



441 G St. N.W.
Washington, DC 20548

B-336320

May 16, 2024

The Honorable Thomas R. Carper
Chairman
The Honorable Shelley Moore Capito
Ranking Member
Committee on Environment and Public Works
United States Senate

The Honorable Bruce Westerman
Chairman
The Honorable Raúl Grijalva
Ranking Member
Committee on Natural Resources
House of Representatives

Subject: *Council on Environmental Quality: National Environmental Policy Act Implementing Regulations Revisions Phase 2*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Council on Environmental Quality (CEQ) entitled “National Environmental Policy Act Implementing Regulations Revisions Phase 2” (RIN: 0331-AA07). We received the rule on May 1, 2024. It was published in the *Federal Register* as a final rule on May 1, 2024. 89 Fed. Reg. 35442. The effective date of the rule is July 1, 2024.

According to CEQ, this final rule revises regulations for implementing the procedural provisions of the National Environmental Policy Act (NEPA), including recent amendments to NEPA in the Fiscal Responsibility Act. CEQ stated that it is making these revisions to provide for an effective environmental review process; ensure full and fair public engagement; enhance efficiency and regulatory certainty; and promote sound federal agency decision making that is grounded in science, including consideration of relevant environmental, climate change, and environmental justice effects. CEQ also stated that these changes are grounded in NEPA’s statutory text and purpose, including making decisions informed by science; CEQ’s extensive experience implementing NEPA; CEQ’s perspective on how NEPA can best inform agency decision making; longstanding federal agency experience and practice; and case law interpreting NEPA’s requirements.

Enclosed is our assessment of CEQ’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to

the subject matter of the rule, please contact Charlie McKiver, Assistant General Counsel, at (202) 512-5992.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Amy B. Coyle
Deputy General Counsel
Council on Environmental Quality

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
COUNCIL ON ENVIRONMENTAL QUALITY
ENTITLED
“NATIONAL ENVIRONMENTAL POLICY ACT
IMPLEMENTING REGULATIONS REVISIONS PHASE 2”
(RIN: 0331-AA07)

(i) Cost-benefit analysis

According to the Council on Environmental Quality (CEQ), this final rule will improve CEQ regulations to benefit agencies and the public. CEQ stated that an effective National Environmental Policy Act (NEPA) process can save time and reduce overall project costs by providing a clear process for evaluating alternatives and effects, coordinating agencies and relevant stakeholders including the public, and identifying and avoiding problems that may occur in later stages of project development. CEQ also stated that because individual cases will vary, the magnitude of potential costs and benefits resulting from these changes is difficult to anticipate, but CEQ prepared a qualitative analysis in the accompanying Regulatory Impact Analysis.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

CEQ certified that this final rule will not have a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

CEQ determined that this final rule will not result in expenditures of \$100 million or more, adjusted annually for inflation, for tribal, state, and local governments, in the aggregate, or the private sector in any one year. CEQ stated that the rule will not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of the Act.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to

GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

CEQ did not discuss the Act in this final rule or in its submission to us.

(v) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On July 31, 2023, CEQ published a proposed rule. 88 Fed. Reg. 49924. CEQ held four virtual public meetings on the proposed rule on August 26, 2023; August 30, 2023; September 11, 2023; and September 21, 2023, as well as two tribal consultations on September 6, 2023, and September 12, 2023. CEQ stated that it received approximately 147,963 written comments and 86 oral comments in response to the proposed rule and considered these comments in the development of this final rule. CEQ also stated that it provided brief comment summaries and responses for many of the substantive comments it received as part of the summary and rationale in the rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

CEQ determined that this final rule will not impose any new information collection burden that would require additional review or approval by OMB under the Act.

Statutory authorization for the rule

CEQ promulgated this final rule pursuant to the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*

Executive Order No. 12866 (Regulatory Planning and Review)

CEQ determined that this final rule is significant under the Order and submitted it to OMB for review.

Executive Order No. 13132 (Federalism)

CEQ determined that this final rule does not have federalism implications because it applies to federal agencies, not states.