

## PODCAST TRANSCRIPT

Associated report: “EPA Failed to Develop Any Required Cost Benefit Analyses and Failed to Assess Impacts on Children’s Health for Proposed Glider Repeal Rule”

[GARY] Hello, I’m Gary Sternberg, with the U.S. Environmental Protection Agency’s Office of Inspector General. I’m speaking with Alli Dutton, a team leader in the OIG’s Office of Audit and Evaluation. Today, we will discuss a report that looks at the process the EPA followed in developing and issuing a proposed Glider Repeal Rule. This has been a concern for Congress, and in October 2018 we received a congressional request to look at the EPA’s handling of the matter and the proposed repeal rule itself. So, Alli, what exactly is a “glider” vehicle?

[ALLI] The term “glider kit” is used in the heavy-duty vehicle, or “trucking,” industry to describe the chassis and cab assembly where the truck driver sits and to which the trailer is attached. This glider kit is generally produced by a vehicle manufacturer without an engine, transmission or rear axle. A third party then typically installs a used engine, transmission or rear axle. The terms “glider vehicle” and “glider” are typically used to describe this means of salvaging valuable components, such as used engines, from vehicles that were badly damaged in collisions. The issue of concern is that the engines installed in these vehicles are generally old or refurbished, so they don’t have the modern emission control devices. For that reason, they emit much more pollution.

[GARY] Okay. So, what was the original glider rule all about?

[ALLI] In 2016, the EPA finalized the “Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2,” commonly known as the Phase 2 final rule. This rule set emission standards for various types of vehicles to improve fuel efficiency and reduce air pollution. Under the Phase 2 final rule, there are a number of requirements for gliders, including tougher air pollution emission standards for greenhouse gas and criteria air pollutants such as nitrogen oxides and particulate matter. To give you a quick background on particulate matter, also known as PM, and nitrogen oxides, are linked to a variety of health concerns – such as emergency room visits, hospitalizations and even premature death. Emissions from nitrogen oxide and PM from glider vehicles using pre-2002 engines could be 20 to 40 times higher than current engines. That’s why the Phase 2 final rule set emission limits for glider vehicles similar to those of new trucks, and also sought to reduce the number of gliders produced and sold over time.

[GARY] Are there a lot of these glider vehicles on the road?

[ALLI] This is part of the concern. Originally, the EPA was providing a means for truckers who wreck their trucks to salvage used parts. However, over time, there’s been a sharp increase in the number of these vehicles produced. Back in 2004, there were only a few hundred. That number has steadily increased to nearly 10,000 each year. Under the Phase 2 final rule, the EPA maintained that by restricting the number of glider vehicles with high-polluting engines on the road, excess nitrogen oxide and PM emissions would decrease dramatically and lead to substantial public health benefits. The EPA estimated that the removal of all unrestricted glider vehicle emissions could yield between \$6 billion and \$14 billion in health benefits annually.

[GARY] And how did the Glider Repeal Rule come about?

[ALLI] A number of events unfolded in 2017 under the leadership of EPA Administrator Scott Pruitt. On May 8th, 2017, Administrator Pruitt met with the chief executive officer and general counsel of a major glider assembler to discuss the effect of the Phase 2 final rule on glider sales and jobs. On July 10th, three members of the glider industry petitioned the EPA to reconsider the application of the Phase 2 rule. The Administrator replied to the petition that the EPA would revisit the Phase 2 final rule based on the concerns raised by industry. In October 2017, Administrator Pruitt directed that the EPA’s Office of Air and Radiation develop the proposed glider repeal rule. On November 16th, a Notice of Proposed Rulemaking, titled “Repeal of Emission Requirements for Glider Vehicles, Glider Engines, and Glider Kits,” was signed by Mr. Pruitt, and the proposed repeal rule (known as the Glider Repeal Rule) was released for

public comment. The repeal rule would relieve industry of compliance requirements of the Phase 2 final rule that set emissions standards and production limits of glider vehicles beginning January 1st, 2018. As a result, Administrator Pruitt pushed to get the repeal rule out as quickly as possible.

[GARY] At this point, the OIG initiated an audit to address the congressional request. What did the audit attempt to do?

[ALLI] This audit was centered on determining whether EPA acted in compliance with Executive Order 12866, titled Regulatory Planning and Review; and Executive Order 13045, titled Protection of Children from Environmental Health Risks and Safety Risks, in developing the proposed rulemaking. Executive Order 12866 applies when a rule is deemed “significant” because it meets one of the four criteria set by the Office of Management and Budget. The rule is further categorized as “economically significant” if it will have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, environment or public health. Executive Order 13045 applies to regulatory actions determined to be “economically significant” under the other order. Both of the orders have analysis requirements for a rulemaking.

[GARY] Thanks for explaining the requirements of the two relevant executive orders. What did the audit team find?

[ALLI] We found that EPA did not comply with analysis requirements for either executive order, including for either a “significant” or “economically significant” regulatory action. Nor did the EPA include feasible alternatives in the proposed rule, as required by Executive Order 12866. We also found that the EPA did not conduct analysis of the health or safety effects on children required by Executive Order 13045 for an “economically significant” regulatory action. Further, the EPA did not follow its own Action Development Process in developing the Glider Repeal Rule. Although EPA officials were aware that available information indicated that the proposed rulemaking was considered, quote, “economically significant,” Administrator Pruitt directed that the Glider Repeal Rule move forward and not undergo any of the analyses required. One day prior to receiving Administrator Pruitt’s signature, the rule was downgraded from “economically significant” to just “significant.”

[GARY] So, the EPA did not follow the requirements of the two Executive Orders. What does this mean for the public?

[ALLI] Not completing required analysis results in the public not knowing the proposed rulemaking’s costs and benefits, or the impact on children’s health. Also, as no alternatives were considered as required by both executive orders, it’s unknown whether the proposed rule is preferable to potential alternative actions.

[GARY] Were there any other findings?

[ALLI] Yes. The EPA failed to satisfy recordkeeping requirements pertaining to the substantive decision to change the rule’s designation from “economically significant” to “significant” per the Federal Records Act. Although the EPA generated some records, it did not create or preserve adequate records of the formulation and execution of that decision. Additionally, as I mentioned earlier, the EPA did not follow its own Action Development Process, which is supposed to ensure high quality rulemakings backed by strong analysis. For example, no workgroup was established. The agency was late in determining the complexity of the process it would follow. By not following its own process, the EPA did not develop the proposed Glider Repeal Rule with public transparency and the support of high-quality analyses. Developing environmental regulation is one of the agency’s principal responsibilities, and much of EPA’s organizational credibility is linked to the quality of its rulemaking.

[GARY] What did your team recommend in the audit report to address the issues noted?

[ALLI] We recommended that EPA identify for the public the substantive change between the draft submitted to the Office of Management and Budget’s Office of Information and Regulatory Affairs for review and the action subsequently announced, and identify whether that change was made at the suggestion of the Office of Information and Regulatory Affairs. Further, if EPA decides to move forward with finalizing the Glider Repeal Rule, prior to any final issuance, EPA should conduct the required analyses to comply with Executive Orders 12866 and 13045, and any decisions made during the rulemaking process need to be documented. Additionally, the EPA should document the decisions made during the glider repeal rulemaking process to comply with applicable recordkeeping and docketing

requirements including those found in the Federal Records Act, the EPA's Interim Records Management Policy, and EPA's Action Development Process guidance. The agency has provided adequate corrective actions for two of the three recommendations. For the one unresolved recommendation, EPA did not provide a corrective action plan that addressed how they comply with applicable recordkeeping and docketing requirements. I'll close by noting that, as of the date of our report, the proposed Glider Repeal Rule still was listed on EPA's Fall 2019 Regulatory Agenda as "economically significant" and has not been finalized.

[GARY] Thank you so much, Alli, for sharing the results of this important report. For more information about this report and other EPA Office of Inspector General work, please visit our website at [www.epa.gov/oig](http://www.epa.gov/oig), and be sure to follow us on Twitter @epaoig.