




EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

THE DIRECTOR

February 16, 2024

M-24-09

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Shalanda D. Young   
SUBJECT: Guidance on Compliance with the Congressional Review Act

**I. Introduction**

The Congressional Review Act (CRA)<sup>1</sup> establishes a mechanism by which Congress is able to review Federal agency actions. The CRA provides that agencies must submit to Congress and the Government Accountability Office (GAO) the agency's "rule[s]," a term that is defined for purposes of the CRA to include not only rules subject to the notice-and-comment procedures of the Administrative Procedure Act (APA), but also certain other agency statements, subject to several exceptions.<sup>2</sup> Congress may then pass a joint resolution of disapproval that, if signed by the President or enacted over the President's veto, invalidates the rule.<sup>3</sup>

The CRA imposes additional requirements for rules that the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) has designated as "major," as defined by the CRA.<sup>4</sup> A major designation triggers a report by GAO and a 60-day delayed effective date, again subject to certain exceptions.<sup>5</sup>

This Memorandum clarifies the process for OIRA to make major determinations under the CRA and provides guidance regarding the information needed from agencies to enable these determinations. While agencies have an ongoing responsibility to comply

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<sup>1</sup> Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, 110 Stat. 857, 868 (codified at 5 U.S.C. §§ 801–808), is commonly known as the "Congressional Review Act."

<sup>2</sup> The CRA adopts the APA's definition of "rule," which includes, subject to certain exceptions, "the whole or a part of an agency statement of general . . . applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency." 5 U.S.C. § 551(4); *see id.* § 804(3) (incorporating § 551's definition of "rule" for purposes of the CRA). The CRA, however, provides exemptions for several categories of rules, such as those "of particular applicability"; "relating to agency management or personnel"; or "of agency organization, procedure, or practice that do[] not substantially affect the rights or obligations of non-agency parties." 5 U.S.C. § 804(3); *see also id.* § 807 (exempting certain rules concerning monetary policy).

<sup>3</sup> *Id.* § 801.

<sup>4</sup> *Id.* § 804(2).

<sup>5</sup> *Id.* §§ 801(a)(3)(A), 808.

with the CRA, the major determination process outlined here will take full effect on March 17, 2024. This Memorandum supersedes earlier OMB guidance on the CRA.<sup>6</sup>

## II. Major Determination Process

Under the CRA, a rule is major if the OIRA Administrator finds that the rule

has resulted in or is likely to result in—

- (A) an annual effect on the economy of \$100,000,000 or more;
- (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.<sup>7</sup>

The CRA requires Federal agencies to submit a rule to Congress along with a report that, among other things, includes whether the rule has been determined by OIRA to be a major rule and the proposed effective date of the rule.<sup>8</sup> The CRA provides that a major rule may take effect no sooner than 60 calendar days after Congress receives the agency’s CRA report or the rule is published in the *Federal Register*, whichever is later, subject to exceptions.<sup>9</sup> Agencies should not publish a rule—major or not major—in the *Federal Register*, on their websites, or in any other public manner before OIRA has determined whether the rule is major and the agency has complied with the requirements of the CRA.

Below, OIRA describes its process for determining whether a rule is major under the CRA. This process largely reflects existing practices and also clarifies expectations in light of recent changes to the regulatory review process under Executive Order 14094. Agencies should consult their OIRA desk officer with any questions they might have about the major determination process.

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<sup>6</sup> Off. of Mgmt. & Budget, M-19-14, “Guidance on Compliance with the Congressional Review Act” (Apr. 11, 2019); Off. of Mgmt. & Budget, M-99-13, “Guidance for Implementing the Congressional Review Act” (Mar. 30, 1999).

<sup>7</sup> 5 U.S.C. § 804(2). If any undiscounted benefit, cost, or transfer estimate is at least \$100 million in at least one year (including in any consecutive twelve-month period, if an agency has performed such an analysis), then OIRA will designate the rule major under § 804(2)(A).

<sup>8</sup> 5 U.S.C. § 801(a)(1)(A).

<sup>9</sup> 5 U.S.C. §§ 801(a)(3)(A), 808. Exceptions to the 60-day delayed effective date requirement are for certain rules related to hunting, fishing, or camping, *id.* § 808(1), and for rules where the agency has found “good cause” to forgo “notice and public procedure,” *id.* § 808(2).

The major designation also triggers a requirement that GAO prepare a report assessing the rule’s compliance with statutory provisions and executive orders. *See id.* § 801(a)(2).

### **A. Rules submitted through the Executive Order 12866 process**

For rules submitted to OIRA for review pursuant to Executive Order 12866, OIRA will continue to incorporate CRA major determinations into its standard process. Agencies should be aware that the monetary threshold for significance under Section 3(f)(1) of Executive Order 12866, as amended by Executive Order 14094, no longer aligns with the \$100 million monetary threshold for major rules under 5 U.S.C. § 804(2)(A). Agencies should include both a proposed Executive Order 12866 significance determination and a separate proposed determination of whether the rule is major under 5 U.S.C. § 804(2).

### **B. Rules not submitted through the Executive Order 12866 process**

For rules not submitted to OIRA through the centralized review process of Executive Order 12866, agencies should, in consultation with OIRA desk officers, follow the process outlined below:

1. Each agency should notify OIRA regularly of upcoming rules, including summaries of each rule and the agency's recommendation whether a rule is major under the CRA. For example, an agency may recommend that a rule should not be deemed major by explaining that it is likely to result in an annual effect on the economy of less than \$100 million and otherwise does not meet the statutory criteria for a major rule.
2. For rules that an agency considers not major under the CRA, within ten working days of notification, OIRA may follow-up with questions or inform the agency that OIRA agrees with the agency and will designate such rules as not major. Otherwise, the agency should assume that such rules will be subject to the major rule review and CRA determination process in Step 3 below.
3. For rules the agency considers major under the CRA and those rules not previously designated by OIRA as not major, the agency should submit the rule to OIRA for a major rule review and CRA determination.
4. Agencies should include analysis of the benefits, costs, and transfers with each rule sufficient to allow OIRA to determine whether the rule is major under the criteria of 5 U.S.C. § 804(2). While the analysis need not be lengthy, it should include, consistent with the principles enunciated in Part III of this Memorandum, information sufficient to inform OIRA's threshold determination. To make this determination, OIRA may request additional information from the agency.<sup>10</sup>
5. OIRA will review each rule and the information and recommendation submitted and notify the agency in writing of OIRA's designation of the rule as major or not major under the CRA within 30 calendar days after the date of a complete submission, or a time period to be determined by agreement between the regulating agency and OIRA.

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<sup>10</sup> This threshold determination does not require the analysis specified by Sections 6(a)(3)(B)(ii) and 6(a)(3)(C)(ii) of Executive Order 12866; rather, it requires information that is similar to that required for the threshold determination of whether a regulatory action is significant under Section 3(f)(1) of Executive Order 12866.

6. After the designation, agencies may send the CRA report to Congress and the Comptroller in accordance with the applicable provisions of 5 U.S.C. § 801(a), publish the rule in the *Federal Register*, and otherwise publicly release the rule. If OIRA designates a rule as major, the CRA provides that the effective date of the rule must be at least 60 days from the date the rule is received by Congress or the rule is published in the *Federal Register*, whichever is later, subject to the CRA's exceptions.<sup>11</sup>

OIRA has designated, and will continue to designate, certain categories of rules as presumptively not major under the CRA in order to prioritize evaluation of rules more likely to be major. OIRA will work with senior agency officials to identify categories of rules that are presumptively not major because they are unlikely to result in the effects described for a major rule. Rules within these categories would not be subject to the major determination process described in this Memorandum. OIRA, however, reserves the right to revoke this categorical "not major" determination for any category or for any particular rule.

### **III. Principles for OIRA's Major Determinations**

Many major designations occur because a rule will have an annual effect on the economy of \$100 million or more, as specified in 5 U.S.C. § 804(2)(A). Yet the CRA includes additional grounds on which a rule may be deemed major. A rule is also major if it is likely to result in a "major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions,"<sup>12</sup> or in "significant adverse effects on competition, employment, investment, productivity, innovation" or the ability of U.S. entities to compete with foreign entities.<sup>13</sup> A rule can qualify as major under 5 U.S.C. § 804(2)(B) or (C) even if its annual effect on the economy is less than \$100 million. Analysis pursuant to 5 U.S.C. § 804(2)(B) or (C) may sometimes be difficult to perform quantitatively; however, agencies should provide quantitative analysis when reasonably possible and otherwise should provide qualitative analysis.

OIRA notes the following longstanding analytic principles should be considered when providing information necessary for major rule review:

1. Inclusion of all substantially affected entities and use of a time horizon that encompasses all important effects of the rule.<sup>14</sup>
2. Extension beyond the direct effects of the rule to any important additional effects.<sup>15</sup>

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<sup>11</sup> 5 U.S.C. §§ 801(c), 808.

<sup>12</sup> 5 U.S.C. § 804(2)(B).

<sup>13</sup> 5 U.S.C. § 804(2)(C).

<sup>14</sup> A regulatory analysis, if conducted, should present undiscounted year-by-year streams of benefit, cost, and transfer estimates for the full analytic time horizon.

3. Consideration of the probability of the occurrence of benefits, costs, or transfers, even if the precise consequences are uncertain.

In making a “major” determination, OIRA will consider the quality of evidence relevant to the above.

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This Memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States; its departments, agencies, or entities; its officers, employees, or agents; or any other person.

Please consult with your agency’s OIRA desk officer if you have questions regarding this Memorandum.

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<sup>15</sup> These sorts of effects sometimes are referred to by other names: for example, indirect or ancillary benefits and costs, co-benefits, or countervailing risks.