



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

B-335564

September 15, 2023

The Honorable Jon Tester  
Chairman  
The Honorable Jerry Moran  
Ranking Member  
Committee on Veterans' Affairs  
United States Senate

The Honorable Mike Bost  
Chairman  
The Honorable Mark Takano  
Ranking Member  
Committee on Veterans' Affairs  
House of Representatives

Subject: *Department of Veterans Affairs: Presumptive Service Connection for Respiratory Conditions Due to Exposure to Fine Particulate Matter*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Veterans Affairs (VA) entitled "Presumptive Service Connection for Respiratory Conditions Due to Exposure to Fine Particulate Matter" (RIN: 2900-AR25). We received the rule on September 5, 2023. It was published in the *Federal Register* as a final rule on September 1, 2023. 88 Fed. Reg. 60336. The effective date is October 31, 2023.

The final rule, according to VA, adopts as final, with changes, an interim final rule that amended VA adjudication regulations governing presumptive service connection based on presumed exposures to fine particulate matter. VA stated that the amendment was necessary to provide health care, services, and benefits to Gulf War Veterans who were exposed to fine particulate matter associated with deployment to the Southwest Asia theater of operations, as well as Afghanistan, Syria, Djibouti, and Uzbekistan. The amendment, according to VA, eased the evidentiary burden of Gulf War Veterans who file claims with VA for asthma, rhinitis, and sinusitis, to include rhinosinusitis.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). This final rule was published in the *Federal Register* on September 1, 2023. 88 Fed. Reg. 60336. The *Congressional Record* does not reflect the date of receipt by the House of Representatives or the Senate. However, VA provided documentation reflecting that the House of Representatives and the Senate received the rule on September 7, 2023. Email from Office of Regulation Policy and Management, Office of General Counsel, VA, to Senior Attorney, GAO, Subject: *Regulatory Compliance w/CRA - AR25(F) Presumptive Service Connection for Respiratory Conditions Due to Exposure to Fine*

*Particulate Matter* (Sept. 7, 2023). The rule has a stated effective date of October 31, 2023. Therefore, the final rule does not have the required 60-day delay in its effective date.

Enclosed is our assessment of VA'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 Shari Brewster, Assistant General Counsel, at (202) 512-6398.

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: Luvenia Potts  
Office of Regulation Policy and Management  
Office of General Counsel  
Department of Veterans Affairs

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
DEPARTMENT OF VETERANS AFFAIRS  
ENTITLED  
“PRESUMPTIVE SERVICE CONNECTION FOR RESPIRATORY CONDITIONS  
DUE TO EXPOSURE TO FINE PARTICULATE MATTER”  
(RIN: 2900-AR25)

(i) Cost-benefit analysis

The Department of Veterans Affairs (VA) prepared a regulatory impact analysis in a separate supporting document associated with this final rule. VA, *Regulatory Impact Analysis for RIN 2900-AR25(F), Presumptive Service Connection for Respiratory Conditions Due to Exposure to Fine Particulate Matter* (May 2, 2023), available at <https://www.regulations.gov/document/VA-2021-VBA-0015-0032>. Among other things, the regulatory impact analysis included a summary of the costs and benefits of the rule. VA stated that benefits include providing immediate health care, services, and benefits to current and future Gulf War Veterans who may be affected by fine particulate matter due to their military service. VA explained that the rule provides a presumptive service connection for the chronic disabilities of asthma, rhinitis, and sinusitis, to include rhinosinusitis, as well as a presumption of exposure to fine particulate matter, which eases the evidentiary burden of Gulf War Veterans who file claims with VA for these three conditions.

VA determined that there are both transfers and costs associated with the final rule. The total budgetary impact, according to VA, is estimated to be \$1.5 billion in fiscal year (FY) 2023, \$12.4 billion over five years, and \$30.4 billion over 10 years. Transfers, according to VA, are estimated to be \$1.3 billion in FY 2023, \$11.2 billion over five years, and \$28.5 billion over 10 years. Further, costs, according to VA, are estimated to be \$199.8 million in FY 2023, \$1.2 billion over five years, and \$1.9 billion over 10 years.

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

According to VA, the RFA is not applicable to this final rule because notice of proposed rulemaking is not required.

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

VA stated that this final rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year.

(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.

VA does not discuss the Administrative Pay-As-You-Go Act of 2023 in the final rule.

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

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

On August 5, 2021, VA promulgated an interim final rule. 86 Fed. Reg. 42724. VA received comments on the interim final rule and addressed comments in this final rule.

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

VA stated that this final rule contains no provisions constituting a collection of information under the PRA.

Statutory authorization for the rule

VA promulgated this final rule pursuant to section 501(a) of title 38, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

VA stated that the Office of Information and Regulatory Affairs has determined that this final rule is a significant regulatory action under the Order, as amended by Executive Order 14094.

Executive Order No. 13132 (Federalism)

In its submission to us, VA indicated that it did not discuss the Order in the final rule.