

GAO

Statement for the Record
Before the Subcommittee on Commercial
and Administrative Law, Committee on
the Judiciary, House of Representatives

To accompany the Committee
hearing record of Tuesday,
November 6, 2007

**CONGRESSIONAL REVIEW
ACT**

Statement of Gary Keplinger, General Counsel



Chairwoman Sanchez, Mr. Cannon, and Members of the Subcommittee:

I am pleased to submit this statement for the record on the Government Accountability Office's responsibilities under the Congressional Review Act (CRA), and our processes and experiences in carrying out these responsibilities. CRA was designed to give Congress an opportunity to review a rule before it takes effect and to disapprove any rule to which Congress objects through the passage of a joint resolution with presentment to the President.

Under CRA two types of rules, major and nonmajor, must be submitted to both Houses of Congress and GAO before either can take effect. 5 U.S.C. § 801(a)(1)(A). CRA defines a "major" rule as one which has resulted in or is likely to result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic and export markets. 5 U.S.C. § 804(2). CRA specifies that the determination of whether a rule is major is to be made by the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB). *Id.* Major rules cannot be effective until 60 days after publication in the Federal Register or submission to Congress, whichever is later. 5 U.S.C. § 801(a)(3).¹ Nonmajor rules become effective when specified by the agency, but not before they are filed with the Congress. 5 U.S.C. § 801(a)(4).

GAO's primary role under CRA is to provide the Congress with a report on each major rule containing GAO's assessment of whether the promulgating federal agency's submissions to GAO indicate that it has complied with the procedural steps required by various acts and Executive Orders governing the regulatory process. 5 U.S.C. § 801(a)(2)(A). These steps include preparation of a cost-benefit analysis, where required, and compliance with the Regulatory Flexibility Act, the Unfunded Mandates Reform Act of 1995, the Administrative Procedure Act, the Paperwork Reduction Act, and Executive Order No. 12866. In addition, our Office provides a copy of each major rule to the interested audit or evaluation team within GAO to

¹ Under CRA a delay in the effective date for rules does not apply in the case of rules related to hunting, fishing, or camping, or to rules where an agency finds "good cause." 5 U.S.C. § 808.

ascertain if GAO has any work relevant to the rule which should be brought to the attention of the Congress. GAO's report must be sent to the congressional committees of jurisdiction within 15 calendar days.²

CRA is silent as to GAO's role relating to the nonmajor rules. However, since we began receiving rules from federal agencies under CRA in 1996 (Pub. L. No. 104-121, §§251-253, 110 Stat. 847, 868 (1996)), we have collected and made available to Congress and the public in a researchable database on our website certain basic information about major and nonmajor rules. This database contains information about the 10 rules we receive on average each day, including the title of the rule, the agency, the Regulation Identification Number,³ the type of rule (major or nonmajor), the proposed effective date, the date published in the Federal Register, the congressional review trigger date, any joint resolutions of disapproval that may be enacted, and, in the case of major rules, a link to GAO's report on the rule. Since the enactment of CRA in 1996, through October 30, 2007, GAO has received 46,136 rules and of those 703 were major rules for which we prepared reports for Congress.

Standardized Submission Form

GAO has developed for agencies a standardized submission form, which allows for more efficient processing of rules delivered under CRA. Agencies now submit a standardized "Submission of Federal Rules under the Congressional Review Act" form with each rule submitted to GAO. The form includes the information required by CRA for agency reports accompanying submitted rules, such as the Department or Agency name, the title of the rule, the Rule Identification Number and whether or not the agency or OIRA considers the rule to be major. 5 U.S.C. § 801(a)(1)(A). For major rules, the agency indicates which acts and Executive orders the agency determined were relevant to the rule, and whether or not

² In response to Congressional requests, we also have issued to the Congress eight legal opinions on whether or not an agency action is a rule as defined by CRA (B-292045, May 19, 2003; B-291906, February 28, 2003; B-287557, May 14, 2001; B-286338, October 17, 2000; B-281575, January 20, 1999; B-278224, November 10, 1997; B-275178, July 3, 1997; B-274505, September 16, 1996), and an additional opinion interpreting the 60-day delay period for major rules. B-289880, April 5, 2002.

³ The Regulatory Information Service Center assigns a Regulation Identification Number (RIN) to identify each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions. OMB has asked agencies to include RINs in the headings of their Rule and Proposed Rule documents when publishing them in the Federal Register, to make it easier for the public and agency officials to track the publication history of regulatory actions throughout their development.

information regarding compliance with these acts and orders is included in the rule as submitted. The form is available on the GAO's website and may be submitted electronically. The form is also available on the section of the OIRA website that offers guidance and forms to federal agencies.⁴

GAO Receipt of Rules

Federal agencies may use a variety of means to submit rules and reports to GAO, including hand-delivery, postal mail, facsimile or electronic mail. GAO has been able to receive agency rules and reports electronically since 1999, although only a handful of agencies have used this method to transmit rules. Our conversations with agencies indicate that this is attributable, in part, to the fact that the House of Representatives and the Senate require paper copies to be submitted to fulfill the agency's obligation under CRA.

As noted earlier, a rule must be filed in accordance with CRA before it can become effective. 5 U.S.C. § 801(a)(1)(A). GAO has conducted yearly reviews to determine whether all final rules covered by CRA and published in the Federal Register were filed with GAO. We submit to OIRA each year a computer listing of rules we found published in the Federal Register the previous year that have not been filed with our Office. Additionally, GAO monitors the Federal Register daily for major rules under CRA to ensure that we receive all such rules. On the occasion that a major rule is published that has not been received by GAO, GAO promptly follows up with the agency to remind the agency of its responsibilities under CRA.

Sixty Day Delay

A consistent difficulty in implementing CRA has been the failure of some agencies to delay the effective date of major rules for 60 days as required by CRA. 5 U.S.C. § 801(a)(3)(A). In 2007, eight of the forty-three major rules we have reviewed to date have not allowed for the required 60-day delay. We find agencies are not budgeting enough time into their regulatory timetable to allow for the statutory delay. In one of these cases, the agency, Federal Energy Regulatory Commission, delayed the effective date of its rule to comply with CRA. 72 Fed. Reg. 31,452 (June 7, 2007).

⁴ The form is available at http://www.whitehouse.gov/omb/inforeg/regpol-agency_review.html (last visited November 7, 2007).

Conclusion

We look forward to fulfilling GAO's continuing responsibilities under CRA and to working with the subcommittee in the future in its continued oversight of CRA processes and procedures.

Appendix: Rules Received Under CRA by Fiscal Year

Fiscal Year	All Rules	Major Rules
1996 ^a	2,059	35
1997	3,932	59
1998	4,746	70
1999	4,560	58
2000	4,619	65
2001	4,038	81
2002	3,736	52
2003	4,238	48
2004	4,139	63
2005	3,888	64
2006	3,058	54
2007	3,092	51
Total	46,105	700

Source: GAO Federal Rules Database.

^aReporting under the act began when CRA was passed on March 29, 1996.

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