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OFFICE OF MANAGEMENT AND BUDGET
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GAO Database Modernization Act of 2023

This document provides the Office of Management and Budget’s guidance to agencies regarding implementation of the GAO Database Modernization Act of 2023.

Background

The GAO Database Modernization Act of 2023, Pub. L. No. 118-97 (Oct. 1, 2024) (the Act), amends the Congressional Review Act (CRA) to require that, for any rule previously submitted under the CRA, 5 U.S.C. § 801(a), the agency must provide a report to the U.S. Government Accountability Office (GAO) if the agency, “in whole or in part, revokes, suspends, replaces, amends, or otherwise makes the rule ineffective,” or if “the rule is made ineffective for any other reason.” Act § 2(a). The report must contain the title of the rule; its *Federal Register* citation, if any; the date on which the rule was submitted to GAO; and “a description of the provisions of the rule that are being revoked, suspended, replaced, amended, or otherwise made ineffective.” *Id.* The Act sunsets six years after its October 1, 2024 enactment. *Id.* § 2(b). On October 7, GAO sent an email to agencies containing guidance on reporting under the Act.¹

Implementation

As noted, the Act’s requirements apply (1) if the agency takes an action that “in whole or in part, revokes, suspends, replaces, amends, or otherwise makes [an existing rule] ineffective”; or (2) if an existing rule “is made ineffective for any other reason.” Considerations for agencies in each of these situations are outlined below.

1. Agency actions that revoke, suspend, replace, amend, or otherwise make rules ineffective.

When an agency “revokes, suspends, replaces, amends, or otherwise makes [an existing rule] ineffective,” that new action typically will take the form of a new “rule” that already was required to be submitted under existing provisions of the CRA. See 5 U.S.C. § 801(a)(1)(A), 804(3).

In this typical situation, agencies can provide one submission to GAO that both reports the new rule and includes the information required under the Act for the rule being made ineffective. Agencies can comply with the Act by including with their CRA submission materials for the new rule already required under 5 U.S.C. § 801(a)(1)(A) the information specified in the Act—*i.e.*, the titles of any prior rules being revoked, amended, suspended, replaced, or otherwise made ineffective; their *Federal Register* citations, if any; the dates on which the prior rules were initially submitted to GAO (which generally will be the same date as *Federal Register* publication); and a description of the rule provisions being revoked, suspended, replaced, amended,² or otherwise made ineffective by the new rule.

¹ See Email from GAO to Federal Agencies re GAO Database Modernization Act of 2023 (Oct. 7, 2024).

² The Act’s reference to “amend[ments]” does not require reporting all manner of amendments, but rather is limited to those amendments that make all or part of a rule “ineffective.” For example, a rule that merely supplements the requirements of a prior rule generally would not be expected to trigger a reporting requirement under the Act.

According to GAO's guidance, this information specified in the Act should be included with the materials that agencies already submit to GAO by email pursuant to the CRA, either in the body of the agency's email transmitting those materials or as a separate attachment.³ We suggest that, if the agency's new rule itself contains the information specified in the Act (i.e., by containing the required information on all prior rules being revoked or replaced), the agency can include a statement to that effect in their email to GAO.

2. Rules “made ineffective for any other reason.”

The Act also requires agencies to provide reports to GAO if a “rule is made ineffective for any other reason.” This clause applies when a rule is made ineffective by an action other than an agency's promulgation of a new rule, *e.g.*, when a court ruling makes a rule ineffective. According to GAO's guidance, when this provision applies, agencies should send the information specified in the Act, “along with a brief description of the event affecting the rule,” by email to GAO (either in the body of the email or in a separate attachment).⁴

As a preliminary note, because the Act does not impose a time limit on reporting, agencies can consider submitting periodic reports to GAO containing all rules made ineffective by actions other than the agency's promulgation of a new rule (for example, on an annual or bi-annual basis).

Consistent with the Act's purpose of ensuring the accuracy of GAO's rule database, the requirement to report rules “made ineffective” is best read to apply only when a rule has been made legally inoperative on a permanent or indefinite basis. For example, we view this provision as requiring reporting if a court issued an order vacating or enjoining application of a rule nationwide, and no appellate review of that order was available (including when time to seek appellate review has passed). This would apply to both preliminary and permanent nationwide injunctions for which no further appellate relief is available. In these situations, the rule has been “made ineffective,” and reporting that the rule is no longer operative furthers the Act's purpose of ensuring the accuracy of GAO's database.

By contrast, the Act would not require reporting on a judicial decision that is subject to appellate review, is limited in geographic scope, or applies only to certain parties. For example, a court order staying or enjoining the enforcement of a rule (whether preliminarily or permanently) would not make the rule ineffective within the meaning of the Act if the order is subject to appellate review. In these situations, including the rule in the agency's report would frustrate the purposes of the Act: Reporting on orders subject to appeal or geographically limited injunctions could be misleading or confusing to GAO and the public given the pace and unpredictability of litigation, and given the prospect of overlapping or conflicting orders by different courts.

For any questions regarding implementation, please contact your OIRA desk officer.

³ See Email from GAO to Federal Agencies, *supra* note 1.

⁴ *Id.*