

Appendix A:
Evaluative Criteria for Compliance:
Unfunded Mandates Control Act

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CENTER FOR THE STUDY OF AMERICAN BUSINESS PROJECT ON REGULATORY OVERSIGHT

UNFUNDED MANDATES REFORM ACT (PUB. L. 104-4) PROCEDURAL REQUIREMENTS			
QX#	EVALUATIVE CRITERION	STATUTORY CITATION	
P1	Is the agency exempt?	§421(1) [2 USC 658(1)] The term “agency” has the same meaning as defined in section 551(1) of title 5, United States Code, but does not include independent regulatory agencies.	
Is the rule exempt from procedural requirements because it meets any one of the following criteria:		<p>§202(a) [2 USC 1532(a)]: <u>Unless otherwise prohibited by law</u>, before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year, and before <u>promulgating any final rule for which a general notice of proposed rulemaking was published</u>, the agency shall prepare a written statement [on unfunded mandates].</p> <p><u>It is the intent of the conferees that the rulemaking process shall follow the requirements of section 553 of title 5, United States Code, and shall be subject to the exceptions stated therein.</u> When a general notice of proposed rulemaking is promulgated, such notice shall be accompanied by the written statement required by section 202. When an agency promulgates a final rule following the earlier promulgation of a proposed rule, the rule shall be accompanied by an updated written statement. <u>In all cases, the exceptions stated in section 553 shall apply, including for good cause.</u> [Conference Report, §202]</p> <p>(2) Exemptions. As a general limitation, Section 202. requires preparation of an estimate or analysis, “[u]nless otherwise prohibited by law”. <u>The Conference Report states that Section 202 “does not require the preparation of any estimate or analysis if the agency is prohibited by law from considering the estimate or analysis in adopting the rule.”</u></p> <p><u>Section 202 also does not apply to interim final rules or non-notice rules issued under the “good cause” exemption in 5 U.S.C. 553(b)(B). Nor does it apply to situations in which the agency has, under 5 U.S.C. 553(a), claimed an exemption.</u> At the same time, if an agency waived the exemption and follows the informal rulemaking procedures in 5 U.S.C. 553, Section 202 would appear to apply. [OMB Memorandum M-95-09 at 3]</p>	
P2	a		Complying with UMRA procedures is prohibited by law.
P2	b		The rule is an interim final rule.
P2	c		The agency is prohibited by law from considering the estimate or analysis in adopting the rule.
P2	d		The rule was issued under exceptions to the Administrative Procedure Act (5 USC 553), including “good cause.”

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UNFUNDED MANDATES REFORM ACT (PUB. L. 104-4) PROCEDURAL REQUIREMENTS		
QX#	EVALUATIVE CRITERION	STATUTORY CITATION
P3	a	<p>Does the regulation include any federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, of \$100 million or more (adjusted for inflation) in any one year?</p>
P3	b	<p>Does the regulation include any federal mandate that may result in the expenditure by the private sector of \$100 million or more (adjusted for inflation) in any one year?</p>
P3	c	<p>Did the agency prepare a written statement on unfunded federal mandates?</p>

**UNFUNDED MANDATES REFORM ACT (PUB. L. 104-4)
PROCEDURAL REQUIREMENTS**

§202(a) [2 USC 1532(a)]: Unless otherwise prohibited by law, before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement [on unfunded mandates].

§305 [2 USC 1555]. DEFINITION.

Notwithstanding section 3 of this Act [2 USC 1502], for purposes of this title the term "Federal mandate" means any provision in statute or regulation or any Federal court ruling that imposes an enforceable duty upon State, local, or tribal governments including a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

"Federal mandate" is a precisely defined term (Sec. 3(1); Sec. 101(a), adding Sec. 421(6)) that includes a "Federal intergovernmental mandate" (Sec. 421(5)) and a "Federal private sector mandate" (Sec. 421(7)).

"Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments," with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease the Federal Government's responsibility to provide funding" in a situation in which the State, local, or tribal governments "lack authority" to adjust accordingly.

"Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program." [OMB Memorandum M-95-09, footnote 2]

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UNFUNDED MANDATES REFORM ACT (PUB. L. 104-4) PROCEDURAL REQUIREMENTS		
QX#	EVALUATIVE CRITERION	STATUTORY CITATION
P4	a	<p>Does this written statement identify the provision of Federal law under which the rule is being promulgated?</p> <p>§202(a)(1) [2 USC 1532(a)(1)]: <u>[The agency shall prepare a written statement containing] an identification of the provision of Federal law under which the rule is being promulgated.</u></p>

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P4	b Does this written statement contain a description of the extent of the agency's prior consultation with elected representatives of the affected State, local, and tribal governments?	<p>§202(a)(5) [2 USC 1532(a)(5)]: [The agency shall prepare a written statement containing] a description of the extent of the agency's prior consultation with elected representatives (under section 1534 of this title [§204]) of the affected State, local, and tribal governments.</p> <p>§204 [2 USC 1534]: (a) In General.--<u>Each agency shall, to the extent permitted in law, develop an effective process to permit elected officers of State, local, and tribal governments (or their designated employees with authority to act on their behalf) to provide meaningful and timely input in the development of regulatory proposals containing significant Federal intergovernmental mandates.</u></p> <p style="text-align: center;">* * *</p> <p>(c) Implementing Guidelines.--No later than 6 months after the date of enactment of this Act, the President shall issue guidelines and instructions to Federal agencies for appropriate implementation of subsections (a) and (b) consistent with applicable laws and regulations.</p> <p style="text-align: center;">* * *</p> <p>Agencies should seek views of State, local and tribal governments regarding costs, benefits, risks, and alternative and flexible methods of compliance regarding their regulatory proposals. Agencies should also seek views on potential duplication with existing laws or regulations at other levels of government, and on ways to harmonize their rules with State, local and tribal policies and programs. [OMB Memorandum M-95-20 at 4]</p>

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UNFUNDED MANDATES REFORM ACT (PUB. L. 104-4) PROCEDURAL REQUIREMENTS			
QX#	EVALUATIVE CRITERION		STATUTORY CITATION
	When intergovernmental consultation should occur:		<u>Intergovernmental consultation should take place as early in the regulatory process as possible.</u> Except where the need for immediate agency action precludes prior consultation, <u>consultation should occur before publication of the notice of proposed rulemaking</u> or other regulatory action proposing a significant Federal intergovernmental mandate. Consultation should continue after publication of the regulatory action initiating the proposal. <u>Except in exceptional circumstances where the need for immediate action precludes prior consultation, consultation must occur prior to the formal promulgation in final form of the regulatory action.</u> [OMB Memorandum M-95-20 at 2]
P5	a	Does the written statement document consultation before the regulation was proposed?	
P5	b	Does the written statement document consultation after publication of the proposal but before final promulgation?	

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		With whom agencies should consult:	[UMRA] directs agencies to develop an effective process to ensure that “elected officers of State, local, and tribal governments ...” who wish to provide meaningful and timely input are able to do so... [OMB Memorandum M-95-20 at 3-4]
P6	a	Does the written statement document consultation with the highest levels of the pertinent government, such as governors, mayors and tribal chiefs?	(1) Heads of Governments. Agencies should seek to consult with the highest levels of the pertinent government units, e.g., the Office of the Governor, Mayor, or Tribal Chief ... These officials are the ones elected to represent the people and are the ones that the public holds directly accountable for the actions of those government units.
P6	b	Does the written statement document consultation with program officials?	(2) Both Program and Financial Officials. Many regulatory agencies have functional counterparts in State, local, and tribal governments, e.g., those government officials who implement or enforce regulatory responsibilities required in whole or in part by the Federal agency. These local officials tend to be those most familiar with the Federal agency’s regulatory program, and should be consulted as a source of important information concerning the likely effects of, or effective alternatives to, Federal regulatory proposals.
P6	c	Does the written statement document consultation with financial officials?	In addition, agencies should consult with those State, local, and tribal officials most directly responsible for ensuring the funding of compliance with the Federal mandate, e.g., the applicable treasury, budget, tax-collection, or other financial officials. These officials are institutionally responsible for balancing the competing claims for scarce State, local, or tribal resources.

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P6	d	Does the written statement document consultation with Washington representatives?
		(3) Washington Representatives. It is also important that Federal agencies consult with Washington representatives, where available, of associations representing elected officials. These Washington representatives often know which local elected officials are the most knowledgeable about, interested in, or responsible for, implementing specific issues, regulations or programs, and can ensure that a broad range of government officials learn of and provide valuable insight concerning a proposed intergovernmental mandate.
P6	e	Does the written statement document consultation with small governments?
		(4) Small Governments. Agencies should make special efforts to consult with officials of small governments, and to develop a plan for such consultation under section 203 of Title II of [UMRA]. Agencies may wish to consider several mechanisms for reaching small governments, including special task forces, periodic mailings through small government organizations, or communication through rural development councils.
P7		Does the written statement demonstrate that the agency's consultation is commensurate with the significance of the action?
		D. How Much Consultation Should there Be? The scope of intergovernmental consultation should be based on common sense and be commensurate with the significance of the action being taken. The more costly, the more potentially disruptive, the more broadly applicable, the more controversial the proposed intergovernmental mandate – the more consultation there should be. An agency should decide the extent of its consultation on a case-by-case basis; a one-size-fits-all prescription is neither appropriate nor desirable? [OMB Memorandum M-95-20 at 4]
P8	a	Does this written statement contain a summary of the comments and concerns that were presented by State, local, or tribal governments either orally or in writing to the agency?
		<u>§202(a)(5)(B) [2 USC 1532(a)(5)(B)]: [The agency shall prepare a written statement containing] a summary of the comments and concerns that were presented by State, local, or tribal governments either orally or in writing to the agency.</u>

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P8	b	Does this written statement contain a summary of the agency's evaluation of those comments and concerns?
		<u>§202(a)(5)(C) [2 USC 1532(a)(5)(C)]: [The agency shall prepare a written statement containing] a summary of the agency's evaluation of those comments and concerns.</u>
P8	C	Did the agency include in its rule a summary of the information listed above [required by §202(a) [2 USC 1532(a)]?
		<u>§202(b) [2 USC 1532(b)]: In promulgating a general notice of proposed rulemaking or a final rule for which a statement under subsection (a) of this section is required, the agency shall include in the promulgation a summary of the information contained in the statement.</u>
P9		Did OMB certify to Congress in writing that the agency adequately complied or failed to comply with this provision?
		<u>§202(c) [2 USC 1535(c)]: No later than 1 year after March 22, 1995, the Director of the Office of Management and Budget shall certify to Congress, with a written explanation, agency compliance with this section and include in that certification agencies and rulemakings that fail to adequately comply with this section.</u>
		If yes:
P9	a	What was the basis for OMB's certification?

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P10	Did the agency provide notice of the requirements to potentially affected small governments?	§203 [2 USC 1533(a)]: Before establishing any regulatory requirements that might significantly or uniquely affect small governments, <u>agencies shall have developed a plan under which the agency shall—</u> (1) <u>provide notice of the requirements to potentially affected small governments, if any;</u> (2) <u>enable officials of affected small governments to provide meaningful and timely input in the development of regulatory proposals containing significant Federal intergovernmental mandates; and</u> (3) <u>inform, educate, and advise small governments on compliance with the requirements.</u>
P11	Did the agency enable officials of affected small governments to provide meaningful and timely input in the development of regulatory proposals containing significant Federal intergovernmental mandates?	
P12	Did the agency inform, educate, and advise small governments on compliance with the requirements?	

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UNFUNDED MANDATES REFORM ACT (PUB. L. 104-4) ANALYTIC REQUIREMENTS			
Qx#	EVALUATIVE CRITERION		STATUTORY CITATION
	Is the rule exempt from analytic requirements because it meets any one of the following criteria?		<p>§202(a) [2 USC 1532(a)]: <u>Unless otherwise prohibited by law</u>, before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year, and before <u>promulgating any final rule for which a general notice of proposed rulemaking was published</u>, the agency shall prepare a written statement [on unfunded mandates].</p> <p>The Conference substitute adopts the House provision, along with a condition that the items in the written report be included "unless otherwise prohibited by law" <u>This section does not require the preparation of any estimate or analysis if the agency is prohibited by law from considering the estimate or analysis in adopting the rule...</u></p> <p><u>It is the intent of the conferees that the rulemaking process shall follow the requirements of section 553 of title 5, United States Code, and shall be subject to the exceptions stated therein.</u> When a general notice of proposed rulemaking is promulgated, such notice shall be accompanied by the written statement required by section 202. When an agency promulgates a final rule following the earlier promulgation of a proposed rule, the rule shall be accompanied by an updated written statement. <u>In all cases, the exceptions stated in section 553 shall apply, including for good cause.</u> [Conference Report, §202]</p> <p>(2) Exemptions. As a general limitation, Section 202. requires preparation of an estimate or analysis, "[u]nless otherwise prohibited by law". <u>The Conference Report states that Section 202 "does not require the preparation of any estimate or analysis if the agency is prohibited by law from considering the estimate or analysis in adopting the rule."</u></p> <p><u>Section 202 also does not apply to interim final rules or non-notice rules issued under the "good cause" exemption in 5 U.S.C. 553(b)(B). Nor does it apply to situations in which the agency has, under 5 U.S.C. 553(a), claimed an exemption.</u> At the same time, if an agency waived the exemption and follows the informal rulemaking procedures in 5 U.S.C. 553, Section 202 would appear to apply. [OMB Memorandum M-95-09 at 3]</p>
A1	a	Performing the analysis is prohibited by law.	
A1	b	The rule is an interim final rule.	
A1	c	The agency is prohibited by law from considering the estimate or analysis in adopting the rule.	
A1	d	The rule was issued under exceptions to the Administrative Procedure Act (5 USC 553), including "good cause."	

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UNFUNDED MANDATES REFORM ACT (PUB. L. 104-4) ANALYTIC REQUIREMENTS			
Qx#	EVALUATIVE CRITERION		STATUTORY CITATION
Contents of the agency's written statement:			<p>§202(a)(2) [2 USC 1532(a)(2)]: <u>[The agency shall prepare a written statement containing] a qualitative and quantitative assessment of the anticipated costs and benefits of the Federal mandate, including the costs and benefits to State, local, and tribal governments or the private sector, as well as the effect of the Federal mandate on health, safety, and the natural environment and such an assessment shall include—</u></p> <p>(A) <u>an analysis of the extent to which such costs to State, local, and tribal governments may be paid with Federal financial assistance (or otherwise paid for by the Federal Government); and</u></p> <p>(B) <u>the extent to which there are available Federal resources to carry out the intergovernmental mandate.</u></p>
A2	a	Does the agency's written statement assess the costs and benefits of the Federal mandate?	
A2	b	Does the agency's written statement include the extent to which such costs may be paid with Federal financial assistance (or otherwise paid for by the Federal Government)?	
A2	c	Does this written statement include a qualitative and quantitative assessment of the extent to which Federal resources are available to carry out the intergovernmental mandate?	

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Qx#	EVALUATIVE CRITERION		STATUTORY CITATION
A2	d	Does the agency's written statement document the preparation and dissemination of cost estimates prior to the initiation of intergovernmental consultation?	To assist with these consultations, agencies should first estimate the direct costs to be incurred by the State, local, or tribal governments in complying with the mandate and then inform the affected governmental units of these cost estimates. Estimates should cover both up-front and recurring costs, for a reasonable number of years after the rule is to be put into effect. To the extent practicable, agencies should make reasonable efforts to disaggregate those cost estimates as they affect the various levels of government, or otherwise provide the criteria by which those affected can disaggregate the cost estimates in order to determine the potential costs to themselves. Where quantitative estimates are not feasible, agencies should work with other levels of government to discern and discuss qualitative costs. [OMB Memorandum M-95-20 at 4-5.]
A2	e 1	If yes, were these cost estimates disaggregated by level of government with sufficient detail that affected governments could determine their potential costs?	
A2	e 2	If no, was the development of quantitative cost estimates infeasible?	

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Qx#	EVALUATIVE CRITERION		STATUTORY CITATION	
A2	f	Does the agency's written statement document the preparation and dissemination of benefit estimates prior to the initiation of intergovernmental consultation?	<p><u>Agencies should also consult on and estimate the benefits expected from the mandate for States, localities, tribes, and their residents and businesses. Estimates should cover both up-front and recurring benefits for a reasonable number of years after the rule is to be put into effect. To the extent practicable, agencies should make reasonable efforts to disaggregate these benefit estimates as they affect the various levels of government, or otherwise provide the criteria by which those affected can disaggregate the benefit estimates in order to determine the potential benefits to themselves.</u> Where quantitative estimates are not feasible, agencies should work with other levels of government to discern and discuss qualitative benefits. [OMB Memorandum M-95-20 at 4-5.]</p>	
A2	f	1		If yes, were these benefit estimates disaggregated by level of government with sufficient detail that affected governments could determine their potential costs?
A2	f	2		If no, was the development of quantitative benefit estimates infeasible?

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Qx#	EVALUATIVE CRITERION	STATUTORY CITATION
A3	Does this written statement contain agency estimates of the future compliance costs of the Federal mandate? If no:	§202(a)(3)(A) [2 USC 1532(a)(3)(A)]: <u>[The agency shall prepare a written statement containing estimates by the agency, if and to the extent that the agency determines that accurate estimates are reasonably feasible,] of the future compliance costs of the Federal mandate.</u>
A3	a What was the agency's rationale for providing no such estimates?	
A4	Does this written statement contain agency estimates of any disproportionate budgetary effects of the Federal mandate along any or all of the margins enumerated by statute?	§202(a)(3)(B) [2 USC 1532(a)(3)(B)]: <u>[The agency shall prepare a written statement containing] estimates by the agency, if and to the extent that the agency determines that accurate estimates are reasonably feasible,] of any disproportionate budgetary effects of the Federal mandate upon any particular regions of the nation or particular State, local, or tribal governments, urban or rural or other types of communities, or particular segments of the private sector.</u>
A4	a If not, what was the agency's rationale for providing no such estimates?	
Evaluating alternatives:		§202(a)(4) [2 USC 1532(a)(4)]: <u>[The agency shall prepare a written statement containing] estimates by the agency of the effect on the national economy, such as the effect on Productivity, economic growth, full employment, creation of productive jobs, and international competitiveness of United States goods and services, if and to the extent that the agency in its sole discretion determines that accurate estimates are reasonably feasible and that such effect is relevant and material.</u>

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UNFUNDED MANDATES REFORM ACT (PUB. L. 104-4) ANALYTIC REQUIREMENTS		
Qx#	EVALUATIVE CRITERION	STATUTORY CITATION
A5	Does this written statement contain agency estimates of the effect on the national economy along any or all of the margins enumerated by statute?	
A5	a	If no, what was the agency's rationale for providing no such estimates?
A5	b	<p>If yes, did the agency identify and consider a reasonable number of regulatory alternatives that achieve the objectives of the rule?</p> <p>§205(a) [2 USC 1535(a)]: Except as provided in subsection (b) of this section, before promulgating any rule for which a written statement is required under section 1532 of this title, <u>the agency shall identify and consider a reasonable number of regulatory alternatives ...</u></p> <p>The Conference substitute requires that before promulgating any rule for which a written statement is required under section 202, <u>an agency shall identify and consider a reasonable number of regulatory alternatives and select from them either the least costly, the most cost-effective, or the least burdensome alternative that achieves the objectives of the rule, unless either the agency head publishes an explanation of why this was not done or such a selection is inconsistent with law. The conferees intend that "a reasonable number of regulatory alternatives" means the maximum number that an agency can thoroughly consider without delaying the rulemaking process.</u> The substitute also requires the OMB Director, within one year of enactment, to certify agency compliance with this section, and to include in the written explanation any agencies and rulemakings that fail to do so. [Conference Report, §205]</p>

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A7	<p>Did the agency determine that it was exempt from the requirement to identify and consider alternatives?</p> <p>If yes:</p>	<p>§205(b) [2 USC 1535(b)]: <u>The provisions of [§205(a), 2 USC 1535(a)] shall apply unless—</u></p> <p>(1) <u>the head of the affected agency publishes with the final rule an explanation of why the least costly, most cost-effective or least burdensome method of achieving the objectives of the rule was not adopted</u>; or</p> <p>(2) <u>the provisions are inconsistent with law.</u></p>
A7	a	

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UNFUNDED MANDATES REFORM ACT (PUB. L. 104-4) DECISION MAKING REQUIREMENTS		
Qx#	EVALUATIVE CRITERION	STATUTORY CITATION
For regulations with intergovernmental mandates:		§205 [2 USC 1535]:
D1	Did the agency select the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule?	(a) Except as provided in subsection (b) of this section, before promulgating any rule for which a written statement is required under [2 USC 1532], <u>the agency shall ... select the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, for--</u>
D1	a If yes, what was the basis for the agency's determination?	(1) <u>State, local, and tribal governments, in the case of a rule containing a Federal intergovernmental mandate.</u>
D1	b If no, what was the agency's rationale for selecting a different alternative?	* * *
D1	c Did the agency determine that it was excepted from these requirements? If yes:	(b) Exception.-- <u>The provisions of subsection (a) shall apply unless—</u> (1) <u>the head of the affected agency publishes with the final rule an explanation of why the least costly, most cost-effective or least burdensome method of achieving the objectives of the rule was not adopted; or</u>
D1	d 1 What was the basis for the agency's determination?	(2) <u>the provisions are inconsistent with law.</u>

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For regulations with private sector mandates:		§205 [2 USC 1535]:
D2	Did the agency select the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule?	<p>(a) Except as provided in subsection (b) of this section, before promulgating any rule for which a written statement is required under [2 USC 1532], <u>the agency shall ... select the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, for--</u></p> <p style="text-align: center;">* * *</p> <p>(2) <u>the private sector, in the case of a rule containing a Federal private sector mandate.</u></p> <p>(b) Exception.--<u>The provisions of subsection (a) shall apply unless—</u></p> <p>(1) <u>the head of the affected agency publishes with the final rule an explanation of why the least costly, most cost-effective or least burdensome method of achieving the objectives of the rule was not adopted; or</u></p> <p>(2) <u>the provisions are inconsistent with law.</u></p>
D2	a If yes, what was the basis for the agency's determination?	
D2	b If no, what was the agency's rationale for selecting a different alternative?	
D2	c Did the agency determine that it was exempted from these requirements? If yes:	
D2	d 1 What was the basis for the agency's determination?	

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CENTER FOR THE STUDY OF AMERICAN BUSINESS PROJECT ON REGULATORY OVERSIGHT

UNFUNDED MANDATES REFORM ACT (PUB. L. 104-4) JUDICIAL REVIEW		
Qx#	EVALUATIVE CRITERION	STATUTORY CITATION
J1	Has any party petitioned a court to compel an agency to prepare the written statement required under §202 [2 USC 1532]?	<p>§401 [2 USC 1571]. Judicial review.</p> <p>(a) Agency statements on significant regulatory actions--</p> <p>(1) In general. <u>Compliance or noncompliance by any agency with the provisions of sections 1532 and 1533(a)(1) and (2) of this title shall be subject to judicial review only in accordance with this section.</u></p>
J2	Has a court acted to compel the agency to prepare such a statement? If yes:	<p>(2) Limited review of agency compliance or noncompliance.</p> <p>(A) Agency compliance or noncompliance with the provisions of sections 1532 and 1533(a)(1) and (2) of this title shall be subject to judicial review only under section 706(1) of title 5, and only as provided under subparagraph (B).</p> <p>(B) <u>If an agency fails to prepare the written statement (including the preparation of the estimates, analyses, statements, or descriptions) under section 1532 of this title or the written plan under section 1533(a)(1) and (2) of this title, a court may compel the agency to prepare such written statement.</u></p>
J2	a	<p>Has the agency complied with any such court order?</p> <p>(3) Review of agency rules. <u>In any judicial review under any other Federal law of an agency rule for which a written statement or plan is required under sections 1532 and 1533(a)(1) and (2) of this title, the inadequacy or failure to prepare such statement (including the inadequacy or failure to prepare any estimate, analysis, statement or description) or written plan shall not be used as a basis for staying, enjoining, invalidating or otherwise affecting such agency rule.</u></p>

EVALUATIVE CRITERIA FOR COMPLIANCE: UNFUNDED MANDATES CONTROL ACT