provisions as unfunded federal mandates at or above the costs thresholds under UMRA
L43	Pipeline Safety Improvement Act of 2002 (Pub. L. No. 107-355)	<p>(Intergovernmental) Requires operators of natural gas pipelines to adhere to minimum safety standards, provide whistleblower protection for employees, create an employee qualification program, honor orders by the Department of Transportation to correct unsafe conditions, conduct facility risk analysis, develop an integrity management program, create a terrorism security plan, and provide mapping data.</p> <p>(Private Sector) Requires operators of natural gas and hazardous-liquid pipelines to adhere to minimum safety standards, provide whistleblower protection for employees, create an employee qualification program, honor orders by the Department of Transportation to correct unsafe conditions, conduct facility risk analysis, develop an integrity management program, create a terrorism security plan, and provide mapping data.</p>	CBO estimated costs were below threshold.

Source: CBO.

Final Rules with Federal Mandates under UMRA

The following table presents information on each of the nine final rules published by federal regulatory agencies during 2001 and 2002 that the agencies identified as federal mandates under UMRA (see table 6). For each rule, we provide (1) GAO's identification number for the rule, (2) the title of the rule and its date of publication in the *Federal Register*, (3) the agency that published the rule, (4) summary information about the potential costs or other negative financial effects of the rule on affected nonfederal parties, and (5) the agency's statement, as it appeared in the *Federal Register* notice, regarding the applicability of UMRA.

Table 6: Final Rules Published in 2001 and 2002 that Agencies Identified as Containing Federal Mandates Under UMRA

GAO ID	Rule	Agency	Potential costs or negative financial effects of the rule on nonfederal parties	Agency's statement in the <i>Federal Register</i> about the applicability of UMRA
R8	National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills (Jan. 12, 2001)	Environmental Protection Agency (EPA)	Required chemical recovery combustion sources to meet standards reflecting the application of maximum achievable control technology (MACT) to control hazardous air pollutants emissions from these sources. EPA estimated that the pulp and paper industry would incur total capital costs of control for this rule of \$240 million (1997\$) under the final rule. EPA projected annualized compliance expenditures of \$30 million (1997\$).	"The EPA has determined that this rule (in conjunction with the MACT I and MACT III rules and the effluent guidelines recently promulgated for the pulp and paper industry) contains a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector in any 1 year."
R9	Energy Conservation Program for Consumer Products: Clothes Washer Energy Conservation Standards (Jan. 12, 2001)	Department of Energy	Amended existing energy conservation standards for standard-size and compact clothes washers as well as making minor amendments to the test procedure for measuring the energy efficiency of clothes washers. To meet the 2004 standard in this rule, the department estimated that the price of a washer would increase \$53, offset by an annual savings of about \$15 on utility bills and, to meet the 2007 standard, the price would increase \$249, offset by an annual savings of about \$48. The estimated economic impact on manufacturers was a cumulative net present value loss of between \$421.1 million and \$528.4 million.	"Today's final rule may impose expenditures of \$100 million or more on the private sector. It does not contain a Federal intergovernmental mandate."

Appendix III
Final Rules with Federal Mandates under
UMRA

(Continued From Previous Page)

GAO ID	Rule	Agency	Potential costs or negative financial effects of the rule on nonfederal parties	Agency's statement in the <i>Federal Register</i> about the applicability of UMRA
R12	Energy Conservation Program for Consumer Products: Energy Conservation Standards for Water Heaters (Jan. 17, 2001)	Department of Energy	<p>Amended the existing energy conservation standards for water heaters.</p> <p>The department estimated that the total average increased cost to a consumer for an electric and gas water heater would be \$105 and \$118, respectively. The department's manufacturer impact analysis noted that energy efficiency standards could result in losses of industry net present value from about \$8 million to \$57 million, while requiring investments of \$33 million to \$229 million.</p>	"Today's Final Rule may impose expenditures of \$100 million or more in a year in the private sector. It does not contain a Federal intergovernmental mandate."
R14	Control of Air Pollution from New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements (Jan. 18, 2001)	Environmental Protection Agency	<p>Established a national control program to regulate the heavy-duty vehicle and its fuel as a single system. Set new emission standards applicable to heavy-duty highway engines and vehicles, to begin to take effect in model year 2007. Set new standard to reduce the level of sulfur in highway diesel fuel by mid-2006.</p> <p>EPA estimated annual costs starting out at less than \$1.0 billion in 2006 and increasing during the initial years to about \$3.6 billion in 2010. Thereafter, total annual costs are projected to continue increasing due to the effects of projected growth in engine sales and fuel consumption.</p>	<p>"This rule contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in this rule will significantly or uniquely affect small governments.</p> <p>EPA has determined that this rule contains federal mandates that may result in expenditures of more than \$100 million to the private sector in any single year. EPA considered and evaluated a wide range of regulatory alternatives before arriving at the program finalized today. EPA believes that today's final rule represents the least costly, most cost effective approach to achieve the air quality goals of the rule."</p>
R21	Energy Conservation Program for Consumer Products: Central Air Conditioners and Heat Pumps Energy Conservation Standards (Jan. 22, 2001)	Department of Energy	<p>Amended the existing energy conservation standards for central air conditioners and heat pumps.</p> <p>To meet the 2006 standard in this rule for air conditioners, the department estimated that the installed price of a typical air conditioner would increase \$335, offset by annual energy savings of about \$42 on utility bills. To meet the 2006 standard for heat pumps, the installed price of a typical heat pump would increase \$332, offset by annual energy savings of about \$70. The decrease in the net present value of the air conditioning and heat pump manufacturing industry is expected to be \$300 million.</p>	"Today's final rule may impose expenditures of \$100 million or more on the private sector. It does not contain a Federal intergovernmental mandate."

Appendix III
Final Rules with Federal Mandates under
UMRA

(Continued From Previous Page)

GAO ID	Rule	Agency	Potential costs or negative financial effects of the rule on nonfederal parties	Agency's statement in the <i>Federal Register</i> about the applicability of UMRA
R22	National Primary Drinking Water Regulations; Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring (Jan. 22, 2001)	Environmental Protection Agency	<p>Among other provisions, established an enforceable Maximum Contaminant Level for arsenic of 0.01 milligrams per liter, applicable to nontransient, noncommunity water systems and to community water systems. EPA's analysis identified both publicly owned and privately owned water systems that would be regulated under the arsenic rule.</p> <p>EPA estimated that this rule would have a total annualized cost of approximately \$181 million.</p>	"EPA has determined that this rule contains a Federal mandate that may result in expenditures of \$100 million or more for State, Tribal, and local governments, in the aggregate, or the private sector in any one year."
R87	Energy Conservation Program for Consumer Products; Central Air Conditioners and Heat Pumps Energy Conservation Standards (May 23, 2002)	Department of Energy	<p>Amended existing energy conservation standards for central air conditioners and heat pumps and withdrew the final rule published on January 22, 2001, [ID 21] that would have established even higher standards.</p> <p>To meet the 2006 standard in this rule for air conditioners, the department estimated that the installed price of a typical air conditioner would increase \$213, offset by annual energy savings of about \$31 on utility bills. To meet the 2006 standard for heat pumps, the installed price of a typical heat pump would increase \$144, offset by annual energy savings of about \$50. The decrease in the net present value of the air conditioning and heat pump manufacturing industry is expected to be \$159 million.</p>	"Today's rule will impose expenditures of \$100 million or more on the private sector. It does not contain a Federal intergovernmental mandate."

Appendix III
Final Rules with Federal Mandates under
UMRA

(Continued From Previous Page)

GAO ID	Rule	Agency	Potential costs or negative financial effects of the rule on nonfederal parties	Agency's statement in the <i>Federal Register</i> about the applicability of UMRA
R88	<p>Federal Motor Vehicle Safety Standards; Tire Pressure Monitoring Systems; Controls and Displays (June 5, 2002)</p> <p>(In August 2003, the U.S. Court of Appeals held that this rule was contrary to the intent of the tire safety legislation and arbitrary and capricious under the Administrative Procedure Act (see <i>Public Citizen, Inc. v. Mineta</i>, 340 F.3d 39 (2003)). However, because DOT identified the rule as a federal mandate when originally published in 2002, we are including it in our list of rules identified as mandates under UMRA.)</p>	Department of Transportation	<p>Established a new Federal Motor Vehicle Safety Standard that requires the installation of tire pressure monitoring systems that warn the driver when a tire is significantly under-inflated. The rule presented two compliance options, (1) a four tires, 25 percent under-inflation option and (2) a one tire, 30 percent under-inflation option.</p> <p>The agency estimated that, under the first option, compliance with this rule would cost about \$771 million per year, and under the second option would cost about \$533 million per year.</p>	"This final rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, of more than \$100 million annually, but it will result in the expenditure of that magnitude by vehicle manufacturers and/or their suppliers."
R119	Control of Emissions From Nonroad Large Spark-Ignition Engines, and Recreational Engines (Marine and Land-Based) (Nov. 8, 2002)	Environmental Protection Agency	<p>Adopted emission standards for several groups of nonroad engines that have not been subject to EPA's emission standards.</p> <p>EPA estimated that, annually, the cost to manufacturers would be approximately \$210 million.</p>	"This rule contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in this rule would significantly or uniquely affect small governments. EPA has determined that this rule contains federal mandates that may result in expenditures of more than \$100 million to the private sector in any single year."

Source: GAO.

Reasons that Selected Final Rules Did Not Trigger UMRA

The following table provides information on 65 major or economically significant final rules published during that 2001 and 2002 that did not trigger UMRA but that would result in at least some costs or negative financial effects on state, local, and tribal governments or the private sector (see table 7). The table displays the various reasons that agencies cited or could have cited to explain why the rules did not trigger UMRA. Code “A” identifies reasons the agencies cited, and code “O” identifies other reasons that could have applied. Note that only 11 of the 14 possible reasons under UMRA were applicable to any of these rules.¹

¹ The reasons that were not applicable to any of the 65 rules included: (1) enforcing the constitutional rights of individuals, (2) providing emergency assistance or relief at the request of any state, local, or tribal government, and (3) relating to the old age, survivors, and disability insurance program under the Social Security Act and the Internal Revenue Code.

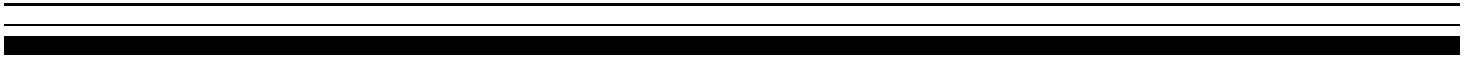
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Reasons that Selected Final Rules Did Not
Trigger UMRA

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Trigger UMRA

Table 7: Reasons 65 Final Rules with Significant Effects on Nonfederal Parties Did Not Trigger UMRA

GAO ID	Rule, date of publication, and publishing agency	Enforces rights prohibiting discrimination	Requires compliance with accounting and auditing procedures	Necessary for national security	Associated with emergency legislation
R1	Lead; Identification of Dangerous Levels of Lead (Jan. 5, 2001) Environmental Protection Agency (EPA)				
R2	Interim Final Rules for Nondiscrimination in Health Coverage in the Group Market (Jan. 8, 2001) Departments of the Treasury, Labor (DOL), and Health and Human Services (HHS)	O			
R4	Retained Water in Raw Meat and Poultry Products; Poultry Chilling Requirements (Jan. 9, 2001) Department of Agriculture (USDA)				
R5	Medicaid Program; Change in Application of Federal Financial Participation Limits (Jan. 11, 2001) HHS				
R6	State Child Health; Implementing Regulations for the State Children's Health Insurance Program (Jan. 11, 2001) HHS				
R7	Promotion of Competitive Networks in Local Telecommunications Markets (Jan. 11, 2001) Federal Communications Commission (FCC)				
R10	Special Areas; Roadless Area Conservation (Jan. 12, 2001) USDA				

Appendix IV
Reasons that Selected Final Rules Did Not
Trigger UMRA



No notice of proposed rulemaking	No expenditure of \$100 million or more in any 1 year	Otherwise prohibited by law	Independent regulatory agency	No enforceable duty	Duty is a condition of federal financial assistance	Duty arises from participation in voluntary federal program
	A			A		
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	O			A		O
		A				A
			O			
	A					

Appendix IV
Reasons that Selected Final Rules Did Not
Trigger UMRA

(Continued From Previous Page)

GAO ID	Rule, date of publication, and publishing agency	Enforces rights prohibiting discrimination	Requires compliance with accounting and auditing procedures	Necessary for national security	Associated with emergency legislation
R11	Medicaid Program; Revision to Medicaid Upper Payment Limit Requirements for Hospital Services, Nursing Facility Services, Intermediate Care Facility Services for the Mentally Retarded, and Clinic Services (Jan. 12, 2001) HHS				
R13	Food Stamp Program; Personal Responsibility Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Jan. 17, 2001) USDA				
R16	Safety Standards for Steel Erection (Jan. 18, 2001) DOL				
R17	Medicaid Program; Medicaid Managed Care (Jan. 19, 2001) HHS				
R18	Hazard Analysis and Critical Control Point (HAACP); Procedures for the Safe and Sanitary Processing and Importing of Juice (Jan. 19, 2001) HHS				
R19	Occupational Injury and Illness Recording and Reporting Requirements (Jan. 19, 2001) DOL				

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Reasons that Selected Final Rules Did Not
Trigger UMRA

No notice of proposed rulemaking	No expenditure of \$100 million or more in any 1 year	Otherwise prohibited by law	Independent regulatory agency	No enforceable duty	Duty is a condition of federal financial assistance	Duty arises from participation in voluntary federal program
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	A	O				O
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	A					
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Reasons that Selected Final Rules Did Not
Trigger UMRA

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GAO ID	Rule, date of publication, and publishing agency	Enforces rights prohibiting discrimination	Requires compliance with accounting and auditing procedures	Necessary for national security	Associated with emergency legislation
R20	Fisheries of the Exclusive Economic Zone Off Alaska; Steller Sea Lion Protection Measures for the Groundfish Fisheries Off Alaska; Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska (Jan. 22, 2001) Department of Commerce				
R23	Disclosure of Mutual Fund After-Tax Returns (Feb. 5, 2001) Securities and Exchange Commission (SEC)				
R24	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)/TRICARE; Partial Implementation of Pharmacy Benefits Program; Implementation of National Defense Authorization Act Medical Benefits for Fiscal Year 2001 (Feb. 9, 2001) Department of Defense (DOD)				
R28	2000-Crop Disaster Program (Mar. 21, 2001) USDA				
R30	Assistance to Firefighters Grant Program (Mar. 29, 2001) Federal Emergency Management Agency (FEMA)				
R31	Adjustment of Status To That Person Admitted for Permanent Residence; Temporary Removal of Certain Restrictions of Eligibility (Mar. 26, 2001) Department of Justice (DOJ)				

Appendix IV
Reasons that Selected Final Rules Did Not
Trigger UMRA

No notice of proposed rulemaking	No expenditure of \$100 million or more in any 1 year	Otherwise prohibited by law	Independent regulatory agency	No enforceable duty	Duty is a condition of federal financial assistance	Duty arises from participation in voluntary federal program
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Appendix IV
Reasons that Selected Final Rules Did Not
Trigger UMRA

(Continued From Previous Page)

GAO ID	Rule, date of publication, and publishing agency	Enforces rights prohibiting discrimination	Requires compliance with accounting and auditing procedures	Necessary for national security	Associated with emergency legislation
R33	Light Truck Average Fuel Economy Standard, Model Year 2003 (Apr. 2, 2001) Department of Transportation (DOT)				
R34	Federal Acquisition Regulations; Electronic and Information Technology Accessibility (Apr. 25, 2001) DOD, General Services Administration (GSA), and National Aeronautics and Space Administration (NASA)	O			
R35	Safety Incentive Grants for Use of Seat Belts—Allocations Based on State Seat Belt Use Rates (Apr. 26, 2001) DOT				
R39	Adjustment of Status Under Legal Immigration Family Equity (LIFE) Act Legalization Provisions and LIFE Act Amendments Family Unity Provisions (June 1, 2001) DOJ				
R41	Revision of Fee Schedules; Fee Recovery for FY 2001 (June 14, 2001) Nuclear Regulatory Commission (NRC)				
R42	Supplemental Property Acquisition and Elevation Assistance (June 15, 2001) FEMA				
R44	Assessment and Collection of Regulatory Fees for Fiscal Year 2001 (July 11, 2001) FCC				

Appendix IV
Reasons that Selected Final Rules Did Not
Trigger UMRA

No notice of proposed rulemaking	No expenditure of \$100 million or more in any 1 year	Otherwise prohibited by law	Independent regulatory agency	No enforceable duty	Duty is a condition of federal financial assistance	Duty arises from participation in voluntary federal program
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Reasons that Selected Final Rules Did Not
Trigger UMRA

(Continued From Previous Page)

GAO ID	Rule, date of publication, and publishing agency	Enforces rights prohibiting discrimination	Requires compliance with accounting and auditing procedures	Necessary for national security	Associated with emergency legislation
R46	Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities-Update; Final Rule (July 31, 2001) HHS				
R49	Medicare Program; Prospective Payment System for Inpatient Rehabilitation Facilities (Aug. 7, 2001) HHS				
R54	Risk-Based Capital (Sept. 13, 2001) Department of Housing and Urban Development				
R58	Regulations for Air Carrier Guarantee Loan Program Under Section 101(a)(1) of the Air Transportation Safety and System Stabilization Act (Oct. 12, 2001) Office of Management and Budget				
R60	Medicare Program; Monthly Actuarial Rates and Monthly Supplementary Medical Insurance Premium Rate Beginning January 1, 2002 (Oct. 26, 2001) HHS				
R61	Medicare Program; Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for 2002 (Oct. 26, 2001) HHS				
R62	Procedures for Compensation of Air Carriers (Oct. 29, 2001) DOT				

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Reasons that Selected Final Rules Did Not
Trigger UMRA

No notice of proposed rulemaking	No expenditure of \$100 million or more in any 1 year	Otherwise prohibited by law	Independent regulatory agency	No enforceable duty	Duty is a condition of federal financial assistance	Duty arises from participation in voluntary federal program
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Appendix IV
Reasons that Selected Final Rules Did Not
Trigger UMRA

(Continued From Previous Page)

GAO ID	Rule, date of publication, and publishing agency	Enforces rights prohibiting discrimination	Requires compliance with accounting and auditing procedures	Necessary for national security	Associated with emergency legislation
R65	Books and Records Requirements for Brokers and Dealers Under the Securities Exchange Act of 1934 (Nov. 2, 2001) SEC				
R67	Copayments for Medications (Dec. 6, 2001) Department of Veterans Affairs (VA)				
R68	Broadcast Services; Digital Television (Dec. 18, 2001) FCC				
R69	September 11th Victim Compensation Fund of 2001 (Dec. 21, 2001) DOJ				
R70	Adjustment of Certain Fees of the Immigration Examinations Fee Account (Dec. 21, 2001) DOJ				
R73	Medicaid Program; Modification of the Medicaid Upper Payment Limit for Non-State Government-Owned or Operated Hospitals (Jan. 18, 2002) HHS				
R75	Class Exemption for Cross-Trades of Securities by Index and Model-Driven Funds (Feb. 12, 2002) DOL				
R76	Aviation Security Infrastructure Fees (Feb. 20, 2002) DOT			O	

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Reasons that Selected Final Rules Did Not
Trigger UMRA

No notice of proposed rulemaking	No expenditure of \$100 million or more in any 1 year	Otherwise prohibited by law	Independent regulatory agency	No enforceable duty	Duty is a condition of federal financial assistance	Duty arises from participation in voluntary federal program
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Appendix IV
Reasons that Selected Final Rules Did Not
Trigger UMRA

(Continued From Previous Page)

GAO ID	Rule, date of publication, and publishing agency	Enforces rights prohibiting discrimination	Requires compliance with accounting and auditing procedures	Necessary for national security	Associated with emergency legislation
R77	Civil Aviation Security Rules (Feb. 22, 2002) DOT			O	O
R78	Security Programs for Aircraft 12,500 Pounds or More (Feb. 22, 2002) DOT			O	O
R79	Assistance to Firefighters Grant Program (Feb. 27, 2002) FEMA				
R80	September 11th Victim Compensation Fund of 2001 (Mar. 13, 2002) DOJ				
R81	Noninsured Crop Disaster Assistance Program (Mar. 19, 2002) USDA				
R83	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)/ TRICARE; Partial Implementation of Pharmacy Benefits Program; Implementation of National Defense Authorization Act for Fiscal Year 2001 (Apr. 3, 2002) DOD				
R84	Light Truck Average Fuel Economy Standard, Model Year 2004 (Apr. 4, 2002) DOT				
R85	New Entrant Safety Assurance Process (May 13, 2002) DOT				

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Reasons that Selected Final Rules Did Not
Trigger UMRA

No notice of proposed rulemaking	No expenditure of \$100 million or more in any 1 year	Otherwise prohibited by law	Independent regulatory agency	No enforceable duty	Duty is a condition of federal financial assistance	Duty arises from participation in voluntary federal program
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A						
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			A			
O	A					

Appendix IV
Reasons that Selected Final Rules Did Not
Trigger UMRA

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GAO ID	Rule, date of publication, and publishing agency	Enforces rights prohibiting discrimination	Requires compliance with accounting and auditing procedures	Necessary for national security	Associated with emergency legislation
R86	Ultra-Wideband Transmission Systems (May 16, 2002) FCC				
R89	Adjustment of Status Under Legal Immigration Family Equity (LIFE) Act Legalization Provisions and LIFE Act Amendments Family Unity Provisions (June 4, 2002) DOJ				
R90	TRICARE; Sub-Acute Care Program; Uniform Skilled Nursing Facility Benefit; Home Health Care Benefit; Adopting Medicare Payment Methods for Skilled Nursing Facilities and Home Health Care Providers (June 13, 2002) DOD				
R91	Medicaid Program; Medicaid Managed Care: New Provisions (June 14, 2002) HHS				
R93	Revision of Fee Schedules; Fee Recovery for FY 2002 (June 24, 2002) NRC				

Appendix IV
Reasons that Selected Final Rules Did Not
Trigger UMRA

No notice of proposed rulemaking	No expenditure of \$100 million or more in any 1 year	Otherwise prohibited by law	Independent regulatory agency	No enforceable duty	Duty is a condition of federal financial assistance	Duty arises from participation in voluntary federal program
			O			
O	A					O
O	O	O				
	A					O
			O			

Appendix IV
Reasons that Selected Final Rules Did Not
Trigger UMRA

(Continued From Previous Page)

GAO ID	Rule, date of publication, and publishing agency	Enforces rights prohibiting discrimination	Requires compliance with accounting and auditing procedures	Necessary for national security	Associated with emergency legislation
R94	Order To Permit Operation of NGSO FSS Systems Co-Frequency With GSO and Terrestrial Systems in the Ku-Band Frequency Range; Authorize Subsidiary Terrestrial Use of the 12.2-12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates; and in Re Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. in the [12.2]-12.7 GHz Band (June 26, 2002) FCC				
R96	Assessment and Collection of Regulatory Fees For Fiscal Year 2002 (July 12, 2002) FCC				
R97	Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update; Notice (July 31, 2002) HHS				
R98	Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2003 Rates (Aug. 1, 2002) HHS				
R100	Standards for Privacy of Individually Identifiable Health Information (Aug. 14, 2002) HHS				
R105	Medicare Program; Medicare-Endorsed Prescription Drug Card Assistance Initiative (Sept. 4, 2002) HHS				

Appendix IV
Reasons that Selected Final Rules Did Not
Trigger UMRA

No notice of proposed rulemaking	No expenditure of \$100 million or more in any 1 year	Otherwise prohibited by law	Independent regulatory agency	No enforceable duty	Duty is a condition of federal financial assistance	Duty arises from participation in voluntary federal program
	O		O			
			O			
O	A					
				A		
	O					
				A		

Appendix IV
Reasons that Selected Final Rules Did Not
Trigger UMRA

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GAO ID	Rule, date of publication, and publishing agency	Enforces rights prohibiting discrimination	Requires compliance with accounting and auditing procedures	Necessary for national security	Associated with emergency legislation
R106	Certification of Disclosure in Companies' Quarterly and Annual Reports (Sept. 9, 2002) SEC				
R107	Acceleration of Periodic Report Filing Dates and Disclosure Concerning Web Site Access to Reports (Sept. 16, 2002) SEC				
R111	Disaster Assistance; Federal Assistance to Individuals and Households (Sept. 30, 2002) FEMA			O	
R115	Medicare Program; Monthly Actuarial Rates and Monthly Supplementary Medical Insurance Premium Rate Beginning January 1, 2003 (Oct. 21, 2002) HHS				
R116	Medicare Program; Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for 2003 (Oct. 21, 2002) HHS				
Total number of rules in which agencies cited the reason					
Total number of rules in which agencies could also have cited the reason		2	1	3	2

Source: GAO

Appendix IV
Reasons that Selected Final Rules Did Not
Trigger UMRA

No notice of proposed rulemaking	No expenditure of \$100 million or more in any 1 year	Otherwise prohibited by law	Independent regulatory agency	No enforceable duty	Duty is a condition of federal financial assistance	Duty arises from participation in voluntary federal program
	O		O			
			O			
					O	O
O	A					O
O	A					
3	26	3		10	3	5
25	17	2	12	1	9	21

Examples of Final Rules that Did Not Trigger UMRA But Had Potentially Significant Financial Effects on Nonfederal Parties

The following table presents information on 29 final rules published by federal regulatory agencies during 2001 and 2002 that did not trigger UMRA but that had potentially significant costs or financial effects on state, local, and tribal governments or the private sector (see table 8). For each rule, we provide (1) GAO’s unique identification number for the rule, (2) the title of the rule and its date of publication in the *Federal Register*, (3) the agency that published the rule, (4) summary information about the potential costs or negative financial effects of the rule on affected nonfederal parties, and (5) the agency’s statement in the *Federal Register* notice, if any, regarding the applicability of UMRA.

Table 8: Examples of Final Rules Published in 2001 and 2002 with Provisions that Affected State, Local, and Tribal Governments or the Private Sector But Did Not Trigger UMRA

GAO ID	Rule	Agency	Potential costs or negative financial effects of the rule on nonfederal parties	Agency’s statement in the <i>Federal Register</i> about the applicability of UMRA
R1	Lead; Identification of Dangerous Levels of Lead (Jan. 5, 2001)	EPA	<p>Established standards for the identification of lead-based paint hazards in most pre-1978 housing and child-occupied facilities, residential lead dust cleanup levels and amendments to dust and soil sampling requirements, and amendments to state program authorization requirements.</p> <p>Although EPA stated that the rule “in and of itself” did not contain a mandate, the agency estimated the potential costs of actions that might be taken based on the hazard standards. Those total costs (estimated over a 50-year span and discounted at 3 percent) were \$69 billion for the final dust and soil standards, \$20 billion for paint interventions, and \$14 billion for testing.</p>	“EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. As indicated previously, this rule does not, in and of itself, mandate any action, or directly impose any costs. ...The UMRA requirements in sections 202, 204, and 205 do not apply to this rule, because this action does not contain any ‘Federal mandates’ or impose any ‘enforceable duty’ on State/Tribal, or local governments or on the private sector.”

Appendix V
Examples of Final Rules that Did Not Trigger
UMRA But Had Potentially Significant
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GAO ID	Rule	Agency	Potential costs or negative financial effects of the rule on nonfederal parties	Agency's statement in the <i>Federal Register</i> about the applicability of UMRA
R2	Interim Final Rules for Nondiscrimination in Health Coverage in the Group Market (Jan. 8, 2001)	Departments of the Treasury, Labor, and Health and Human Services	<p>Prohibited discrimination based on a health factor for group health plans and issuers of health insurance coverage offered in connection with a group health plan.</p> <p>The departments estimated a one-time cost to health plans and insurers to implement this regulation of less than \$19 million. They also provided a rough estimate of more than \$400 million annually for the transfer in premium and claims costs incurred by group health plans to provide coverage to individuals previously denied coverage or offered restricted coverage based on health factors. The departments noted that plan sponsors generally can pass these costs back to participants in health plans through changes to employee premiums or benefits.</p>	"For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), as well as Executive Order 12875, this interim final rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, nor does it include mandates which may impose an annual burden of \$100 million or more on the private sector."
R4	Retained Water in Raw Meat and Poultry Products; Poultry Chilling Requirements (Jan. 9, 2001)	USDA	<p>Limited the amount of water retained by raw, single-ingredient meat and poultry products as a result of post-evisceration processing, such as carcass washing and chilling.</p> <p>The agency estimated that the lower bound of costs to the private sector in the first year of implementation would be \$110 million.</p>	(No mention of UMRA)
R5	Medicaid Program; Change in Application of Federal Financial Participation Limits (Jan. 11, 2001)	HHS	<p>Gave states additional flexibility in setting Medicaid eligibility requirements.</p> <p>According to the agency, the rule did not require that states make any changes in their programs. However, the agency projected a cost to state Medicaid of removing federal financial participation limits that was estimated at \$680 million over federal fiscal years 2001-2005.</p>	"This final rule will have no impact on the private sector. The rule imposes no requirements on State, local or tribal governments. Rather, it offers State governments additional flexibility in operating their Medicaid programs, but does not require that they make any changes in their programs."

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Examples of Final Rules that Did Not Trigger
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GAO ID	Rule	Agency	Potential costs or negative financial effects of the rule on nonfederal parties	Agency's statement in the <i>Federal Register</i> about the applicability of UMRA
R10	Special Areas; Roadless Area Conservation (Jan. 12, 2001)	USDA	<p>Established prohibitions on road construction, road reconstruction, and timber harvesting in inventoried roadless areas on the National Forest System's lands.</p> <p>Among the estimated costs of the rule, the agency identified lost jobs and lost income in certain industries (timber, road construction, mineral resources, and recreation) plus other effects (e.g., lost coal, phosphate, and gas resources). For example, the agency estimated that up to 546 direct and 3,095 total jobs related to limitations on exploration for and development of leasable minerals could be affected, with a potential effect on mining-related annual income of \$36.2 million less direct and \$127.8 million less total income.</p>	"This proposed rule does not compel the expenditure of \$100 million or more by any State, local, or tribal government, or anyone in the private sector. Therefore, a statement under Section 202 of the Act is not required."
R11	Medicaid Program; Revision to Medicaid Upper Payment Limit Requirements for Hospital Services, Nursing Facility Services, Intermediate Care Facility Services for the Mentally Retarded, and Clinic Services (Jan. 12, 2001)	HHS	<p>Modified the Medicaid upper payment limits for certain health care services.</p> <p>Budget projections indicated that potentially two-thirds of the federal share of enhanced payments to government facilities that are not state-owned or operated could be in excess of the upper payment limits imposed by this final rule. The limits imposed by this rule could therefore result in federal financial participation reductions of nearly \$55 billion over the next 10 years.</p>	"Absent FFP [federal financial participation], we do not believe States will continue to set excessive payment rates for Medicaid services furnished by government providers. Generally, discontinuing an expenditure should not result in new costs, unless the State has to fund the portion of the expenditure that is no longer Federally funded with all State and local dollars. ...We do not believe the aggregate upper payment limits in this final rule have any unfunded mandates implications because they do not require any additional expenditures by States to providers under their Medicaid program."

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Examples of Final Rules that Did Not Trigger
UMRA But Had Potentially Significant
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GAO ID	Rule	Agency	Potential costs or negative financial effects of the rule on nonfederal parties	Agency's statement in the <i>Federal Register</i> about the applicability of UMRA
R17	Medicaid Program; Medicaid Managed Care (Jan. 19, 2001)	HHS	<p>Amended the Medicaid regulations to implement provisions of the Balanced Budget Act of 1997 that, among other changes, allowed states greater flexibility by permitting them to amend their state plan to require certain categories of Medicaid beneficiaries to enroll in managed care entities without obtaining waivers, if beneficiary choice is provided.</p> <p>The agency said that some of the new provisions "represent new requirements for States, MCOs, PHPs, and PCCMs but also provide expanded opportunities for participation in Medicaid managed care." Also, "a large number of entities, such as hospitals, State agencies, and MCOs will be affected by the implementation of these statutory provisions, and a substantial number of these entities may be required to make changes in their operations..." The state costs of the 6-month guaranteed eligibility option were projected to exceed \$100 million in 2 fiscal years.</p>	"This rule does not impose any mandates on State, local, or tribal governments, or the private sector that will result in an annual expenditure of \$100 million or more."
R20	Fisheries of the Exclusive Economic Zone Off Alaska; Steller Sea Lion Protection Measures for the Groundfish Fisheries Off Alaska; Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska (Jan. 22, 2001)	Department of Commerce	<p>Implemented Steller sea lion protection measures.</p> <p>Under one set of assumptions, the agency estimated that, as a result of the reduced harvest in restricted times and places due to this rule, processing and fishing industry revenues could drop by between \$225 million to \$401 million per year.</p>	(No mention of UMRA)

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Examples of Final Rules that Did Not Trigger
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GAO ID	Rule	Agency	Potential costs or negative financial effects of the rule on nonfederal parties	Agency's statement in the <i>Federal Register</i> about the applicability of UMRA
R31	Adjustment of Status To That Person Admitted for Permanent Residence; Temporary Removal of Certain Restrictions of Eligibility (Mar. 26, 2001)	DOJ	<p>Amended regulations governing eligibility for adjustment of status under section 245(i) of the Immigration and Nationality Act to conform the regulations to existing policy and procedures and to remove language that had been superseded by subsequent legislation.</p> <p>DOJ estimated that the effect on the economy "directly associated with the expected increase in the number of applications for adjustment of status...with the required \$1,000 penalty fee and other associated applications" would be about \$178.3 million in 2001, \$99.2 million in 2002, and \$91.9 million in 2003.</p>	"This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or the private sector, of \$100 million or more in 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995."
R34	Federal Acquisition Regulations; Electronic and Information Technology Accessibility (April 25, 2001)	DOD, GSA, NASA	<p>Amended the Federal Acquisition Regulations to incorporate standards for electronic and information technology (EIT) to ensure that EIT allows those with disabilities to have access and use of information comparable to that of other federal employees (with the standards applying to federal contracts awarded on or after the effective date of this final rule and to indefinite-quantity contract delivery orders or task orders issued on or after the effective date).</p> <p>Summary information on the potential costs of the rule indicated that nonfederal costs could range from \$92 million to \$377 million annually. The range of costs was attributed to the "uncertainty of manufacturers to distribute these costs over the general consumer population."</p>	(No mention of UMRA)
R39	Adjustment of Status Under Legal Immigration Family Equity (LIFE) Act Legalization Provisions and LIFE Act Amendments Family Unity Provisions (June 1, 2001)	DOJ	<p>Established procedures for certain class action participants to become lawful permanent residents of the United States.</p> <p>Fees were required of applicants, with an expected impact on the economy, directly associated with the expected increase in the number of applications and an increase in fees, of approximately \$152.4 million in 2001.</p>	"This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any 1 year, and it will not significantly or uniquely effect [sic] small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995."

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Examples of Final Rules that Did Not Trigger
UMRA But Had Potentially Significant
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GAO ID	Rule	Agency	Potential costs or negative financial effects of the rule on nonfederal parties	Agency's statement in the <i>Federal Register</i> about the applicability of UMRA
R44	Assessment and Collection of Regulatory Fees for Fiscal Year 2001 (July 11, 2001)	FCC	Revised FCC's regulatory fee schedule. For fiscal year 2001, the amount to be recovered through fees was \$200,146,000.	(No mention of UMRA, but, as an independent regulatory agency, not subject to UMRA)
R60	Medicare Program; Monthly Actuarial Rates and Monthly Supplementary Medical Insurance Premium Rate Beginning January 1, 2002 (Oct. 26, 2001)	HHS	Announced the monthly actuarial rates for aged and disabled enrollees in the Medicare Supplementary Medical Insurance (SMI) program for 2002 and the monthly SMI premium rate to be paid by all enrollees in 2002. Increased premium costs to beneficiaries by about \$1.83 billion for 2002.	(No mention of UMRA)
R61	Medicare Program; Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for 2002 (Oct. 26, 2001)	HHS	Announced the inpatient hospital deductible and the hospital and extended care services coinsurance amounts for calendar year 2002 under Medicare Part A. The agency estimated that the total increased cost to beneficiaries for the deductible and coinsurance amounts would be about \$430 million.	"This notice has no consequential effect on State, local, or tribal governments or on the private sector."
R67	Copayments for Medications (Dec. 6, 2001)	VA	Amended VA's medical regulations to set forth copayment requirements for medications. Raised the copayment amount for medications from \$2 to \$7, with an estimated total impact of an increase in VA collections from veterans of \$250 million annually.	"This rule would have no consequential effect on State, local, or tribal governments."

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Examples of Final Rules that Did Not Trigger
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GAO ID	Rule	Agency	Potential costs or negative financial effects of the rule on nonfederal parties	Agency's statement in the <i>Federal Register</i> about the applicability of UMRA
R70	Adjustment of Certain Fees of the Immigration Examinations Fee Account (Dec. 21, 2001)	DOJ	<p>Adjusted (increased) the fee schedule for certain immigration and naturalization applications and fees, as well as the fee for fingerprinting of applicants who apply for certain immigration and naturalization benefits.</p> <p>The agency anticipated collecting an additional \$127 million in fees from individuals and businesses filing immigration applications and petitions in fiscal year 2002. The agency also stated that the rule would have an effect on the economy of \$169 million, in order to generate the revenue necessary to fund the increased expenses of processing the Service's immigration and naturalization applications and petitions.</p>	"This rule will not impose a mandate of enforceable duty on State, local, and tribal governments in the aggregate, or on the private sector, and it will not significantly or uniquely affect small governments. Accordingly, no further actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995."
R73	Medicaid Program; Modification of the Medicaid Upper Payment Limit for Non-State Government-Owned or Operated Hospitals (Jan. 18, 2002)	HHS	<p>Modified the Medicaid upper payment limit (UPL) provisions to remove the 150-percent UPL for inpatient hospital services and outpatient hospital services furnished by nonstate government-owned or operated hospitals.</p> <p>The limits on aggregate federal payments to a group of hospitals were estimated to reduce potential federal costs by about \$9 billion over fiscal years 2002 through 2006.</p>	"Because this final rule does not mandate any new spending requirements or costs, but rather limits aggregate payments to a group of hospitals, we do not believe it has any unfunded mandate implications."
R76	Aviation Security Infrastructure Fees (Feb. 20, 2002)	DOT	<p>Imposed a fee (the Aviation Security Infrastructure Fee) on air carriers and foreign air carriers engaged in air transportation, foreign air transportation, and intrastate air transportation.</p> <p>The agency noted that this rulemaking "may impose significant costs on air carriers and foreign air carriers."</p>	"The requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply when rulemaking actions are taken without the issuance of a notice of proposed rulemaking. Accordingly, the TSA [Transportation Security Administration] has not prepared a statement under the Act."
R77	Civil Aviation Security Rules (Feb. 22, 2002)	DOT	<p>Required additional qualifications, training, and testing of individuals who screen people and property carried in passenger aircraft.</p> <p>Although the agency did not complete an economic analysis for this rule, it recognized that "this rule may impose significant costs on aircraft operators and foreign air carriers."</p>	"The requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply when rulemaking actions are taken without the issuance of a notice of proposed rulemaking. Therefore, the FAA [Federal Aviation Administration] and TSA have not prepared a statement under the Act."

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Examples of Final Rules that Did Not Trigger
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GAO ID	Rule	Agency	Potential costs or negative financial effects of the rule on nonfederal parties	Agency's statement in the <i>Federal Register</i> about the applicability of UMRA
R78	Security Programs for Aircraft 12,500 Pounds or More (Feb. 22, 2002)	DOT	<p>Required certain aircraft operators using aircraft with a maximum certified takeoff weight of 12,500 pounds or more to carry out security measures, conduct criminal history records checks on their flight crew members, and restrict access to the flight deck.</p> <p>Although the agency did not complete an economic analysis for this rule, it recognized that "this rule may impose significant costs on aircraft operators."</p>	"The requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply when rulemaking actions are taken without the issuance of a notice of proposed rulemaking. Accordingly, TSA has not prepared a statement under the Act."
R89	Adjustment of Status Under Legal Immigration Family Equity (LIFE) Act Legalization Provisions and LIFE Act Amendments Family Unity Provisions (June 4, 2002)	DOJ	<p>Final adoption of procedures for certain class action participants to become lawful permanent residents of the United States.</p> <p>Fees were required of applicants, with an expected impact on the economy, directly associated with the expected increase in the number of applications and an increase in fees of about \$43.3 million in 2001, \$152.2 million in 2002, and \$37.9 million in 2003.</p>	"This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely effect [sic] small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995."
R90	TRICARE; Sub-Acute Care Program; Uniform Skilled Nursing Facility Benefit; Home Health Care Benefit; Adopting Medicare Payment Methods for Skilled Nursing Facilities and Home Health Care Providers (June 13, 2002)	DOD	<p>Established a sub-acute care benefits program with skilled nursing facility and home health care benefits modeled after those of the Medicare program and implemented other reforms enacted in the National Defense Authorization Act for Fiscal Year 2002.</p> <p>The rule was expected to result in reduced federal TRICARE payments to skilled nursing facilities in excess of \$100 million per year, partially offset by increases in Medicare payments to skilled nursing facilities, home health agencies, and other institutional providers of \$4 million in fiscal year 2003.</p>	(No mention of UMRA)

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Examples of Final Rules that Did Not Trigger
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GAO ID	Rule	Agency	Potential costs or negative financial effects of the rule on nonfederal parties	Agency's statement in the <i>Federal Register</i> about the applicability of UMRA
R91	Medicaid Program; Medicaid Managed Care: New Provisions (June 14, 2002)	HHS	<p>Amended Medicaid regulations to implement provisions of the Balanced Budget Act of 1997 that allow states greater flexibility to amend their state plans regarding managed care, established some new beneficiary protections, and eliminated certain requirements viewed by state agencies as impediments to the growth of managed care programs.</p> <p>The agency recognized that "a large number of entities, such as hospitals, State agencies, MCOs, PIHPs, PAHPs, and PCCMs will be affected by the implementation of these statutory provisions, and a substantial number of these entities may be required to make changes in their operations..." The agency discussed potential impacts on states and providers in 12 different areas, projecting that some of the changes (such as new quality standards and a 6-month guaranteed eligibility option) could result in costs to providers or states of \$125 million or more in fiscal years 2004 and 2005.</p>	"We have determined that this final rule does not impose any mandates on State, local, or tribal governments, or the private sector that will result in an annual expenditure of \$110 million or more."
R93	Revision of Fee Schedules; Fee Recovery for FY 2002 (June 24, 2002)	NRC	<p>Amended the NRC's licensing, inspection, and annual fees charged to applicants and licensees.</p> <p>The final rule resulted in increases in the annual fees charged to certain licensees and holders of certificates, registrations, and approvals, and decreases in annual fees for others. For fiscal year 2002, NRC's fee recovery amount was to be approximately \$479.5 million.</p>	(No mention of UMRA, but, as an independent regulatory agency, not subject to UMRA)
R96	Assessment and Collection of Regulatory Fees For Fiscal Year 2002 (July 12, 2002)	FCC	<p>Revised FCC's regulatory fees for fiscal year 2002.</p> <p>The expected total amount of fees was \$218,757,000.</p>	(No mention of UMRA, but, as an independent regulatory agency, not subject to UMRA)

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GAO ID	Rule	Agency	Potential costs or negative financial effects of the rule on nonfederal parties	Agency's statement in the <i>Federal Register</i> about the applicability of UMRA
R97	Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update; Notice (July 31, 2002)	HHS	<p>Updated the payment rates used under the prospective payment system (PPS) for skilled nursing facilities (SNFs) for fiscal year 2003, as required by statute.</p> <p>The updating of rates was projected to increase payments to SNFs by approximately \$400 million, but the agency also identified an estimated aggregate decrease in payments associated with this notice of \$1 billion for fiscal year 2003 because of the expiration of previous temporary add-ons to the prospective payment rates to SNFs.</p>	<p>"This notice will have no consequential effect on State, local, or tribal governments. We believe the private sector cost of this notice falls below these thresholds [\$110 million or more] as well. Because this notice does not impose unfunded mandates, as defined by section 202 of UMRA, we have not prepared an assessment."</p>
R107	Acceleration of Periodic Report Filing Dates and Disclosure Concerning Web Site Access to Reports (Sept. 16, 2002)	SEC	<p>Accelerated filing deadlines for annual and quarterly reports and included requirements for additional reporting and disclosure.</p> <p>The amendments accelerating quarterly and annual report due dates were estimated to increase costs to some affected reporting companies—including costs for preparing the reports, using additional in-house and outside resources, and making additional capital investments, such as in information systems. SEC provided cost ranges and median estimates regarding initial costs (from about \$29.9 million to \$11.9 billion—median value of \$298.6 million) and on-going annual costs (from \$75.5 million to \$686.8 million—median value of \$247.2 million) of accelerating reporting deadlines, but noted that these estimates might overstate the actual costs from the amendments being adopted in this final rule. The final rule's amendments regarding Web-site access to information were estimated to increase the costs to affected companies by a total of \$463,525.</p>	<p>(No mention of UMRA, but, as an independent regulatory agency, not subject to UMRA)</p>

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Examples of Final Rules that Did Not Trigger
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GAO ID	Rule	Agency	Potential costs or negative financial effects of the rule on nonfederal parties	Agency's statement in the <i>Federal Register</i> about the applicability of UMRA
R115	Medicare Program; Monthly Actuarial Rates and Monthly Supplementary Medical Insurance Premium Rate Beginning January 1, 2003 (Oct. 21, 2002)	HHS	<p>Increased the cost of premiums for Medicare's Supplemental Medical Insurance (SMI) enrollees.</p> <p>The agency estimated that the cost of the increase in the premium to the approximately 38 million SMI enrollees would be about \$2.161 billion in 2003.</p>	"This notice has no consequential effect on State, local, or tribal governments. We believe the private sector costs of this notice fall below this threshold [\$110 million] as well."
R116	Medicare Program; Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for 2003 (Oct. 21, 2002)	HHS	<p>Announced inpatient hospital deductible and hospital extended care coinsurance amounts for services furnished in calendar year 2003 under Medicare Part A.</p> <p>The total increase in cost to beneficiaries, due to the increase in deductible and coinsurance amounts and the change in the number of deductibles and daily coinsurance amounts paid, was estimated at about \$580 million in 2003.</p>	"This notice has no consequential effect on State, local, or tribal governments or on the private sector."

Source: GAO.

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