



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

B-332373

September 8, 2020

The Honorable John Barrasso
Chairman
The Honorable Thomas R. Carper
Ranking Member
Committee on Environment and Public Works
United States Senate

The Honorable Raúl M. Grijalva
Chairman
The Honorable Rob Bishop
Ranking Member
Committee on Natural Resources
House of Representatives

The Honorable Frank Pallone, Jr.
Chairman
The Honorable Greg Walden
Ranking Member
Committee on Energy and Commerce
House of Representatives

Subject: *Council on Environmental Quality: Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our amended report¹ on a major rule promulgated by the Council on Environmental Quality (CEQ) entitled “Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act” (RIN: 0331-AA03). We received the rule on July 15, 2020. It was published in the *Federal Register* as a final rule on July 16, 2020. 85 Fed. Reg. 43304. The effective date of the rule is September 14, 2020.

The final rule updates the regulations for federal agencies to implement the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.* According to CEQ, these regulations have not been comprehensively updated since their promulgation in 1978. CEQ states the final rule comprehensively updates, modernizes, and clarifies the regulations to facilitate more efficient, effective, and timely NEPA reviews by federal agencies in connection with proposals for agency action.

¹ Upon receipt of the additional documentation from the agency as described below, we are issuing this amended report to revise a statement in the original report dated July 31, 2020, that CEQ did not comply with the 60-day delay in effective date requirement of 5 U.S.C. § 801(a)(3)(A).

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). The final rule was published in the *Federal Register* on July 16, 2020. 85 Fed. Reg. 43304. The Senate received the rule on July 15, 2020. 166 Cong. Rec. S4470 (daily ed. July 23, 2020). Notwithstanding an indication in the *Congressional Record* that the House of Representatives received the rule on July 21, 2020, CEQ provided documentation showing that the rule was received by the House of Representatives on July 15, 2020. 166 Cong. Reg. H3879 (daily ed. July 27, 2020). The rule has a stated effective date of September 14, 2020. Therefore, based on CEQ's documentation, the final rule has the required 60-day delay in its effective date.

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 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 style with a large, looped initial "S".

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Theresa Pettigrew
Associate Director for Legislative and
Regulatory Affairs
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
“UPDATE TO THE REGULATIONS IMPLEMENTING
THE PROCEDURAL PROVISIONS OF
THE NATIONAL ENVIRONMENTAL POLICY ACT”
(RIN: 0331-AA03)

(i) Cost-benefit analysis

The Council on Environmental Quality (CEQ) analyzed the costs and benefits of this rule. According to CEQ, many of the changes made in the rule codify long-standing practices and case law that have developed since CEQ issued the 1978 regulations. CEQ noted that changes clarifying or otherwise improving the ability to interpret and implement regulations would have little to no quantifiable impact. CEQ anticipates that the revisions to the regulations will significantly lower administrative costs as a result of changes to reduce paperwork. CEQ expects the changes in the final rule to catalyze economic benefits by expediting some reviews.

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

CEQ certified that the 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 the final rule would not result in expenditures of \$100 million or more for state, tribal, and local governments, in the aggregate, or the private sector in any one year.

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

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

On January 10, 2020, CEQ published a proposed rule. 85 Fed. Reg. 1684. CEQ received approximately 1,145,571 comments. CEQ responded to germane comments in this final rule.

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

CEQ determined that this final rule contains no information collection requirements under the Act.

Statutory authorization for the rule

CEQ promulgated this final rule pursuant to sections 4321-4347, 4371-4375, and 7609 of title 42, United States Code.

Executive Order No. 12,866 (Regulatory Planning and Review)

The Office of Management and Budget determined that this final rule is economically significant under the Order.

Executive Order No. 13,132 (Federalism)

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