



April 2014

# NATIONAL ENVIRONMENTAL POLICY ACT

## Little Information Exists on NEPA Analyses

# GAO Highlights

Highlights of [GAO-14-369](#), a report to congressional requesters

## Why GAO Did This Study

NEPA requires all federal agencies to evaluate the potential environmental effects of proposed projects—such as roads or bridges—on the human environment. Agencies prepare an EIS when a project will have a potentially significant impact on the environment. They may prepare an EA to determine whether a project will have a significant potential impact. If a project fits within a category of activities determined to have no significant impact—a CE—then an EA or an EIS is generally not necessary. The adequacy of these analyses has been a focus of litigation.

GAO was asked to review issues related to costs, time frames, and litigation associated with completing NEPA analyses. This report describes information on the (1) number and type of NEPA analyses, (2) costs and benefits of completing those analyses, and (3) frequency and outcomes of related litigation. GAO included available information on both costs and benefits to be consistent with standard economic principles for evaluating federal programs, and selected the Departments of Defense, Energy, the Interior, and Transportation, and the USDA Forest Service for analysis because they generally complete the most NEPA analyses. GAO reviewed documents and interviewed individuals from federal agencies, academia, and professional groups with expertise in NEPA analyses and litigation. GAO's findings are not generalizable to agencies other than those selected.

This report has no recommendations. GAO provided a draft to CEQ and agency officials for review and comment, and they generally agreed with GAO's findings.

View [GAO-14-369](#). For more information, contact Anne-Marie Fennell at (202) 512-3841 or [fennella@gao.gov](mailto:fennella@gao.gov).

April 2014

## NATIONAL ENVIRONMENTAL POLICY ACT

### Little Information Exists On NEPA Analyses

## What GAO Found

Governmentwide data on the number and type of most National Environmental Policy Act (NEPA) analyses are not readily available, as data collection efforts vary by agency. NEPA generally requires federal agencies to evaluate the potential environmental effects of actions they propose to carry out, fund, or approve (e.g., by permit) by preparing analyses of different comprehensiveness depending on the significance of a proposed project's effects on the environment—from the most detailed Environmental Impact Statements (EIS) to the less comprehensive Environmental Assessments (EA) and Categorical Exclusions (CE). Agencies do not routinely track the number of EAs or CEs, but the Council on Environmental Quality (CEQ)—the entity within the Executive Office of the President that oversees NEPA implementation—estimates that about 95 percent of NEPA analyses are CEs, less than 5 percent are EAs, and less than 1 percent are EISs. Projects requiring an EIS are a small portion of all projects but are likely to be high-profile, complex, and expensive. The Environmental Protection Agency (EPA) maintains governmentwide information on EISs. A 2011 Congressional Research Service report noted that determining the total number of federal actions subject to NEPA is difficult, since most agencies track only the number of actions requiring an EIS.

Little information exists on the costs and benefits of completing NEPA analyses. Agencies do not routinely track the cost of completing NEPA analyses, and there is no governmentwide mechanism to do so, according to officials from CEQ, EPA, and other agencies GAO reviewed. However, the Department of Energy (DOE) tracks limited cost data associated with NEPA analyses. DOE officials told GAO that they track the money the agency pays to contractors to conduct NEPA analyses. According to DOE data, its median EIS contractor cost for calendar years 2003 through 2012 was \$1.4 million. For context, a 2003 task force report to CEQ—the only available source of governmentwide cost estimates—estimated that a typical EIS cost from \$250,000 to \$2 million. EAs and CEs generally cost less than EISs, according to CEQ and federal agencies. Information on the benefits of completing NEPA analyses is largely qualitative. According to studies and agency officials, some of the qualitative benefits of NEPA include its role in encouraging public participation and in discovering and addressing project design problems that could be more costly in the long run. Complicating the determination of costs and benefits, agency activities under NEPA are hard to separate from other required environmental analyses under federal laws such as the Endangered Species Act and the Clean Water Act; executive orders; agency guidance; and state and local laws.

Some information is available on the frequency and outcome of NEPA litigation. Agency data, interviews with agency officials, and available studies show that most NEPA analyses do not result in litigation, although the impact of litigation could be substantial if a single lawsuit affects numerous federal decisions or actions in several states. In 2011, the most recent data available, CEQ reported 94 NEPA cases filed, down from the average of 129 cases filed per year from calendar year 2001 through calendar year 2008. The federal government prevails in most NEPA litigation, according to CEQ and legal studies.

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Figure 1: Process for Implementing National Environmental Policy Act Requirements

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**Abbreviations**

BLM	Bureau of Land Management
CE	Categorical Exclusion
CEQ	Council on Environmental Quality
CRS	Congressional Research Service
DOD	Department of Defense
DOE	Department of Energy
DOT	Department of Transportation
eMNEPA	electronic Management of NEPA
EA	Environmental Assessment
EIS	Environmental Impact Statement
EPA	Environmental Protection Agency
FHWA	Federal Highway Administration
NAEP	National Association of Environmental Professionals
NEPA	National Environmental Policy Act
PAPAI	Project and Program Action Information
PEPC	Planning, Environment, and Public Comment

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April 15, 2014

### Congressional Requesters

The National Environmental Policy Act (NEPA)—the statute requiring federal agencies to evaluate the potential environmental effects of proposed projects on the human environment—has been identified by critics as a cause of delay for projects because of time-consuming requirements and praised by proponents for, among other things, bringing public participation into government decision making.<sup>1</sup> Under NEPA, all federal agencies generally are to evaluate the potential environmental effects of actions they propose to carry out, fund, or approve (e.g., by permit)—including the development of infrastructure projects, such as roads and bridges. Enacted in 1970, NEPA, and the subsequent Council on Environmental Quality Regulations Implementing the Procedural Provisions of NEPA, set out an environmental review process that has two principal purposes: (1) to ensure that an agency carefully considers information concerning the potential environmental effects of proposed development projects and (2) to ensure that this information is made available to the public.<sup>2</sup> NEPA requires federal agencies to analyze the nature and extent of a project’s potential environmental effects and, in many cases, document these analyses.<sup>3</sup> The documentation and comprehensiveness of these analyses depends on the significance of a project’s potential effects on the environment. The adequacy of NEPA analyses has been a focus of litigation. You asked us to review various

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<sup>1</sup>NEPA applies to federal agency policies, programs, plans, and projects (40 C.F.R. § 1508.18(b)). The focus of this report is on development projects.

<sup>2</sup>Pub. L. No. 91-190 (1970), codified at 42 U.S.C. § 4321-4347. NEPA’s congressional declaration of purpose states that the purposes of the act are “to declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.” 42 U.S.C. § 4321.

<sup>3</sup>The CEQ “Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act” (CEQ regulations), 40 C.F.R. Parts 1500-1508, set out the levels of analysis and documentation for complying with NEPA. The level of analysis and documentation can take the form of a Categorical Exclusion (CE), Environmental Assessment (EA), or Environmental Impact Statement (EIS). Not all CEs are documented at the time the CE is used for a specific proposed project.

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issues related to costs, time frames, and litigation associated with completing NEPA analyses. This report describes information on the (1) number and type of NEPA analyses, (2) costs and benefits of completing those analyses, and (3) frequency and outcomes of related litigation. We included available information on both costs and benefits to be consistent with standard economic principles for evaluating federal programs and generally accepted government auditing standards.

To respond to these objectives, we reviewed relevant publications, obtained documents and analyses from federal agencies, and interviewed federal officials and individuals from academia and professional associations with expertise in conducting NEPA analyses. Specifically, to describe the number and type of NEPA analyses from calendar year 2008 through calendar year 2012 and what is known about the costs and benefits of NEPA analyses, we reported information identified through the literature review, interviews, and other sources. We selected the Departments of Defense, Energy, the Interior, and Transportation; and the Forest Service within the U.S. Department of Agriculture for analysis because they generally complete the most NEPA analyses. Our findings for these agencies are not generalizable to other federal agencies but provide examples of NEPA implementation. To describe the frequency and outcome of NEPA litigation, we reviewed (1) laws, regulations, and agency guidance; (2) NEPA litigation data collected from federal entities and the National Association of Environmental Professionals (NAEP), the professional association for NEPA practitioners within and outside the federal government; and (3) relevant studies. To assess the reliability of data collected from the selected agencies, we reviewed existing documentation when available and interviewed officials, including those from the U.S. Department of Justice, knowledgeable about the data. We found all data to be sufficiently reliable for the purposes of this report. See appendix I for additional details on our objectives, scope, and methodology.

We conducted this performance audit from June 2013 to April 2014 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

Under NEPA, federal agencies are to evaluate the potential environmental effects of projects they are proposing by preparing either an Environmental Assessment (EA) or a more detailed Environmental Impact Statement (EIS), assuming no Categorical Exclusion (CE) applies. Agencies may prepare an EA to determine whether a proposed project is expected to have a potentially significant impact on the human environment.<sup>4</sup> If prior to or during the development of an EA, the agency determines that the project may cause significant environmental impacts, an EIS should be prepared. However, if the agency, in its EA, determines there are no significant impacts from the proposed project or action, then it is to prepare a document—a Finding of No Significant Impact—that presents the reasons why the agency has concluded that no significant environmental impacts will occur if the project is implemented. An EIS is a more detailed statement than an EA, and NEPA implementing regulations specify requirements and procedures—such as providing the public with an opportunity to comment on the draft document—applicable to the EIS process that are not mandated for EAs.<sup>5</sup>

If a proposed project fits within a category of activities that an agency has already determined normally does not have the potential for significant environmental impacts—a CE—and the agency has established that category of activities in its NEPA implementing procedures, then it generally need not prepare an EA or EIS.<sup>6</sup> The agency may instead approve projects that fit within the relevant category by using one of its established CEs. For example, the Bureau of Land Management (BLM) within the Department of the Interior (Interior) has CEs in place for numerous types of activities, such as constructing nesting platforms for wild birds and constructing snow fences for safety. For a project to be

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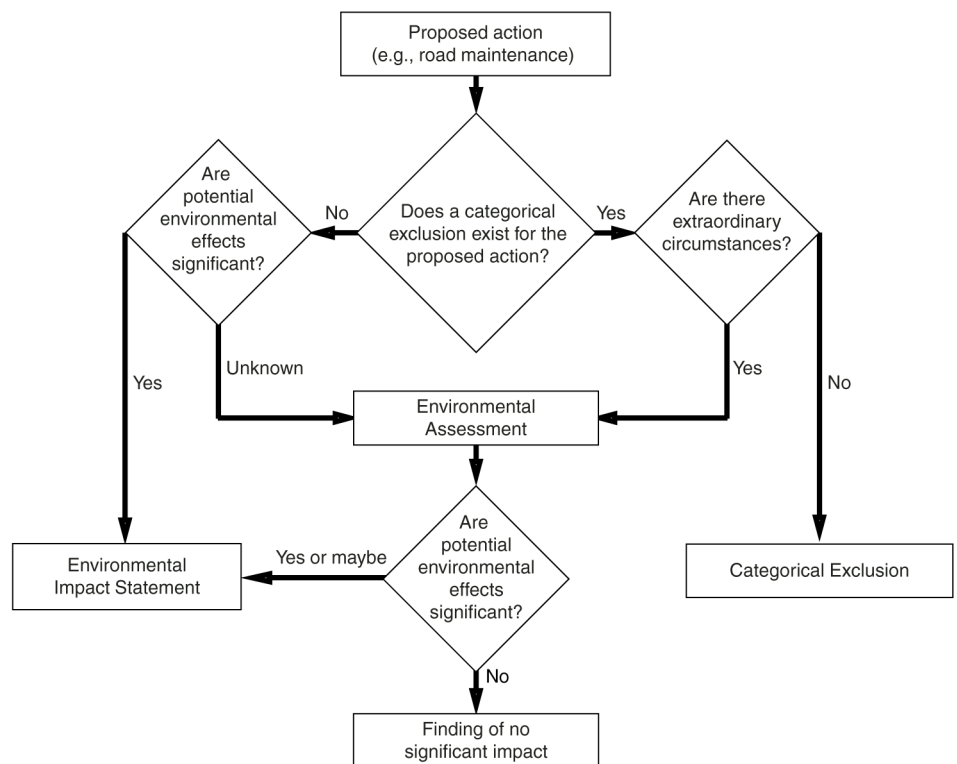
<sup>4</sup>The human environment is interpreted comprehensively to include the natural and physical environment and the relationship of people to that environment (40 C.F.R. § 1508.14). The effects analyzed under NEPA include ecological, aesthetic, historic, cultural, economic, social, or health (40 C.F.R. § 1508.8).

<sup>5</sup>An EIS must, among other things, (1) describe the environment that will be affected, (2) identify alternatives to the proposed action and identify the agency's preferred alternative, (3) present the environmental impacts of the proposed action and alternatives, and (4) identify any adverse environmental impacts that cannot be avoided should the proposed action be implemented.

<sup>6</sup>Some categorical exclusions are established by statute and therefore generally do not require an agency determination that such actions do not have a significant environmental impact.

approved using a CE, the agency must determine whether any extraordinary circumstances exist in which a normally excluded action may have a significant effect. Figure 1 illustrates the general process for implementing NEPA requirements.

**Figure 1: Process for Implementing National Environmental Policy Act Requirements**



Source: GAO.

Private individuals or companies may become involved in the NEPA process when a project they are developing needs a permit or other authorization from a federal agency to proceed, such as when the project involves federal land. For example, a company may apply for such a permit in constructing a pipeline crossing federal lands; in that case, the agency that is being asked to issue the permit must evaluate the potential environmental effects of constructing the pipeline under NEPA. The private company or developer may in some cases provide environmental analyses and documentation or enter into an agreement with an agency to pay a contractor for the preparation of environmental analyses and



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documents, but the agency remains ultimately responsible for the scope and content of the analyses under NEPA.<sup>7</sup>

CEQ within the Executive Office of the President oversees the implementation of NEPA, reviews and approves federal agency NEPA procedures, and issues regulations and guidance documents that govern and guide federal agencies' interpretation and implementation of NEPA.<sup>8</sup> The Environmental Protection Agency (EPA) also plays two key roles in other agencies' NEPA processes. First, EPA reviews and publicly comments on the adequacy of each draft EIS and the environmental impacts of the proposed actions reviewed in the EIS. If EPA determines that the action is environmentally unsatisfactory, it is required by law to refer the matter to CEQ. Second, EPA maintains a national EIS filing system. Federal entities must publish in the Federal Register a Notice of Intent to prepare an EIS and file their draft and final EISs with EPA, which publishes weekly notices in the Federal Register listing EISs available for public review and comment.<sup>9</sup>

CEQ's regulations implementing NEPA require federal agencies to solicit public comment on draft EISs.<sup>10</sup> When the public comment period is finished, the agency proposing to carry out or permitting a project is to analyze comments, conduct further analysis as necessary, and prepare the final EIS. In the final EIS, the agency is to respond to the substantive comments received from other government agencies and the public. Sometimes a federal agency must prepare a supplemental analysis to either a draft or final EIS if it makes substantial changes in the proposed action that are relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns.<sup>11</sup> Further, in certain circumstances, agencies may—through

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<sup>7</sup>40 C.F.R. § 1506.5.

<sup>8</sup>40 C.F.R. Parts 1500-1508.

<sup>9</sup>The EIS process begins with publication of a Notice of Intent stating an agency intends to prepare an EIS for a proposed project. EPA publishes Notices of Availability in the *Federal Register* notifying the public when a draft EIS is available for comment and when a final EIS is has been issued.

<sup>10</sup>While there is no corresponding requirement for an EA public comment period, agencies may provide one. See, e.g., 40 C.F.R. § 1506.6 (Agencies shall make "diligent efforts to involve the public in preparing and implementing their NEPA procedures.")

<sup>11</sup>40 CFR § 1502.9(c)(1).

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“incorporation by reference,” “adoption,” or “tiering”—use another analysis to meet some or, in the case of adoption, all of the environmental review requirements of NEPA.<sup>12</sup>

Unlike other environmental statutes, such as the Clean Water Act or the Clean Air Act, no individual agency has enforcement authority with regard to NEPA’s implementation.<sup>13</sup> This absence of enforcement authority is sometimes cited as the reason that litigation has been chosen as an avenue by individuals and groups that disagree with how an agency meets NEPA requirements for a given project.<sup>14</sup> For example, a group may allege that an EIS is inadequate, or that the environmental impacts of an action will in fact be significant when an agency has determined they are not. Critics of NEPA have stated that those who disapprove of a federal project will use NEPA as the basis for litigation to delay or halt that project. Others argue that litigation only results when agencies do not comply with NEPA’s procedural requirements.

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## Data on the Number and Type of Most NEPA Analyses Are Not Readily Available

Governmentwide data on the number and type of most NEPA analyses are not readily available, as data collection efforts vary by agency (see app. II for a summary of federal NEPA data collection efforts). Agencies do not routinely track the number of EAs or CEs, but CEQ estimates that EAs and CEs comprise most NEPA analyses. EPA publishes and maintains governmentwide information on EISs.

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<sup>12</sup>See 40 C.F.R. §§ 1500.4, 1500.5, and regulations cited therein.

<sup>13</sup>Also, unlike these other laws, while NEPA imposes procedural requirements, it does not establish substantive standards.

<sup>14</sup>CRS, *The National Environmental Policy Act (NEPA): Background and Implementation*, RL33152 (Washington, D.C.: Jan. 10, 2011). NEPA does not contain civil or criminal enforcement provisions; litigation challenging an agency’s compliance is brought under the Administrative Procedure Act.

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Many Agencies Do Not Routinely Track the Number of EAs or CEs, but CEQ Estimates That EAs and CEs Comprise Most NEPA Analyses

Many agencies do not routinely track the number of EAs or CEs. However, based on information provided to CEQ by federal agencies, CEQ estimates that about 95 percent of NEPA analyses are CEs, less than 5 percent are EAs, and less than 1 percent are EISs. These estimates were consistent with the information collected on projects funded by the American Recovery and Reinvestment Act of 2009 (Recovery Act).<sup>15</sup> Projects requiring an EIS are a small portion of all projects but are likely to be high-profile, complex, and expensive. As the Congressional Research Service (CRS) noted in its 2011 report on NEPA, determining the total number of federal actions subject to NEPA is difficult, since most agencies track only the number of actions requiring an EIS.<sup>16</sup>

The percentages of EISs, EAs, and CEs vary by agency because of differences in project type and agency mission. For example, the Department of Energy (DOE) reported that 95 percent of its 9,060 NEPA analyses from fiscal year 2008 to fiscal year 2012 were CEs, 2.6 percent were EAs, and 2.4 percent were EISs or supplement analyses. Further, in June 2012, we reported that the vast majority of highway projects are processed as CEs, noting that the Federal Highway Administration (FHWA) within the Department of Transportation (DOT) estimated that approximately 96 percent of highway projects were processed as CEs, based on data collected in 2009.<sup>17</sup> Representing the lowest proportion of CEs in the data available to us, the Forest Service reported that 78 percent of its 14,574 NEPA analyses from fiscal year 2008 to fiscal year 2012 were CEs, 20 percent were EAs, and 2 percent were EISs.

Of the agencies we reviewed, DOE and the Forest Service officials told us that CEs are likely underrepresented in their totals because agency

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<sup>15</sup>The Recovery Act required the President to report to the Senate Environment and Public Works Committee and the House Natural Resources Committee every 90 days until September 30, 2011 on the status and progress of projects and activities funded by this Act with respect to compliance with National Environmental Policy Act requirements and documentation. Pub. L. No. 111-5, § 1609(c), 123 Stat. 304 (2009). Recovery Act projects may not be representative of ratios for all NEPA analyses. CEQ reports to Congress on the status and progress of NEPA reviews under the Recovery Act can be accessed [here](#).

<sup>16</sup>CRS, *The National Environmental Policy Act (NEPA): Background and Implementation*, RL33152 (Washington, D.C.: Jan. 10, 2011).

<sup>17</sup>GAO, *Highway Projects: Some Federal and State Practices to Expedite Completion Show Progress*, [GAO-12-593](#) (Washington, D.C.: June 6, 2012).

systems do not track certain categories of CEs considered “routine” activities, such as emergency preparedness planning. For example, DOE officials stated that the department has two types of CEs, those that (1) are routine (e.g., administrative, financial, and personnel actions; information gathering, analysis, and dissemination) and are not tracked and (2) are documented as required by DOE regulations.

### Governmentwide Data Are Available on EISs

EPA publishes and maintains governmentwide information on EISs, updated when Notices of Availability for draft and final EISs are published in the Federal Register. CEQ and NAEP publish publicly available reports on EISs using EPA data.<sup>18</sup> As shown in table 1, the three compilations of EIS data produce different totals.

**Table 1: Number of Environmental Impact Statements from EPA, CEQ, and NAEP, 2008 through 2012**

Calendar year	Environmental Protection Agency (EPA)			Council on Environmental Quality (CEQ)			National Association of Environmental Professionals (NAEP)		
	Draft	Final	Total	Draft	Final	Total	Draft	Final	Total
2008	270	277	547	270	277	547 <sup>a</sup>	272	276	548 <sup>b</sup>
2009	252	203	455	252	203	455 <sup>c</sup>	277	222	499
2010	242	240	482	241	246	487	243	231	474
2011	235	201	436	234	201	435	234	204	438
2012	200	197	397	199	198	397	194	210	404
<b>Total</b>	<b>1,199</b>	<b>1,118</b>	<b>2,317</b>	<b>1,196</b>	<b>1,125</b>	<b>2,321</b>	<b>1,220</b>	<b>1,143</b>	<b>2,363</b>

Sources: GAO analysis of EPA data, and CEQ and NAEP reports.

Notes:

NEPA calls for federal agencies to circulate a draft Environmental Impact Statement (EIS) for public review and comment. When the public comment period is finished, the agency analyzes comments, conducts further analysis as necessary, and prepares the final EIS. The final EIS is circulated for review and may be made available for public review and comment.

The differences in EIS numbers are likely due to different assumptions used to count the number of EISs and minor inconsistencies in the EPA data compiled for the CEQ and NAEP reports and GAO’s

<sup>18</sup>NAEP’s annual NEPA reports generally include two sets of EIS data. The first set, presented in tables 1 and 2, reflects NAEP’s analysis of the number of draft and final EIS announcements published in the *Federal Register*. The second set of EIS data are used by NAEP to analyze the time frames associated with completing EISs. The two sets of EIS data within NAEP reports generally do not match, in part because the sample of EISs used to evaluate time frames excludes certain projects, such as “adoptions” or EISs that were subsequently supplemented.

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analysis of EPA's database. EPA officials told us that the data it provides to others may differ because EPA periodically corrects the manually entered data in their EIS database.

<sup>a</sup>In 2008, two different CEQ documents listed 543 and 547 total EISs, respectively. We used the 547 value in this table because it matched the sum of the draft and final EIS reported by CEQ in 2008 and also because it matched the total number we derived from the information supplied by EPA.

<sup>b</sup>One section of NAEP's Annual NEPA Report 2008 identified a total of 548 EISs for 2008, while another section of the report identified a total of 547. We use 548 for this table to remain consistent with NAEP's summary of EIS data for 2008.

<sup>c</sup>For 2009, the CEQ source document shows 450 for the total number of EISs, but this is a computation error because the total from adding the "draft" and "final" entries is 455.

According to CEQ and EPA officials, the differences in EIS numbers shown in table 1 are likely due to different assumptions used to count the number of EISs and minor inconsistencies in the EPA data compiled for the CEQ and NAEP reports and for our analysis of EPA's data. CEQ obtains the EIS data it reports based on summary totals provided by EPA. Occasionally, CEQ also gathers some CE, EA, and EIS data through its "data call" process, by which it aggregates information submitted by agencies that use different data collection mechanisms of varying quality. According to a January 2011 CRS report on NEPA, agencies track the total draft, final, and supplemental EISs filed, not the total number of individual federal actions requiring an EIS.<sup>19</sup> In other words, agency data generally reflect the number of EIS documents associated with a project, not the number of projects.

Four agencies—the Forest Service, BLM, FHWA, and the U.S. Army Corps of Engineers within the Department of Defense (DOD)—are generally the most frequent producers of EISs, accounting for 60 percent of the EISs in 2012, according to data in NAEP's April 2013 report.<sup>20</sup> As shown in table 2, these agencies account for over half of total draft and final EISs from 2008 through 2012, according to NAEP data.

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<sup>19</sup>CRS, *The National Environmental Policy Act (NEPA): Background and Implementation*, RL33152 (Washington, D.C.: Jan. 10, 2011).

<sup>20</sup>NAEP, *Annual NEPA Report 2012 of the National Environmental Policy Act (NEPA) Practice* (April 2013).

**Table 2: Number of Environmental Impact Statements by Agency as Reported by National Association of Environmental Professionals (NAEP), 2008 through 2012**

Calendar year	Forest Service		Bureau of Land Management <sup>a</sup>		Federal Highway Administration		Army Corps of Engineers		All other agencies <sup>b</sup>		Total
	Number	Percentage of total	Number	Percentage of total	Number	Percentage of total	Number	Percentage of total	Number	Percentage of total	
2008	123	22	49	9	65	12	43	8	268	49	548 <sup>c</sup>
2009	134	27	28	6	58	12	41	8	238	48	499
2010	104	22	55	12	56	12	39	8	220	46	474
2011	109	25	42	10	49	11	33	8	205	47	438
2012	102	25	56	14	44	11	41	10	161	40	404
<b>Total</b>	<b>572</b>	<b>24</b>	<b>230</b>	<b>10</b>	<b>272</b>	<b>12</b>	<b>197</b>	<b>8</b>	<b>1,092</b>	<b>46</b>	<b>2,363</b>

Source: GAO analysis of NAEP data.

Note: The National Environmental Policy Act (NEPA) calls for federal agencies to solicit input by submitting a draft Environmental Impact Statement (EIS) for public comment. When the public comment period is finished, the agency analyzes comments, conducts further analysis as necessary, and prepares the final EIS.

<sup>a</sup>According to BLM officials, BLM completed 53 NEPA analyses in 2010, 44 in 2011, and 20 in 2012. We present NAEP's analysis of EPA data in this table.

<sup>b</sup>In 2012, 31 other agencies completed at least 1 draft or final EIS. Five of them prepared 10 or more, including the National Park Service (21 draft and final EISs) and the Fish and Wildlife Service (19), both within the Department of the Interior; the National Oceanic and Atmospheric Administration within the Department of Commerce (17); the Navy within the Department of Defense (14); and the Federal Transit Administration within the Department of Transportation (10). The list of agencies varied somewhat for each of the other fiscal years presented (2008 through 2011).

<sup>c</sup>One section of NAEP's Annual NEPA Report 2008 identified a total of 548 EISs for 2008, while another section of the report identified a total of 547. We use 548 for this table to remain consistent with NAEP's summary of EIS data for 2008.

## Little Information Exists on the Costs and Benefits of Completing NEPA Analyses

Little information exists at the agencies we reviewed on the costs and benefits of completing NEPA analyses. We found that, with few exceptions, the agencies did not routinely track data on the cost of completing NEPA analyses, and that the cost associated with conducting an EIS or EA can vary considerably, depending on the complexity and scope of the project. Information on the benefits of completing NEPA analyses is largely qualitative. Complicating matters, agency activities under NEPA are hard to separate from other environmental review tasks under federal laws, such as the Clean Water Act and the Endangered Species Act; executive orders; agency guidance; and state and local laws.

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## Little Information Exists on the Cost of Completing NEPA Analyses

Little information exists on the cost of completing NEPA analyses. With few exceptions, the agencies we reviewed do not track the cost of completing NEPA analyses, although some of the agencies tracked information on NEPA time frames, which can be an element of project cost.

## Most Agencies We Reviewed Do Not Track the Cost of Completing NEPA Analyses

In general, we found that the agencies we reviewed do not routinely track data on the cost of completing NEPA analyses. According to CEQ officials, CEQ rarely collects data on projected or estimated costs related to complying with NEPA. EPA officials also told us that there is no governmentwide mechanism to track the costs of completing EISs. Similarly, most of the agencies we reviewed do not track NEPA cost data. For example, Forest Service officials said that tracking the cost of completing NEPA analyses is not currently a feature of their NEPA data collection system. Complicating efforts to record costs, applicants may, in some cases, provide environmental analyses and documentation or enter into an agreement with the agency to pay for the preparation of NEPA analyses and documentation needed for permits issued by federal agencies.<sup>21</sup> Agencies generally do not report costs that are “paid by the applicant” because these costs reflect business transactions between applicants and their contractors and are not available to agency officials.

Two NEPA-related studies completed by federal agencies illustrate how it is difficult to extract NEPA cost data from agency accounting systems. An August 2007 Forest Service report on competitive sourcing for NEPA compliance stated that it is “very difficult to track the actual cost of performing NEPA. Positions that perform NEPA-related activities are currently located within nearly every staff group, and are funded by a large number of budget line items. There is no single budget line item or budget object code to follow in attempting to calculate the costs of doing NEPA.”<sup>22</sup> Similarly, a 2003 study funded by FHWA evaluating the

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<sup>21</sup>The agency remains responsible for the scope and content of the analyses under NEPA and the NEPA documentation. 40 C.F.R. § 1506.5.

<sup>22</sup>U.S. Forest Service, Competitive Sourcing Program Office, *Feasibility Study of Activities Related to National Environmental Policy Act (NEPA) Compliance* (Washington, D.C.: Aug. 10, 2007).

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performance of environmental “streamlining” noted that NEPA cost data would be difficult to segregate for analysis.<sup>23</sup>

However, DOE tracks limited cost data associated with NEPA analyses. DOE officials told us that they track the funds the agency pays to contractors to prepare NEPA analyses and does not track other costs, such as the time spent by DOE employees. According to DOE data, the average payment to a contractor to prepare an EIS from calendar year 2003 through calendar year 2012 was \$6.6 million, with the range being a low of \$60,000 and a high of \$85 million.<sup>24</sup> DOE’s median EIS contractor cost was \$1.4 million over that time period. More recently, DOE’s March 2014 NEPA quarterly report stated that for the 12 months that ended December 31, 2013, the median cost for the preparation of four EISs for which cost data were available was \$1.7 million, and the average cost was \$2.9 million. For context, a 2003 task force report to CEQ—the only available source of governmentwide cost estimates—estimated that an EIS typically cost from \$250,000 to \$2 million.<sup>25</sup>

In comparison, DOE’s payments to contractors to produce an EA ranged from \$3,000 to \$1.2 million with a median cost of \$65,000 from calendar year 2003 through calendar year 2012, according to DOE data. In its March 2014 NEPA quarterly report, DOE stated that, for the 12 months that ended December 31, 2013, the median cost for the preparation of 8 EAs was \$73,000, and the average cost was \$301,000. For governmentwide context, the 2003 task force report to CEQ estimated

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<sup>23</sup>U.S. Department of Transportation, Federal Highway Administration, *Evaluating the Performance of Environmental Streamlining: Phase II* (Washington, D.C.: 2003). We have ongoing work reviewing what is known about any duplication resulting from state and federal environmental impact review requirements for federal highway projects, as required by Section 1322 of the Moving Ahead for Progress in the 21st Century Act, Pub. L. No. 112-141, 126 Stat. 405, 553 (2012). We expect to issue a final report by the end of October 2014.

<sup>24</sup>According to DOE, the cost for the \$85 million Hanford Tank Closure and Waste Management EIS includes the costs for three major EISs—waste management, high-level waste tank closure, and disposition of a nuclear reactor—that were started separately and ultimately integrated into one document.

<sup>25</sup>The NEPA Task Force Report to The Council on Environmental Quality, *Modernizing NEPA Implementation*. (September 2003).



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Some Information Is Available  
on NEPA Time Frames

that an EA typically costs from \$5,000 to \$200,000.<sup>26</sup> Agencies provided no cost data on CEs but stated that the cost of a CE—which, in many cases, is for a “routine” activity, such as repainting a building—was generally much lower than the cost of an EA.

Some governmentwide information is available on time frames for completing EISs—which can be one element of project cost—but few estimates exist for EAs and CEs because most agencies do not collect information on the number and type of NEPA analyses, and few guidelines exist on time frames for completing environmental analyses (see app. III for information on CEQ NEPA time frame guidelines). NAEP annually reports information on EIS time frames by analyzing information published by agencies in the Federal Register, with the Notice of Intent to complete an EIS as the “start” date, and the Notice of Availability for the final EIS as the “end” date.<sup>27</sup> Our review did not identify other governmentwide sources of these data. Based on the information published in the Federal Register, NAEP reported in April 2013 that the 197 final EISs in 2012 had an average preparation time of 1,675 days, or 4.6 years—the highest average EIS preparation time the organization had recorded since 1997.<sup>28</sup> From 2000 through 2012, according to NAEP, the

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<sup>26</sup> The NEPA Task Force Report to The Council on Environmental Quality, *Modernizing NEPA Implementation*. (September 2003). This report estimated that a “small” EA typically costs from \$5,000 to \$20,000 and a “large” EA costs from \$50,000 to \$200,000, but the report did not define “small” and “large.”

<sup>27</sup> According to CEQ officials, time frame data do not reflect certain nuances in the NEPA process. There could be a number of “non-NEPA” reasons for the “start,” “pause,” and “stop” of a project, such as waiting for funding or a non-federal permit, authorization, or other determination.

<sup>28</sup> NAEP, *Annual NEPA Report 2012 of the National Environmental Policy Act (NEPA) Practice* (April 2013). NAEP’s estimates are subject to sampling error and highlight the considerable variability in the time frames associated with EISs across the federal government. NAEP presented its time frame data along with margins of error at one standard deviation. NAEP’s NEPA average preparation time of 1,675 days had a one standard deviation confidence interval of plus or minus 1,247 days (plus or minus 3.4 years). Also, the number of final EISs included in this sample—197—does not match the number of final EISs—210—presented for 2012 in table 1. NAEP’s annual reports use two different sources of information on NEPA analyses, one for its count of NEPA analysis, and another for analyzing time frames.

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total annual average governmentwide EIS preparation time increased at an average rate of 34.2 days per year.<sup>29</sup>

In addition, some agency officials told us that time frame measures for EISs may not account for up-front work that occurs before the Notice of Intent to produce an EIS—the “start” date typically used in EIS time frame calculations. DOT officials told us that the “start” date is unclear in some cases because of the large volume of project development and planning work that occurs before a Notice of Intent is issued. DOE officials made a similar point, noting that time frames are difficult to determine for many NEPA analyses because there is a large volume of up-front work that is not captured by standard time frame measures. According to technical comments from CEQ and federal agencies, to ensure consistency in its NEPA metrics, DOE measures EIS completion time from the date of publication of the Notice of Intent to the date of publication of the notice of availability of the final EIS. Further, according to a 2007 CRS report, a project may stop and restart for any number of reasons that are unrelated to NEPA or any other environmental requirement.<sup>30</sup> For example, a 10-year time frame to complete a project may have been associated with funding issues, engineering requirements, changes in agency priorities, delays in obtaining nonfederal approvals, or community opposition to the project, to name a few.

Less governmentwide information is available on the completion time for EAs and CEs. According to DOE’s June 2013 quarterly NEPA report, for the 12 months that ended March 31, 2013, the average completion time for 16 EAs was 13 months (with a median of 11 months). For the past 10 calendar years (i.e., 2003 through 2012), DOE’s average EA completion time was 13 months (with a median of 9 months). Interior’s Office of Surface Mining estimated that its EAs take approximately 4 months on average to complete, and the Forest Service reported that its 501 EAs in fiscal year 2012 took an average of about 18 months to complete. Further, officials from Bureau of Indian Affairs within Interior told us that

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<sup>29</sup>For more information on EIS time frames, see Piet deWitt and Carole A. deWitt, “How Long Does It Take to Prepare an Environmental Impact Statement?” *Environmental Practice* 10, no. 4 (December 2008) and Piet deWitt and Carole A. deWitt, “Preparation Times for Final Environmental Impact Statements Made Available from 2007 through 2010,” *Environmental Practice* 15, no. 2 (June 2013).

<sup>30</sup>CRS, *The National Environmental Policy Act: Streamlining NEPA*, RL33267 (Washington, D.C.: Dec. 6, 2007).

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their EAs are generally completed in about 1 month but that they may take up to 6 months depending on their complexity. In addition, DOT officials said that determining the start time of EAs and CEs is even more difficult than for EISs. The time for completing these can depend in large part on how much of the up-front work was done already as part of the preliminary engineering process and how many other environmental processes are involved (e.g., consultations under the Endangered Species Act).

The little governmentwide information that is available on CEs shows that they generally take less time to complete than EAs. DOE does not track completion times for CEs, but agency officials stated that they usually take 1 or 2 days. Similarly, officials at Interior's Office of Surface Mining reported that CEs take approximately 2 days to complete. In contrast, Forest Service took an average of 177 days to complete CEs in fiscal year 2012, shorter than its average of 565 days for EAs, according to agency documents. The Forest Service documents its CEs with Decision Memos, which are completed after all necessary consultations, reviews, and other determinations associated with a decision to implement a particular proposed project are completed.

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### Information on the Benefits of Completing NEPA Analyses Is Largely Qualitative

According to agency officials, information on the benefits of completing NEPA analyses is largely qualitative. We have previously reported that assessing the benefits of federal environmental requirements, including those associated with NEPA, is difficult because the monetization of environmental benefits often requires making subjective decisions on key assumptions.<sup>31</sup> According to studies and agency officials, some of the qualitative benefits of NEPA include its role as a tool for encouraging transparency and public participation and in discovering and addressing the potential effects of a proposal in the early design stages to avoid problems that could end up taking more time and being more costly in the long run.

*Encouraging public participation.* NEPA is intended to help government make informed decisions, encourage the public to participate in those decisions, and make the government accountable for its decisions. Public

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<sup>31</sup>GAO, *Federal-Aid Highways: Federal Requirements for Highways May Influence Funding Decisions and Create Challenges, but Benefits and Costs Are Not Tracked*, [GAO-09-36](#) (Washington, D.C.: December 12, 2008).

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participation is a central part of the NEPA process, allowing agencies to obtain input directly from those individuals who may be affected by a federal action. DOE officials referred to this public comment component of NEPA as a piece of “good government architecture,” and DOD officials similarly described NEPA as a forum for resolving organizational differences by promoting interaction between interested parties inside and outside the government. Likewise, the National Park Service within Interior uses its Planning, Environment, and Public Comment (PEPC) system as a comprehensive information and public comment site for National Park Service projects, including those requiring NEPA analyses.<sup>32</sup>

*Discovering and addressing design problems.* One benefit of the environmental review process, according to a 2012 CRS report, is that it ultimately saves time and reduces overall project costs by identifying and avoiding problems that may occur in later stages of project development.<sup>33</sup> Projects that make it through the NEPA process are financially and environmentally improved, according to a senior NAEP official, because the process helps planners avoid the multiyear cost of mitigating a project’s potential adverse effects up front by identifying and evaluating alternatives that would not otherwise have been identified. Moreover, agency officials who oversee federal NEPA programs told us that one of the benefits of NEPA analyses is that they lead to improved projects. For example, DOT officials stated that the NEPA process allows project decision makers to discover and solve design problems that could end up being more costly in the long run. Similarly, Forest Service officials said that NEPA leads to better decisions on projects because of the environmental information considered in the process. Providing examples to illustrate these points, CEQ published a document describing time savings and improved outcomes on projects funded by the Recovery Act. Similarly, NEPA Success Stories: Celebrating Forty Years of Transparency and Open Government—published in August 2010 as a joint effort by the Environmental Law Institute, the Grand Canyon Trust, and the Partnership Project—described and highlighted improved

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<sup>32</sup>Click [here](#) for more information on PEPC.

<sup>33</sup>CRS, *The Role of the Environmental Review Process in Federally Funded Highway Projects: Background and Issues for Congress*, R42479, (Washington, D.C.: Apr. 11, 2012).

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environmental outcomes brought about through the NEPA process.<sup>34</sup> DOE has also published a document showing its NEPA “success stories.”<sup>35</sup> In one example from this document, DOE cited the November 28, 2008, Final Programmatic EIS for the Designation of Energy Corridors on Federal Lands in 11 Western States (DOE/EIS-0386), that it had developed in cooperation with BLM. In this case, public comments resulted in the consideration of alternative routes and operating procedures for energy transmission corridors to avoid sensitive environmental resources.

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**Activities under NEPA Are Hard to Separate from Other Required Environmental Analyses, Complicating the Determination of Costs and Benefits**

Agency activities under NEPA are hard to separate from other required environmental analyses, further complicating the determination of costs and benefits. CEQ’s NEPA regulations specify that, to the fullest extent possible, agencies must prepare NEPA analyses concurrently with other environmental requirements. CEQ’s March 6, 2012, memorandum on Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act states that agencies “must integrate, to the fullest extent possible, their draft EIS with environmental impact analyses and related surveys and studies required by other statutes or executive orders, amplifying the requirement in the CEQ regulations.<sup>36</sup> The goal should be to conduct concurrent rather than sequential processes whenever appropriate.” Different types of environmental analyses may also be conducted in response to other requirements under federal laws such as the Clean Water Act and the Endangered Species Act; executive orders; agency guidance; and state and local laws. As reported in 2011 by CRS, NEPA functions as an “umbrella” statute; any study, review, or consultation required by any

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<sup>34</sup>Click [here](#) to see “NEPA Success Stories and Benefits.” As of February 26, 2014, CEQ’s NEPA.gov website was down due to security issues.

<sup>35</sup>DOE’s NEPA success stories can be found [here](#).

<sup>36</sup>40 C.F.R. Parts 1500-1508, at § 1502.25.

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other law that is related to the environment should be conducted within the framework of the NEPA process.<sup>37</sup>

As a result, the biggest challenge in determining the costs and benefits of NEPA is separating activities under NEPA from activities under other environmental laws. According to DOT officials, the dollar costs for developing a NEPA analysis reported by agencies also includes costs for developing analyses required by a number of other federal laws, executive orders, and state and local laws, which potentially could be a significant part of the cost estimate. Similarly, DOD officials stated that NEPA is one piece of the larger environmental review process involving many environmental requirements associated with a project. As noted by officials from the Bureau of Reclamation within Interior, the NEPA process by design incorporates a multitude of other compliance issues and provides a framework and orderly process—akin to an assembly line—which can help reduce delays. In some instances, a delay in NEPA is the result of a delay in an ancillary effort to comply with another law, according to these officials and a wide range of other sources.

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## Some Information Is Available on the Frequency and Outcome of NEPA Litigation

Some information is available on the frequency and outcome of NEPA litigation. Agency data, interviews with agency officials, and available studies indicate that most NEPA analyses do not result in litigation, although the impact of litigation could be substantial if a lawsuit affects numerous federal decisions or actions in several states. The federal government prevails in most NEPA litigation, according to CEQ and NAEP data, and legal studies.

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<sup>37</sup>CRS, *The National Environmental Policy Act (NEPA): Background and Implementation*, RL33152 (Washington, D.C.: Jan. 10, 2011). According to technical comments from CEQ and federal agencies, this statement is overbroad. Studies, reviews, or consultations required by law and related to the environment may occur outside the NEPA process when necessary, and in fact this routinely occurs in real practice. Thus, according to the technical comments, it would be more accurate to track the language in the relevant CEQ regulation, 40 CFR 1500.2(c).

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Available Data Show That Most NEPA Analyses Do Not Result in Litigation, but Individual Cases Can Have Substantial Impacts

Agency data, interviews with agency officials, and available studies indicate that most NEPA analyses do not result in litigation. While no governmentwide system exists to track NEPA litigation or its associated costs, NEPA litigation data are available from CEQ, the Department of Justice, and NAEP. Appendix IV describes how these sources gather information in different ways for different purposes.

The number of lawsuits filed under NEPA has generally remained stable following a decline after the early years of implementation, according to CEQ and other sources. NEPA litigation began to decline in the mid-1970s and has remained relatively constant since the late 1980s, as reported by CRS in 2007.<sup>38</sup> More specifically, 189 cases were filed in 1974, according to the twenty-fifth anniversary report of CEQ. In 1994, 106 NEPA lawsuits were filed. Since that time, according to CEQ data, the number of NEPA lawsuits filed annually has consistently been just above or below 100, with the exception of a period in the early- and mid-2000s.<sup>39</sup> In 2011, the most recent data available, CEQ reported 94 NEPA cases, down from the average of 129 cases filed per year from 2001 through 2008.<sup>40</sup> In 2012, U.S. Courts of Appeals issued 28 decisions involving implementation of NEPA by federal agencies, according to NAEP data.

Although the number of NEPA lawsuits is relatively small when compared with the total number of NEPA analyses, one lawsuit can affect numerous federal decisions or actions in several states, having a far-reaching impact. In addition to CEQ regulations and an agency's own regulations, according to a 2011 CRS report, preparers of NEPA analyses and documentation may be mindful of previous judicial interpretation in an

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<sup>38</sup>CRS, *The National Environmental Policy Act: Streamlining NEPA*, RL33267 (Washington, D.C.: Dec. 6, 2007).

<sup>39</sup>As summarized by CEQ on its [website](#), since 2001, fewer than 175 NEPA cases were filed each year, with fewer than 100 filed each year in 2007, 2009, 2010, and 2011. A 2004 report by the Environmental Law Institute cited an increase in the number of NEPA cases filed in 2001 and 2002. See Jay E. Austin, et al. *Judging NEPA: A "Hard Look" at Judicial Decision Making Under the National Environmental Policy Act* (Washington, D.C.: Environmental Law Institute, 2004).

<sup>40</sup>Steven K. Imig, NEPA Case Law Update, *Rocky Mountain Mineral Law Foundation Special Institute on the National Environmental Policy Act*, October 28-29, 2010, Paper 12.

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attempt to prepare a “litigation-proof” EIS.<sup>41</sup> CEQ has observed that such an effort may lead to an increase in the cost and time needed to complete NEPA analyses but not necessarily to an improvement in the quality of the documents ultimately produced.

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## The Federal Government Prevails in Most NEPA Litigation

The federal government prevails in most NEPA litigation, according to CEQ and NAEP data and other legal studies. CEQ annually publishes survey results on NEPA litigation that identify the number of cases involving a NEPA-based cause of action; federal agencies that were identified as a lead defendant; and general information on plaintiffs (i.e., grouped into categories, such as “public interest groups” and “business groups”); reasons for litigation; and outcomes of the cases decided during the year.<sup>42</sup> In general, according to CEQ data, NEPA case outcomes are about evenly split between those involving challenges to EISs and those involving other challenges to the adequacy of NEPA analyses (e.g., EAs and CEs). The federal government successfully defended its decisions in more than 50 percent of the cases from 2008 through 2011. For example, in 2011, 99 of the 146 total NEPA case dispositions—68 percent—reported by CEQ resulted in a judgment favorable to the federal agency being sued or a dismissal of the case without settlement.<sup>43</sup> In 2011, that rate increased to 80 percent if the 18 settlements reported by CEQ were considered successes.<sup>44</sup> However, the CEQ data do not present enough case-specific details to determine whether the settlements should be considered as favorable dispositions. The plaintiffs, in most cases, were public interest groups.

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<sup>41</sup>CRS, *The National Environmental Policy Act (NEPA): Background and Implementation*, RL33152 (Washington, D.C.: Jan. 10, 2011).

<sup>42</sup>CEQ did not define the terms “public interest group” or “business group” in its published survey results. According to CEQ officials, CEQ used the terms “public interest group” to include citizen groups and environmental nongovernmental organizations and the term “business group” to include business, industry, and development focused groups and organizations.

<sup>43</sup>The total number of dispositions does not relate directly to the 94 cases filed in 2011 because litigation may take multiple years to resolve and there may be more than one disposition per case.

<sup>44</sup>The CEQ surveys identify three types of nonadverse dispositions: (1) judgment for the defendant; (2) dismissal without settlement; and (3) settlement.



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Reporting litigation outcome data similar to CEQ's, a January 2014 article on Forest Service land management litigation found that the Forest Service won nearly 54 percent of its cases and lost about 23 percent.<sup>45</sup> About 23 percent of the cases were settled, which the study found to be an important dispute resolution tool. Litigants generally challenged logging projects, most frequently under the National Environmental Policy Act and the National Forest Management Act. The article found that the Forest Service had a lower success rate in cases where plaintiffs advocated for less resource use (generally initiated by environmental groups) compared to cases where greater resource use was advocated. The report noted that environmental groups suing the Forest Service for less resource use not only have more potential statutory bases for legal challenges available to them than groups seeking more use of national forest resources, but there are also more statutes that relate directly to enhancing public participation and protecting natural resources.

Other sources of information also show that the federal government prevails in most NEPA litigation. For example, NAEP's 2012 annual NEPA report stated that the government prevailed in 24 of the 28 cases (86 percent) decided by U.S. Courts of Appeals. A NEPA legal treatise similarly reports that "government agencies almost always win their case when the adequacy of an EIS is challenged, if the environmental analysis is reasonably complete. Adequacy cases raise primarily factual issues on which the courts normally defer to the agency. The success record in litigation is more evenly divided when a NEPA case raises threshold questions that determine whether the agency has complied with the statute. An example is a challenge to an agency decision that an EIS was not required. Some lower federal courts are especially sensitive to agency attempts to avoid their NEPA responsibilities."<sup>46</sup> NAEP also provides detailed descriptions of cases decided by U.S. Courts of Appeals in its annual reports.<sup>47</sup>

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<sup>45</sup>Amanda M.A. Miner, Robert W. Mamsheimer, and Denise M. Keele, "Twenty Years of Forest Service Land Management Litigation," *Journal of Forestry* 112, no. 1 (January 2014).

<sup>46</sup>Daniel R. Mandelker, with the assistance of Robert L. Glicksman, Arianne Michalek Aughey, JD, and Donald McGillivray, *NEPA Law and Litigation*, 2<sup>nd</sup> ed. (Thomson Reuters/West, Rel. 10, 2012).

<sup>47</sup>NAEP, *Annual NEPA Report 2012 of the National Environmental Policy Act (NEPA) Practice* (April 2013).

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## Agency Comments and Our Evaluation

We provided a draft of this product to the Council on Environmental Quality (CEQ) for governmentwide comments in coordination with the Departments of Agriculture, Defense, Energy, Interior, Justice, and Transportation, and the Environmental Protection Agency (EPA). In written comments, reproduced in appendix V, CEQ generally agreed with our findings. CEQ and federal agencies also provided technical comments that we incorporated, as appropriate.

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We are sending copies of this report to the appropriate congressional committees; Chair of the Council on Environmental Quality; Secretaries of Defense, Energy, the Interior, and Transportation; Attorney General; Chief of the Forest Service within the Department of Agriculture; Administrator of EPA; and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff members have any questions about this report, please contact us at (202) 512-3841 or [fennella@gao.gov](mailto:fennella@gao.gov); or [gomezj@gao.gov](mailto:gomezj@gao.gov); and (202) 512-4523 or [leporeb@gao.gov](mailto:leporeb@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last

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page of this report. GAO staff who made key contributions to this report are listed in appendix VI.



Anne-Marie Fennell  
Director, Natural Resources and Environment



Alfredo Gomez  
Director, Natural Resources and Environment



Brian Lepore  
Director, Defense Capabilities and Management

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*List of Requesters*

The Honorable David Vitter  
Ranking Member  
Committee on Environment and Public Works  
United States Senate

The Honorable Howard P. "Buck" McKeon  
Chairman  
Committee on Armed Services  
House of Representatives

The Honorable Fred Upton  
Chairman  
Committee on Energy and Commerce  
House of Representatives

The Honorable Doc Hastings  
Chairman  
Committee on Natural Resources  
House of Representatives

The Honorable Bill Shuster  
Chairman  
Committee on Transportation and Infrastructure  
House of Representatives

The Honorable Rob Bishop  
Chairman  
Subcommittee on Public Lands and Environmental Regulation  
Committee on Natural Resources  
House of Representatives

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# Appendix I: Objectives, Scope, and Methodology

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This appendix provides information on the scope of work and the methodology used to collect information on how we described the (1) number and type of National Environmental Policy Act (NEPA) analyses, (2) costs and benefits of completing those analyses, and (3) frequency and outcomes of related litigation. We included available information on both costs and benefits to be consistent with standard economic principles for evaluating federal programs and generally accepted government auditing standards.

To respond to these objectives, we reviewed relevant publications, obtained documents and analyses from federal agencies, and interviewed federal officials and individuals from academia and a professional association with expertise in conducting NEPA analyses. Specifically, to describe the number and type of NEPA analyses and what is known about the costs and benefits of NEPA analyses, we reported information identified through the literature review, interviews, and other sources. We selected the Departments of Defense, Energy, the Interior, and Transportation and the Forest Service within the U.S. Department of Agriculture for analysis because they generally complete the most NEPA analyses. Our findings for these agencies are not generalizable to other federal agencies.

To assess the availability of information to respond to these objectives, we (1) conducted a literature search and review with the assistance of a technical librarian; (2) reviewed our past work on NEPA and studies from the Congressional Research Service; (3) obtained documents and analyses from federal agencies; and (4) interviewed officials who oversee federal NEPA programs from the Departments of Defense, Energy, the Interior, Justice, and Transportation; the Forest Service within the Department of Agriculture; the Environmental Protection Agency (EPA); the Council on Environmental Quality (CEQ) within the Executive Office of the President; and individuals with expertise from academia and the National Association of Environmental Professionals (NAEP)—a professional association representing private and government NEPA practitioners.

Specifically, to describe the number and type of NEPA analyses from calendar year 2008 through calendar year 2012, we analyzed data identified through the literature review and interviews. We focused on data and documents maintained by CEQ, EPA, and NAEP. CEQ and NAEP periodically report data on the number of certain types of NEPA analyses, and EPA maintains a database of Environmental Impact Statements, one of its roles in implementing NEPA. To generate

information on the number of Environmental Impact Statements from EPA's database, we sorted the data by calendar year and counted the number of analyses for each year. We did not conduct an extensive evaluation of this database, although a high-level analysis discovered potential inconsistencies. For example, EPA's database contained entries with the same unique identifier, making it difficult to identify the exact number of NEPA analyses. We discussed these inconsistencies with EPA officials, who told us that they were aware of certain errors due to manual data entry and the use of different analysis methods. These officials said that EPA EIS data provided to others may differ because EPA periodically corrects the manually entered data. We did not count duplicate records in our analysis of EPA's data. We believe these data are sufficiently reliable for the purposes of this report.

To describe what is known about the costs and benefits of NEPA analysis, we reported the available information on the subject identified through the literature review and interviews. To describe the frequency and outcome of NEPA litigation we (1) reviewed laws, regulations, and agency guidance; (2) reviewed NEPA litigation data generated by CEQ and NAEP; (3) interviewed Department of Justice officials; and (4) reviewed relevant legal studies.

Information from these sources is cited in footnotes throughout this report. To answer the various objectives, we relied on data from several sources. To assess the reliability of data collected by agencies and NAEP, we reviewed existing documentation, when available, and interviewed officials knowledgeable about the data. We found all data sufficiently reliable for the purposes of this report.

We conducted this performance audit from June 2013 to April 2014 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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# Appendix II: Summary of Federal NEPA Data Collection Efforts

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Federal National Environmental Policy Act (NEPA) data collection efforts vary by agency. The Council on Environmental Quality's (CEQ) NEPA implementing regulations set forth requirements that federal agencies must adhere to, and require federal agencies to adopt their own procedures, as necessary, that conform with NEPA and CEQ's regulations.<sup>1</sup> Federal agencies decide how to apply CEQ regulations in the NEPA process. According to a 2007 Congressional Research Service (CRS) report, the CEQ regulations were meant to be generic in nature, with individual agencies formulating procedures applicable to their own projects.<sup>2</sup> The report states that this approach was taken because of the diverse nature of projects and environmental impacts managed by federal agencies with unique mandates and missions. Consequently, NEPA procedures vary to some extent from agency to agency, and comprehensive governmentwide data on NEPA analyses are generally not centrally collected.

As stated by a CEQ official, "there is no master NEPA spreadsheet, and there are many gaps in NEPA-related data collected across the federal government." To obtain information on agency NEPA activities, the official said that CEQ works closely with its federal agency NEPA contact group, composed of key officials responsible for implementing NEPA in each agency. CEQ meets regularly with these officials and uses this network to collect NEPA-related information through requests for information, whereby CEQ distributes a list of questions to relevant agencies and then collects and reports the answers. According to CEQ officials, NEPA data reported by CEQ are generated through these requests, which have quality assurance limitations because related activities at federal departments are themselves diffused throughout various offices and bureaus.

Of the agencies we reviewed, the Departments of Defense, the Interior, and Transportation do not centrally collect information on NEPA analyses, allowing component agencies to collect the information, whereas the Department of Energy and the Forest Service within the Department of Agriculture aggregate certain data.

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<sup>1</sup>40 C.F.R. § 1507.3.

<sup>2</sup>CRS, *The National Environmental Policy Act: Streamlining NEPA*, RL33267 (Washington, D.C.: Dec. 6, 2007).

*Department of Defense (DOD).* Each of the military services and defense agencies collects data on NEPA analyses, but DOD does not aggregate information that is collected on the number and type of NEPA analyses at the departmentwide level. Data collection within the military services and agencies is decentralized, according to DOD officials. For example, the Army collects Environmental Impact Statement (EIS) data at the Armywide level, and responsibility for Environmental Assessments (EA) and Categorical Exclusions (CE) are delegated to the lowest possible command level. DOD officials said that each of the services and defense agencies works to maintain a balance between the work that needs to be completed and the management effort needed to accomplish that work. While the level of information collected may vary by service or defense agency, each collects the information that it has determined necessary to manage its NEPA workload. According to these officials, every new information system and data call must generally come from existing funding, taking resources from other tasks.

*Department of the Interior (Interior).* Data are not collected at the department level, according to Interior officials, and Interior conducts its own departmentwide data calls to component bureaus and entities whenever CEQ asks for NEPA-related information. The data collection efforts of its individual bureaus vary considerably. For example, the National Park Service uses its Planning, Environment, and Public Comment (PEPC) system as a comprehensive information and public comment site for National Park Service projects. Other Interior bureaus are beginning to track information or rely on less formal systems and not formalized databases. For example, the Bureau of Indian Affairs uses its internal NEPA Tracker system—started in September 2012—which the bureau states is to collect information on NEPA analyses to create a better administrative record to potentially identify new categories of CEs for future development and use. Prior to the NEPA Tracker system, the Bureau of Indian Affairs tracked NEPA analyses less formally, with varying information quality across the bureau’s different entities, according to agency officials. According to Bureau of Land Management officials, the bureau has developed and is currently implementing its ePlanning system, a comprehensive, bureau-wide, Internet-based tool for writing, reviewing, publishing, and receiving public commentary on land use plans and NEPA documents. The tool is fully operational, and the bureau expects to complete implementation in 2015. At the Bureau of Reclamation, NEPA activities are cataloged and tracked by each region or area office according to local procedures, and the information on the number and type of NEPA analyses resides with these offices. NEPA



information at the Fish and Wildlife Service, according to agency officials, is collected at the refuge level.

*Department of Transportation (DOT).* According to agency officials, each DOT administration—such as the Federal Highway Administration (FHWA), which funds highway projects; the Federal Motor Carrier Safety Administration, which develops commercial motor vehicle and driver regulations; and the Federal Aviation Administration, which is responsible for, among other things, the nation’s air traffic control system—has its own NEPA operating and data collection procedures that track NEPA-related information to varying degrees because each mode of transportation has different characteristics and needs.<sup>3</sup> Environmental reviews for highway projects funded by FHWA have long been of interest to Congress and federal, state, and local stakeholders.<sup>4</sup> FHWA and its 52 division offices have traditionally used an internal data system to track EIS documents. FHWA officials told us that they are in the process of replacing the agency’s legacy system with the new Project and Program Action Information (PAPAI) system, which went online in March 2013. PAPAI is capable of tracking information on EISs, EAs, and CEs, including project completion time frames, but its use is not mandatory, according to DOT officials.

*Department of Energy (DOE).* The Office of NEPA Policy and Compliance within DOE maintains a website where it posts extensive agencywide NEPA documentation, including information on the number and type of NEPA analyses completed since the mid-1990s and a series of quarterly lessons learned reports documenting certain NEPA performance metrics, including information on time and cost.<sup>5</sup> DOE’s September 2013 quarterly report documents available information on its NEPA analysis workload, completion times, and costs from 2003 through 2012.<sup>6</sup> DOE began tracking cost and completion time metrics in the mid-1990s because it

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<sup>3</sup>According to technical comments from CEQ and federal agencies, several DOT administrations, including Federal Aviation Administration, are tracking the status of NEPA analyses, or NEPA status is reported as part of a larger financial tracking database.

<sup>4</sup>[GAO-12-593](#).

<sup>5</sup>Click [here](#) to see the information on DOE’s website.

<sup>6</sup>DOE’s September 2013 quarterly report can be found [here](#). These data are discussed in more detail elsewhere in this report.

was concerned about the timeliness and cost of NEPA reviews.<sup>7</sup> DOE officials told us they collect these data because, in their view, “what gets measured gets done.” Making DOE NEPA analyses easily available allows others to apply the best practices and potentially avoid costly litigation, according to DOE officials.

*Department of Agriculture’s Forest Service.* The Forest Service’s computer system, known as the Planning, Appeals, and Litigation System, provides information for responding to congressional requests for NEPA data, to support preparation for responding to lawsuits, and about overall project objectives and design. As stated by agency officials, data from the system can be used to identify trends in the preparation of NEPA analyses over time. This information can be valuable to managers in managing overall NEPA compliance and can identify innovative ways to deal with recurring environmental issues that affect projects, according to Forest Service officials. The system also provides tools to help the agency meet NEPA requirements, including automatic distribution of the schedule of proposed NEPA actions, a searchable database of draft EISs, and electronic filing of draft and final EISs to EPA.

CEQ also identified as a best practice the service’s electronic Management of NEPA (eMNEPA) pilot—a suite of web-based tools and databases to improve the efficiency of environmental reviews by enabling online submission and processing of public comments, among other things.<sup>8</sup> On March 17, 2011, CEQ invited members of the public and federal agencies to nominate projects employing innovative approaches to complete environmental reviews more efficiently and effectively. On August 31, 2011, CEQ announced that eMNEPA was selected as part of the first NEPA pilot project. CEQ officials told us that they would prioritize the use of CEQ oversight resources to focus on identifying, disseminating, and encouraging agencies to use their additional resources in improving operational efficiency through tools like eMNEPA rather than focusing on improved data collection and reporting. Specifically, CEQ officials said that information technology tools that enable easy access to relevant technical information across the federal

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<sup>7</sup>DOE, *Secretarial Policy Statement on the National Environmental Policy Act*, (Washington, D.C.: June 13, 1994). The secretarial policy statement is available [here](#).

<sup>8</sup>More information on Forest Service’s eMNEPA is available [here](#).

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government are also of value in enhancing the ability of agencies to conduct efficient and timely NEPA environmental reviews.

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# Appendix III: CEQ NEPA Time Frame Guidelines

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The Council on Environmental Quality's (CEQ) March 1981 guidance document published in the Federal Register titled *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations* advises that

"... even large complex energy projects would require only about 12 months for the completion of the entire EIS process. For most major actions, this period is well within the planning time that is needed in any event, apart from NEPA. The time required for the preparation of program EISs may be greater. The Council also recognizes that some projects will entail difficult long-term planning and/or the acquisition of certain data which of necessity will require more time for the preparation of the EIS. Indeed, some proposals should be given more time for the thoughtful preparation of an EIS and development of a decision which fulfills NEPA's substantive goals. For cases in which only an environmental assessment will be prepared, the NEPA process should take no more than 3 months, and in many cases substantially less, as part of the normal analysis and approval process for the action."<sup>1</sup>

CEQ's National Environmental Policy Act (NEPA) regulations do not specify a required time frame for completing NEPA analyses. The regulations state that CEQ has decided that prescribed universal time limits for the entire NEPA process are too inflexible. The regulations also state that federal agencies are encouraged to set time limits appropriate to individual actions and should take into consideration factors such as the potential for environmental harm, size of the proposed action, and degree of public need for the proposed action, including the consequences of delay. CEQ's March 6, 2012, memorandum on *Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act* encourages agencies to develop meaningful and expeditious timelines for environmental reviews, and it amplifies the factors an agency should take into account when setting time limits, noting that establishing appropriate and predictable time limits promotes the efficiency of the NEPA process. The CEQ regulations also require agencies to reduce delay by, among other things, integrating the NEPA process into early project planning, emphasizing interagency cooperation, integrating NEPA requirements with other environmental review requirements, and adopting environmental documents prepared by other federal agencies.

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<sup>1</sup>CEQ, *Memorandum to Agencies: Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*. 46 Fed. Reg. 18026 (Mar. 23, 1981) as amended.

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# Appendix IV: Sources of NEPA Litigation Data

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In general, there is no governmentwide system to track National Environmental Policy Act (NEPA) litigation and its associated costs. The Council on Environmental Quality (CEQ), the Department of Justice, and the National Association of Environmental Professionals (NAEP) gather NEPA litigation information in different ways for different purposes.

CEQ collects NEPA litigation data through periodic requests for information, whereby it distributes a list of questions to the general counsel offices of relevant agencies and then collects and reports the information on its website.<sup>1</sup> CEQ's NEPA litigation survey presents information on NEPA-based claims brought against agencies in court, including aggregated information on types of lawsuits and who brought the suits. The survey results do not present information on the cost of NEPA litigation because, according to officials from several of the agencies we reviewed, agencies do not track this information. For example, Forest Service officials told us that they do not centrally track the cost or time associated with the preparation for litigation. As another example, the Department of Energy's litigation data do not include the cost of litigation or the time spent on litigation-related tasks, although it includes the number of NEPA-related cases over time.

The Department of Justice defends nearly all federal agencies when they face NEPA litigation.<sup>2</sup> These officials told us that the department's Case Management System database tracks limited information on NEPA cases handled by the Environment and Natural Resources Division, and the Executive Office for U.S. Attorneys case management system, called the Legal Information Office Network System, tracks NEPA cases at individual U.S. Attorneys' Offices to some extent. However, Department of Justice officials told us that these systems do not interface with each other, so it would be impossible to gather comprehensive information on NEPA litigation from the Department of Justice.

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<sup>1</sup>CEQ used to report on NEPA litigation in required annual reports, but the annual reporting requirement was eliminated by Congress, and the last annual report was issued in 1997. CEQ's more recent NEPA litigation survey results are provided [here](#).

<sup>2</sup>Such litigation is handled both by the Department of Justice's Environment and Natural Resources Division and by individual U.S. Attorneys' Offices depending upon the agency, the type of case, and the expertise of the department's personnel. Agency personnel provide the Department of Justice with the administrative record that forms the basis of judicial review and provide assistance throughout the litigation process, as needed.

Further, Department of Justice officials told us that the department is not able to comprehensively identify all NEPA litigation because a single case could have numerous other environmental claims in addition to a single NEPA claim. In such instances, the Environment and Natural Resources Division's Case Management System may not capture every claim raised in the case.<sup>3</sup> As a result, the Department of Justice does not track trends in NEPA litigation or staff hours spent on NEPA cases. The cost of collecting the information would outweigh the management benefits of doing so, according to these officials.

The Department of Justice's NEPA litigation data are not comparable to CEQ's because the department's system is designed to track cases, while CEQ provides information on NEPA events—such as the number of cases filed, number of injunctions or remands, and other decisions. There could be multiple NEPA events or decisions related to a single case. Department of Justice officials stated that they would not be able to reconcile CEQ's information with information in Department of Justice systems.

NEPA litigation data collected by the third source—NAEP—differ from those collected by CEQ or the Department of Justice. NAEP collects information on NEPA cases decided by U.S. Courts of Appeals because these cases are generally the most significant to the NEPA practitioners that are NAEP's members, according to NAEP officials. The NAEP report contains case study summaries of the latest developments in NEPA litigation to help NEPA practitioners understand how to account for new court-mandated requirements in NEPA analyses and does not attempt to track all NEPA litigation across the government.

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<sup>3</sup>According to Department of Justice officials, the Environment and Natural Resources Division uses a customized Case Management System for internal purposes. This Case Management System includes case information such as the caption, lead statute, court district, case hours, and general outcomes. The Environment and Natural Resources Division generally uses the Case Management System information to measure performance, assess resource needs and expenditures, and track the hours of certain employees to individual cases.

# Appendix V: Comments from the Council on Environmental Quality



EXECUTIVE OFFICE OF THE PRESIDENT  
COUNCIL ON ENVIRONMENTAL QUALITY  
WASHINGTON, D.C. 20503

April 9, 2014

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Dear Directors Fennell, Gomez, and Lepore:

Thank you for the opportunity to review and comment on the Government Accountability Office's (GAO) proposed report, "*National Environmental Policy Act: Information on the Costs and Benefits of Completing Analyses*" ("Proposed Report," report numbers GAO-14-369 and GAO-14-370). This letter conveys the combined comments from the Departments of Agriculture, Defense, Energy, Interior, Justice, and Transportation and the Environmental Protection Agency.

The Proposed Report collects and presents a considerable amount of data from these Federal agencies and departments, each of whom independently implements the requirements of the National Environmental Policy Act (NEPA) and the Council on Environmental Quality's (CEQ) NEPA Regulations (40 CFR parts 1500-1508) pursuant to its own NEPA implementing regulations and procedures. We appreciate the obvious efforts of your staff in preparing this generally well-written proposed report. The following comments are offered to increase the accuracy and improve the clarity of GAO's proposed report.

We are pleased to see that GAO has observed that agency reviews pursuant to NEPA are "hard to separate from other environmental review[s]" conducted under other federal, state, and local law; executive orders; and guidance (Proposed Report at Highlights, p. 10 and p. 16). GAO's finding underscores the requirements of NEPA and CEQ's NEPA Regulations, which call for an interdisciplinary approach to reduce duplication and

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**Appendix V: Comments from the Council on  
Environmental Quality**

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paperwork. 42 U.S.C. § 4332(2)(A); 40 CFR §§ 1502.6 and 1506.4. By integrating, to the fullest extent possible, the NEPA process with other planning and environmental review procedures required by law or conducted pursuant to agency practice, agencies identify issues early, reduce redundancy, promote efficiency and expedite overall environmental review. We welcome the opportunity to work with GAO to more fully describe these qualitative benefits of NEPA reviews in the Proposed Report.

We also note that throughout the document, GAO refers to "NEPA analyses." We suggest using the phrase "NEPA reviews" to better reflect NEPA's procedural requirements. Similarly, throughout the report, GAO uses the phrase "likely environmental effects" when describing the applicability of NEPA. We note that neither the statute nor CEQ's regulations limit NEPA reviews to "likely" environmental effects and recommend using the word "potential" when describing the environmental effects considered under NEPA reviews.

We would also like to bring to GAO's attention the most recent "Lessons Learned Quarterly Report" issued by the Department of Energy (DOE) and a recent article published in the *Journal of Forestry* regarding the Forest Service and land management litigation. These documents provide data which GAO may find informative as it finalizes the Proposed Report. DOE's most recent quarterly report can be accessed at the following URL: [www.energy.gov/node/810944](http://www.energy.gov/node/810944) and should be used to provide more current data regarding DOE's statistics in Proposed Report.

In the Proposed Report, GAO references and discusses a 2006 article in the *Journal of Forestry* on land management litigation (page 19). We recommend GAO consider the findings in a more recent article published in the January 2014 issue of the *Journal of Forestry* titled, "Twenty Years of Forest Service Land Management Litigation." GAO may find the updated data in this article helpful. For example, based on litigation cases filed from 1989 to 2008, the Forest Service prevailed in 53.8% of these cases, lost 23.3%, and settled 22.9%.

Finally, to increase the overall accuracy and clarity of the report, we intend to share some additional technical and editorial comments with your staff. We look forward to continuing to work with GAO on completing this report. Should you have any questions or require further clarification of these comments, please contact Manisha Patel at [mpatel@ceq.eop.gov](mailto:mpatel@ceq.eop.gov).

Sincerely,



Michael J. Boots  
Acting Chair



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# Appendix VI: GAO Contacts and Staff Acknowledgments

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