



Technical Reform of the Congressional Review Act

Committee on Rulemaking

Proposed Recommendation for Committee | October 21, 2021

1 [Preamble]

RECOMMENDATION

Requiring Electronic Submission of Reports Required by 5 U.S.C. § 801(a)(1)(A)

- 2 1. Congress should amend 5 U.S.C. § 801(a)(1)(A) to provide that the reports required by
3 that provision (“801(a) reports”) be submitted to Congress and the Government
4 Accountability Office (GAO) electronically rather than by hand delivery.
5 2. In the event Congress does not enact the amendment described in Paragraph 1, both
6 chambers of Congress still should modify their rules or policies to require electronic
7 submittal of 801(a) reports.
8 3. In the event that Congress, in some manner, mandates electronic submittal of 801(a)
9 reports, it should establish procedures governing how agencies may electronically submit
10 801(a) reports.

Simplifying and Clarifying the Procedures for Determining Relevant Dates Under 5 U.S.C. §§ 801 and 802.

- 11 4. Congress should amend 5 U.S.C. § 801(d)(1) to establish a fixed date each year after
12 which rules submitted to Congress under the Congressional Review Act (“CRA”) will be
13 subject to the CRA’s review process during the following session of Congress. In fixing a
14 date to serve as the start of this “lookback period,” Congress should consider a date
15 between mid-July and early August, which is when, as a matter of recent history, the

Commented [MT1]: Note for Committee: The preamble will provide more information about the lookback period and how it functions in the context of the CRA as a whole.



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- 16 lookback period under the current version of 5 U.S.C. § 801(d)(1) has typically
17 commenced.
- 18 5. Congress should amend 5 U.S.C. § 802(a), which establishes the period during which
19 joint resolutions of disapproval under the CRA may be introduced, to either:
- 20 a. Eliminate the period; or
- 21 b. Align the dates on which the period commences and ends with the period during
22 which the Senate may act on a proposed joint resolution of disapproval submitted
23 under the CRA.
- 24 6. Congress should review and, where appropriate, enact existing Parliamentary
25 interpretations that bear on calculating deadlines under the CRA. If Congress does not
26 enact those interpretations, it should ensure that they are published in a manner that is
27 accessible to the public.

Commented [MT2]: Note for Committee: The preamble will provide more information about this period and how it functions in the context of the CRA as a whole.

Commented [MT3]: Note for Committee: The preamble will provide more information about the role of Parliamentary interpretations in administering the CRA.

Initiating Review of Agency Actions for Which Agencies Do Not Submit 801(a) Reports

- 28 7. Congress should amend Chapter 8 of Title 5 of the United States Code to provide a
29 mechanism for initiating congressional review under the CRA of agency actions for
30 which agencies do not submit 801(a) reports. In particular, Congress should enact the
31 process it currently relies on to initiate CRA review of such agency actions, whereby:
- 32 a. A Member or committee requests the opinion of the GAO on whether an agency
33 action qualifies as a “rule” under the CRA;
- 34 b. GAO issues an opinion as to whether the agency action in question qualifies as a
35 “rule” under the CRA;
- 36 c. If GAO concludes that the action amounts to a rule under the CRA, a Member of
37 Congress or a committee provides for publication of the GAO opinion in the
38 *Congressional Record*; and
- 39 d. Publication of the GAO opinion in the *Congressional Record* is deemed to be the
40 date that triggers the time periods for CRA review of the agency action.



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- 41 8. If Congress amends the CRA to enact the procedure described in Paragraph 7, it should
42 impose a time limit on its own use of that procedure.
- 43 9. If Congress amends the CRA to enact the procedure described in Paragraph 7, it should
44 permit legislators in both chambers to solicit a GAO opinion on whether a particular
45 agency action is a rule.
- 46 10. Congress should consider imposing a deadline on GAO for issuing requested opinions on
47 whether a particular agency action is a rule for purposes of the CRA.