



COUNCIL ON ENVIRONMENTAL QUALITY

40 CFR Part 1518

RIN 0331-AA09

Office of Environmental Quality Management Fund

AGENCY: Council on Environmental Quality.

ACTION: Final rule.

SUMMARY: The Council on Environmental Quality (CEQ) is amending its Office of Environmental Quality Management Fund regulations to clarify their meaning, modernize them to reflect developments in CEQ's practices in administering the Office of Environmental Quality Management Fund (the Management Fund) since CEQ first adopted its regulations, and make administrative changes.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

I. Background

The Environmental Quality Improvement Act, as amended (Pub. L. 91-224, Title II, April 3, 1970; Pub. L. 97-258, September 13, 1982; and Pub. L. 98-581, October 30, 1984) established the Management Fund to receive advance payments from other agencies or accounts that may be used solely to finance (1) study contracts that are jointly sponsored by the Office of Environmental Quality (OEQ) and one or more other Federal agencies; and (2) Federal interagency environmental projects (including task forces) in which OEQ participates. 42 U.S.C. 4375(a). The statute requires the Director of the

Office of Environmental Quality (OEQ) to promulgate regulations setting forth policies and procedures for operation of the OEQ Management Fund. 42 U.S.C. 4375(c).¹

The CEQ Chair approved internal policies and procedures for operation of the Management Fund in January 1985. On October 4, 2002, the CEQ Chair promulgated regulations governing the operation of the Management Fund.²

II. Summary of the Final Rule

CEQ is amending its Management Fund regulations to clarify their meaning, including for consistency with the Plain Writing Act of 2010 (Pub. L. 111-274) and the Federal Plain Language Guidelines,³ modernize them to reflect developments in CEQ's practices in administering the Management Fund since CEQ first adopted its regulations, and make administrative changes.

Section 1518.1—Purpose. CEQ revises this section to describe the purpose of the Office of Environmental Quality Management Fund as well as the purpose of part 1518, which is to set forth CEQ's procedures for administering the Management Fund.

Section 1518.2—Definitions. CEQ revises this section to define key terms that appear throughout part 1518. In particular, CEQ removes the definitions of the terms “advance payment,” which the prior regulations defined but did not use elsewhere in part 1518, and “source,” which no longer appears in the regulations as revised. CEQ adds definitions for “environmental project” and “study contract” to clarify the meaning of those terms. These definitions are consistent with CEQ's authorities under National Environmental Policy Act of 1969 (NEPA) and the Environmental Quality Improvement Act of 1970. CEQ also adds a definition of “personnel costs” to clarify the types of

¹ OEQ houses the professional and administrative staff of CEQ, and the Chair of CEQ is the Director of OEQ *ex officio*. 42 U.S.C. 4372(a), (d)(1). This preamble refers to the Chair of CEQ and the Director of OEQ, and to CEQ and OEQ, interchangeably.

² CEQ, Office of Environmental Quality Management Fund, 67 FR 62189 (Oct. 4, 2002).

³ Federal Plain Language Guidelines (1st rev. May 2011), <https://www.plainlanguage.gov/media/FederalPLGuidelines.pdf>.

expenditures that CEQ may make from the Management Fund. Finally, CEQ adds definitions for “payment” and “reallocation” to clarify how the regulations use those terms to describe the movement of funds to and from the Management Fund.

Section 1518.3—Policy and general requirements. CEQ revises this section to more clearly explain the internal policies and procedures by which CEQ administers the Management Fund, including the types of expenditures that CEQ may make from the Management Fund, and to eliminate outdated provisions that no longer reflect CEQ’s business processes.

Section 1518.4—Charters. CEQ revises this section, which describes the purpose of charters for environmental projects and study contracts that receive support from the Management Fund, to more clearly set forth what a charter must contain and to better explain the roles of the Director and the Project Officer in approving and amending a charter.

Section 1518.5—Finances and accounting. CEQ moves the provisions on Management Fund finances and accounting from the previous 40 CFR 1518.4(b) to § 1518.5. This section explains how agencies make payments into the Management Fund and specifies procedures for making expenditures from the Management Fund. CEQ makes clarifying changes to this section to improve its readability and better reflect current practices. Paragraph (a) requires the Project Officer for each environmental project or study contract receiving support from the Management Fund to prepare a budget estimate and update it annually. CEQ adds a new provision in paragraph (c)(1) that, consistent with longstanding practice, requires the Director to transmit a letter to an agency when requesting a payment into the Management Fund.

III. Regulatory Analysis and Notices

A. Administrative Procedure Act

This rule relates to a matter of agency management or personnel and is a rule of agency organization, procedure, or practice. As such, this rule is exempt from the usual requirements of prior notice and comment and a 30-day delay in effective date. See 5 U.S.C. 553(a)(2), (b), and (d). The rule is effective upon signature.

B. Regulatory Flexibility Act and Executive Order 13272, *Proper Consideration of Small Entities in Agency Rulemaking*

The Regulatory Flexibility Act (RFA), as amended, 5 U.S.C. 601 *et seq.*, and E.O. 13272, *Proper Consideration of Small Entities in Agency Rulemaking*,⁴ require agencies to assess the impacts of rules on small entities. Under the RFA, small entities include small businesses, small organizations, and small governmental jurisdictions. An agency must prepare a final regulatory flexibility analysis unless it determines and certifies that a final rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

This rule relates to a matter of agency management or personnel and is a rule of agency organization, procedure, or practice. Accordingly, CEQ hereby certifies that the rule will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 2 U.S.C. 1531), requires Federal agencies to assess the effects of their regulatory actions on state, local, and Tribal governments, and the private sector to the extent that such regulations incorporate requirements specifically set forth in law. Before promulgating a rule that may result in the expenditure by a state, Tribal, or local government, in the aggregate, or by the private sector of \$100 million, adjusted annually for inflation, in any 1 year, an agency must prepare a written statement that assesses the effects on state, Tribal, and local governments and the private sector. 2 U.S.C. 1532. This rule relates to a

⁴ 67 FR 53461 (Aug. 16, 2002).

matter of agency management or personnel and is a rule of agency organization, procedure, or practice, and accordingly will not result in expenditures of \$100 million or more for state, local, and Tribal governments, in the aggregate, or the private sector in any 1 year. This rule also does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of 2 U.S.C. 1531 through 1538.

D. Executive Order 12866, Regulatory Planning and Review

E.O. 12866, as supplemented and affirmed by E.O. 13563 and amended by E.O. 14094, provides that the Office of Information and Regulatory Affairs will review any regulatory action that qualifies as a “significant regulatory action” within the meaning of the E.O.⁵ The rule does not qualify as a significant regulatory action.

E. Executive Order 12988, Civil Justice Reform

Under section 3(a) of E.O. 12988,⁶ agencies must review their regulations to eliminate drafting errors and ambiguities, draft them to minimize litigation, and provide a clear legal standard for affected conduct. Section 3(b) provides a list of specific matters that agencies must consider when conducting the review required by section 3(a). CEQ has conducted this review and determined that this rule complies with the requirements of E.O. 12988.

F. Paperwork Reduction Act

This rule does not impose any new information collection burden that would require additional review or approval by OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*

G. National Environmental Policy Act (NEPA)

⁵ See E.O. 12866, *Regulatory Planning and Review*, 58 FR 51735, 51737 (Oct. 4, 1993); E.O. 14094, *Modernizing Regulatory Review*, 88 FR 21879, 21879-80 (Apr. 11, 2023); E.O. 13563, *Improving Regulation and Regulatory Review*, 76 FR 3821, 3822 (Jan. 21, 2011).

⁶ 61 FR 4729 (Feb. 7, 1996).

The National Environmental Policy Act of 1969 (NEPA) (Pub. L. 118-5, 42 U.S.C. 4321 *et seq.*), as amended, and the CEQ regulations that implement NEPA, 40 CFR Parts 1500 through 1508, require consideration of the environmental effects of proposed actions in agency decision making. NEPA provides for three levels of review. First, agencies may establish in their agency-specific NEPA procedures categorical exclusions (CEs) for categories of actions that normally do not have a significant effect on the human environment, individually or in the aggregate, and apply CEs to individual actions, as appropriate.⁷ If an agency proposes to take an action that does not fall within a CE but is not likely to have significant environmental effects (or the significance of whose effects is unknown), CEQ's NEPA regulations direct the agency to prepare an environmental assessment (EA).⁸ If, as a result of this assessment, the agency determines that the proposed action will not have significant effects, the agency may make a finding of no significant impact (FONSI), in which case the agency may proceed with the action.⁹ Otherwise, the agency must prepare an environmental impact statement (EIS).¹⁰

CEQ has not established a CE for the preparation, revision, and adoption of regulations generally. Accordingly, CEQ has prepared an EA to determine whether the revisions to the Management Fund regulations would have a significant effect on the human environment. Because, as set forth below, the regulation will likely have no discernable effect on the use of resources in CEQ's administration of the Management Fund, CEQ finds that the regulation will have no significant impact on the human environment and that it is therefore unnecessary to prepare an EIS.

⁷ 40 CFR 1501.4(a).

⁸ *Id.* § 1501.5(a).

⁹ *Id.* § 1501.6.

¹⁰ 40 CFR part 1502.

1. Environmental Assessment

Purpose and Need: As set forth in the Background (part I of this preamble) and Summary of the Final Rule (part II of this preamble), CEQ adopted its Management Fund regulations in 2010 and has not updated them to reflect developments in CEQ's practices in administering the Management Fund since then. Furthermore, clarifying the regulations and making administrative changes will make the regulations easier to understand and use.

Proposed Action and Alternatives: A summary of the proposed action is set forth above in the Summary of the Final Rule. Under a "no action" alternative, CEQ would continue to operate under its current regulations, resolving ambiguities and addressing inconsistencies between the regulations and current CEQ practices on a case-by-case basis. CEQ has decided that this approach is undesirable because it requires CEQ staff to address ambiguities and inconsistencies that CEQ can obviate by updating the regulation.

CEQ's preferred alternative is to amend its regulations as set forth in this Final Rule, for the reasons set forth in part II of this preamble.

Environmental Effects of Alternatives: CEQ's administration of the Management Fund affects the environment primarily through CEQ's use of energy and other office resources. CEQ's use of resources for these purposes has remained within the range typical of the operations of a small office. CEQ anticipates that the amendments set forth in this rulemaking will have minimal or no discernable effects on its use of resources in administering the Management Fund.

List of Agencies and Persons Consulted: CEQ's NEPA staff reviewed and commented on this EA and this final rulemaking.

2. Finding of No Significant Impact

Based on the foregoing EA, CEQ finds that implementation of the regulations in this notice would have minimal or no discernable effects on CEQ's use of energy and

other office resources in CEQ's administration of the Management Fund. Thus, there would be no significant effects associated with implementation of the proposed action, and it is not necessary for CEQ to prepare an EIS.

CEQ further finds that the action is not one that normally requires the preparation of an EIS, closely similar to such an action, or an action without precedent.

List of Subjects in 40 CFR Part 1518

Accounting, Administrative practice and procedure, Environmental impact statements and Environmental Quality Office.

Brenda Mallory,

Chair, Council on Environmental Quality, and Director, Office of Environmental Quality.

For the reasons discussed in the preamble, the Council on Environmental Quality amends 40 CFR part 1518 by revising and republishing it to read as follows:

Part 1518—Office of Environmental Quality Management Fund

1518.1 Purpose.

1518.2 Definitions.

1518.3 Policy and general requirements.

1518.4 Charters.

1518.5 Finances and accounting.

Authority: 42 U.S.C. 4375.

§ 1518.1 Purpose.

(a) The purpose of the Office of Environmental Quality Management Fund is to finance:

(1) Study contracts that the Office of Environmental Quality and at least one other Federal agency jointly sponsor; and

(2) Federal interagency environmental projects (including task forces) in which the Office of Environmental Quality participates.

(b) The purpose of the regulations in this part is to set forth policies and procedures for operation of the Management Fund, in order to support its effective administration and to set forth the Office of Environmental Quality's internal procedures and practices with respect to the Management Fund.

§ 1518.2 Definitions.

Council on Environmental Quality, as used in this part, includes the Office of Environmental Quality.

Director means the Director of the Office of Environmental Quality (or delegate). The Environmental Quality Improvement Act, 42 U.S.C. 4372(a), specifies that the Chair of the Council on Environmental Quality serves as the Director of the Office of Environmental Quality.

Environmental project means an official activity pertaining to the environment that requires coordination by or the involvement of the Council on Environmental Quality and other Federal agencies, such as an interagency task force.

Interagency agreement means a document jointly executed by the Office of Environmental Quality and at least one other Federal agency that sets forth the details of a jointly sponsored study contract or environmental project and the funding arrangements for such a study or project.

Management Fund means the Office of Environmental Quality Management Fund.

Payment means a transfer of funds from an agency or another account to the Management Fund.

Personnel costs include an employee's salary or wages and benefits and other direct expenses of employment, such as administrative costs associated with an official background investigation of the employee.

Project Officer means the Federal employee responsible for direct supervision of a study contract or environmental project that receives support from the Management Fund.

Reallocation means a transfer of funds from the Management Fund to another account or between subaccounts of the Management Fund.

Study contract means an agreement with a public or private agency, institution, organization, or individual (including, without limitation, an agency, committee, or official of the Federal Government) to prepare or support the development of a report, analysis, or recommendation.

§ 1518.3 Policy and general requirements.

(a) To receive support from the Management Fund, an environmental project or study contract must advance the purposes and goals of the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, or the Environmental Quality Improvement Act, 42 U.S.C. 4371 *et seq.*

(b) When the Director accepts agency funds for payment into the Management Fund, the interagency agreement must specify the permissible uses of the funds, and any restrictions relating thereto, such as a limitation on the funds' period of availability, consistent with § 1518.5 of this part.

(c) The Director may authorize the Project Officer to make expenditures to support Management Fund study contracts and environmental projects, including:

(1) Acquisition of office space, equipment, supplies, and other goods and services, whether by purchase, lease, or otherwise;

(2) Personnel costs;

(3) Official travel;

(4) Publication of documents;

(5) Services of consultants, experts, or contractors;

(6) Conferences, public meetings, and events;

(7) Access to information, such as scientific and technical data;

(8) Public engagement activities; and

(9) Other necessary expenses.

(d) The Director must not authorize expenditures from the Management Fund that would solely benefit the Council on Environmental Quality or another Federal agency or that would reimburse the Council on Environmental Quality or another Federal agency for expenses not related to an environmental project or a study contract. For example:

(1) The Director may authorize expenditures pursuant to paragraph (c)(2) of this section for the personnel costs of an employee whose duties are limited to carrying out the objectives of a study contract or an environmental project, but not for the personnel costs of an employee who carries out duties unrelated to a study contract or an environmental project.

(2) If a portion of an employee's duties will carry out the objectives of an environmental project or a study contract, the Director may authorize expenditures pursuant to paragraph (c)(2) of this section for a proportional share of the employee's personnel costs.

(e) In carrying out the purposes of the Management Fund, 42 U.S.C. 4372(e) authorizes the Director to contract with public or private agencies, institutions, organizations and individuals, by negotiation, without regard to 31 U.S.C. 3324(a) and (b), 41 U.S.C. 6101.

§ 1518.4 Charters.

(a) The Director must not authorize expenditures from the Management Fund for an environmental project or a study contract until the Director has approved a charter for the environmental project or study contract.

(b) The Project Officer must prepare a charter for each environmental project or a study contract and obtain the Director's approval of the charter.

(c) The charter must:

(1) Describe the environmental project or study contract;

(2) Clearly explain how the environmental project or study contract is consistent with the goals, purposes, and statutory authority of the Office of Environmental Quality;

(3) Identify the Federal agency or agencies (and any State, Tribal, or local agencies) participating in the environmental project or study contract; and

(4) Provide the names, titles, and contact information of the Project Officer and an administrative point of contact.

(d) The Project Officer may amend a charter in writing with the Director's approval of the amended charter.

(e) The Office of Environmental Quality must provide the Office of Administration in the Executive Office of the President with a copy of each charter and amendment that the Director approves.

§ 1518.5 Finances and accounting.

(a) The Project Officer for each environmental project or study contract receiving support from the Management Fund must prepare a budget estimate as part of the charter and update the budget estimate annually following the charter's approval. The Office of Environmental Quality must provide copies of these budget estimates to the Office of Administration.

(b) The Council on Environmental Quality may make a payment into the Management Fund by a letter of transmittal that specifies the particular environmental project or study contract it is funding. The Office of Environmental Quality will provide a copy of each such transmittal letter to the Office of Administration.

(c) Agencies other than the Council on Environmental Quality may make advance payments to the Management Fund using the following procedure:

(1) The Director must provide the agency with a letter that specifies the particular environmental project or study contract to which the Director will apply the payment.

(2) The Director and the agency must enter an interagency agreement for the payment. The interagency agreement should indicate any statutory authority appropriate to the transaction, including 42 U.S.C. 4375(a).

(d) The Management Fund is a no-year appropriations account, which can accept funds with any period of availability or funds that remain available until expended (*i.e.*, “one-year,” “multiple-year,” or “no-year” funds). Appropriated funds that an agency pays into the Management Fund expire under the terms of the appropriation under which they originated. The Office of Environmental Quality must account separately for each payment of funds into the Management Fund and track when each such payment will expire.

(e) In addition to or in lieu of an advance payment into the Management Fund, any agency, including the Council on Environmental Quality, may support an environmental project or study contract by providing technical expertise, physical resources, facilities, equipment, or other assets; performing support or administrative services; or assigning detailees or agency representatives.

(f) The Office of Environmental Quality must maintain a separate subaccount within the Management Fund for each environmental project or study contract.

(g) The Director or the Project Officer must approve all of the expenditures for a particular environmental project or study contract. The Management Fund may only accept payments in advance of expenditure; accordingly, the Director or the Project Officer may only approve expenditures for which the Management Fund has received adequate payments in advance.

(h) The Director may approve the reallocation of funds from the Management Fund to another Federal account (or from one Management Fund subaccount to another) provided that:

(1) The agency that originally made the payment of the funds in question to the Management Fund approves the reallocation in writing;

(2) The reallocation would promote the statutory mission of the Office of Environmental Quality; and

(3) The Director determines the reallocation is in the best interest of the Federal Government.

(i) The Office of Environmental Quality must classify each financial transaction involving a Management Fund subaccount in sufficient detail to meet the Office of Environmental Quality's management planning, fiscal control, and financial audit requirements.

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