



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

***Congressionally Requested Report:
Compliance with the law
Improving air quality***

EPA Failed to Develop Required Cost and Benefit Analyses and to Assess Air Quality Impacts on Children's Health for Proposed Glider Repeal Rule Allowing Used Engines in Heavy-Duty Trucks

Report No. 20-P-0047

December 5, 2019



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Abbreviations

ADP	Action Development Process
CFR	Code of Federal Regulations
EO	Executive Order
EPA	U.S. Environmental Protection Agency
IG Act	Inspector General Act of 1978
NOx	Nitrogen Oxides
NPRM	Notice of Proposed Rulemaking
OIG	Office of Inspector General
OIRA	Office of Information and Regulatory Affairs (in Office of Management and Budget)
OMB	Office of Management and Budget
PM	Particulate Matter
U.S.C.	United States Code

Cover Photo: Typical glider kit configuration. (EPA photo)

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At a Glance

Why We Did This Project

We received a congressional request raising concerns about the U.S. Environmental Protection Agency's (EPA's) development of the Notice of Proposed Rulemaking, "Repeal of Emission Requirements for Glider Vehicles, Glider Engines, and Glider Kits." We sought to determine whether the EPA acted in compliance with Executive Orders (EOs) 12866 and 13045 in developing the proposed rulemaking.

The EPA's "Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2," finalized in October 2016, included emission requirements and production limits for glider vehicles. A glider kit is a chassis for a tractor-trailer; it becomes a glider vehicle when an engine, transmission and/or rear axle are added. After receiving a petition from the glider industry in July 2017, the EPA proposed to rescind the portion of the Phase 2 rule affecting gliders (proposed Glider Repeal Rule) in November 2017.

This report addresses the following:

- *Compliance with the law.*
- *Improving air quality.*

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EPA Failed to Develop Required Cost and Benefit Analyses and to Assess Air Quality Impacts on Children's Health for Proposed Glider Repeal Rule Allowing Used Engines in Heavy-Duty Trucks

What We Found

The EPA did not comply with requirements of EOs 12866 and 13045 when developing and issuing the proposed Glider Repeal Rule. Additionally, the EPA did not follow its principal rulemaking guidance—the Action Development Process—in developing the proposed Glider Repeal Rule, nor did it meet Federal Records Act requirements.

The EPA's actions regarding the proposed Glider Repeal Rule lacked transparency and deprived the public of required information.

EO 12866 directs that significant regulatory actions be submitted to the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) for review. Any substantive OIRA-recommended changes to the regulatory action must be publicly identified. A regulatory action deemed "economically significant" under EO 12866 triggers an assessment of (1) the anticipated costs and benefits and (2) any reasonable alternatives. EO 13045 applies to "economically significant" regulatory actions that "concern an environmental health or safety risk that an agency has reason to believe may disproportionately affect children." This order requires an evaluation of the environmental health risks to children and an explanation of why the planned regulation is preferable to alternatives.

According to EPA managers and officials, then-EPA Administrator Scott Pruitt directed that the Glider Repeal Rule be promulgated as quickly as possible. The proposed repeal rule would relieve industry of compliance requirements of the Phase 2 rule, which set emissions standards and production limits for gliders beginning January 1, 2018. EPA officials were aware that available information indicated the proposed Glider Repeal Rule was "economically significant;" however, Pruitt directed the Office of Air and Radiation to develop the proposed rule without conducting the analyses required by the EOs. The lack of analyses caused the public to not be informed of the proposed rule's benefits, costs, potential alternatives and impacts on children's health during the public comment period. As of the date of this report, the proposed Glider Repeal Rule is listed on the EPA's Fall 2019 Regulatory Agenda as "economically significant."

Recommendations and Planned Agency Corrective Actions

We recommend that the agency identify for the public the substantive change to the proposed rule made at the suggestion or recommendation of OIRA, conduct the required analyses prior to finalizing the repeal, provide the public a means to comment on the analyses supporting the rulemaking, and document the decisions made. The agency provided sufficient planned corrective actions for two recommendations, while one recommendation remains unresolved.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
INSPECTOR GENERAL

December 5, 2019

MEMORANDUM

SUBJECT: EPA Failed to Develop Required Cost and Benefit Analyses and to Assess Air Quality Impacts on Children's Health for Proposed Glider Repeal Rule Allowing Used Engines in Heavy-Duty Trucks
Report No. 20-P-0047

FROM: Charles J. Sheehan, Acting Inspector General

A handwritten signature in blue ink that reads "Charles J. Sheehan".

TO: Anne Idsal, Principal Deputy Assistant Administrator
Office of Air and Radiation

Brittany Bolen, Associate Administrator for Policy

This is a report on the subject audit conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). The project number for this audit was OA&E-FY19-0053. This report contains findings that describe the problems the OIG has identified and corrective actions that OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determination on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

The Office of Air and Radiation has primary responsibility for the subjects covered in this audit.

In accordance with EPA Manual 2750, acceptable corrective actions and milestone dates were provided in response to Recommendations 1 and 2 in this report. These recommendations are considered resolved and no final response is required. However, if you submit a response, it will be posted on the OIG's website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal along with corresponding justification.

Action Required

One recommendation in this report—Recommendation 3—is unresolved. In accordance with EPA Manual 2750, the resolution process begins immediately with the issuance of this report. We are requesting a meeting within 30 days between the Principal Deputy Assistant Administrator for Air and Radiation and the OIG's Assistant Inspector General for Audit and Evaluation. If resolution is still not reached, the Office of Air and Radiation is required to complete and submit a dispute resolution request to the Chief Financial Officer.

We will post this report to our website at www.epa.gov/oig.

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Chapter 1

Introduction

Purpose

The U.S Environmental Protection Agency’s (EPA’s) Office of Inspector General (OIG) received a congressional request on October 31, 2018, that raised concerns about the EPA’s handling of the Notice of Proposed Rulemaking (NPRM), “Repeal of Emission Requirements for Glider Vehicles, Glider Engines, and Glider Kits.” In response to this request, the OIG conducted an audit to determine whether the EPA acted in compliance with Executive Order (EO) 12866, *Regulatory Planning and Review*, and EO 13045, *Protection of Children from Environmental Health Risks and Safety Risks*, in developing the proposed rulemaking.

Background

In a “[Frequently Asked Questions](#)” document on heavy-duty glider vehicles and kits, issued in July 2015, the EPA provides the following definitions:

What are heavy-duty “glider vehicles” and “glider kits”?

The term “glider kit” is used in the heavy-duty vehicle industry to describe a chassis and cab assembly that is generally produced by a vehicle manufacturer without a new engine, transmission, or rear axle. A third party then typically installs a used engine, transmission, and/or rear axle to complete assembly of the vehicle. The terms “glider vehicle” or “glider” are typically used for the completed vehicles. Historically, gliders have been used as a means to salvage valuable components, such as used engines, transmissions, and axles, from vehicles that were badly damaged in collisions.

On October 25, 2016, the EPA finalized the “Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2,” hereafter referred to as the Phase 2 final rule. Under this rulemaking, the EPA required a number of changes and clarifications for standards regarding “glider vehicles,” “glider engines” and “glider kits.”¹ The Phase 2 final rule contains greenhouse gas emissions and criteria air pollution emission standards (such as for nitrogen oxides [NOx] and particulate matter [PM]) for engines used

¹ This report uses the term “gliders” to also refer to glider engines (remanufactured or refurbished engines), glider kits (new cab and chassis used to construct a glider vehicle), and glider vehicles (new cab and chassis and remanufactured or refurbished engine).

in glider vehicles. The rule also sets emissions limits for glider vehicles similar to those for new trucks.

Under the Phase 2 final rule, the EPA estimated that NO_x and PM emissions of any glider vehicles using pre-2007 engines could be at least 10 times higher than emissions from equivalent vehicles being produced with new engines. Additionally, emissions of NO_x and PM from glider vehicles using pre-2002 engines (prior to exhaust aftertreatment requirements) could be 20 to 40 times higher than current engines.

Numerous scientific studies have linked PM and NO_x to a variety of health problems. For example, the effects of PM can result in emergency department visits, hospitalizations and, in some cases, premature death. Nitrogen oxides react with volatile organic compounds to form ozone and react with ammonia and other compounds to form particle pollution resulting in associated public health and environmental effects.

Source: EPA, Our Nation's Air (2019)

The EPA indicated that, since 2004, production of glider vehicles increased by an order of magnitude from a few hundred to thousands per year. While glider vehicle production was not reported to the EPA prior to the Phase 2 final rule, the EPA estimated that production was close to 10,000 each year.²

The Phase 2 final rule included a transitional program for gliders, in addition to a long-term program that allows the reuse of relatively new engines. For the transitional program, which allows the use of older engines, the rule stated that, for calendar year 2017, each manufacturer's combined production of glider kits and glider vehicles with pre-2010 engines was capped at the manufacturer's highest annual production of glider kits and vehicles for any year from 2010 to 2014. Any glider kits or glider vehicles produced beyond this allowance were subject to all requirements applicable to new engines and vehicles for model year 2017. Effective January 1, 2018, the permissible number of glider vehicles that could be produced without meeting the Phase 2 long-term program was limited as follows:

Small businesses may produce a limited number of glider vehicles without meeting either the engine or vehicle standards of the long-term program. Larger vehicle manufacturers may provide glider kits to these small businesses without the assembled vehicle meeting the applicable vehicle standards. This number is limited to the small vehicle manufacturer's highest annual production volume in 2010 through 2014 or 300, whichever is less.

The 2018 allowances mostly will continue after 2020, but—effective January 1, 2021—all glider vehicles will be required to meet the Phase 2 greenhouse gas vehicle standards.

² EPA Office of Transportation and Air Quality and U.S. Department of Transportation. August 2016. Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2 Response to Comments for Joint Rulemaking. EPA-420-R-16-901.

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 NOx and PM emissions would decrease dramatically and lead to substantial public health benefits. As Figure 1 shows, the EPA estimated that the annual monetized health impacts (such as reduced premature mortality, respiratory illnesses and infant mortality) of the glider requirements were between \$6 billion and \$14 billion per year (2013 dollars).³

Figure 1: EPA’s estimated annual monetized health impacts of the Phase 2 final rule glider requirements



Source: OIG image.

Petition from Industry to Reconsider Glider Provisions

On May 8, 2017, then EPA Administrator Scott 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 10, 2017, three members of the glider industry petitioned the EPA to reconsider the application of the Phase 2 final rule to glider kits, glider vehicles and rebuilt engines installed in gliders.⁴ According to the petitioners, Section 202(a) of the Clean Air Act does not authorize the EPA to regulate gliders as new motor vehicles; the EPA’s prior decision to regulate gliders was based on unsupported assumptions, rather than data; and reconsideration was warranted under EO 13783.⁵ The petition requested that the EPA complete its reconsideration as soon as possible given the impending January 1, 2018, compliance date, which, according to the petition, would effectively eliminate the industry.

Pruitt responded to the petition on August 17, 2017, stating that the EPA had decided to revisit the provisions of the Phase 2 final rule that related to gliders. The response also stated that the EPA intended “to develop and issue a Federal Register notice of proposed rulemaking on this matter, consistent with the requirements of the Clean Air Act.”

³ *Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2*, [81 Fed. Reg. 73478](#), 73943 (Oct. 25, 2016).

⁴ The EPA was petitioned jointly in a [petition for reconsideration](#) by three glider assemblers: Fitzgerald Glider Kits, Harrison Truck Centers and Indiana Phoenix.

⁵ EO 13783 (March 31, 2017), *Promoting Energy Independence and Economic Growth*, directed federal agencies to immediately review actions that may burden the development or use of domestically produced energy resources.

From August 2017 through October 2017, EPA staff, managers and other EPA officials discussed multiple regulatory options to address the concerns raised in the petition. Pruitt decided to issue an NPRM to repeal the glider portions of the Phase 2 rule. On November 9, 2017, the NPRM (proposed Glider Repeal Rule) was signed by Pruitt, and the proposed rule was released for public comment on November 16, 2017. As of the date of this report, a final rule has not been issued.

Pertinent dates and actions referenced in this report are included in a timeline in Appendix A.

EPA's Action Development Process

Developing environmental regulations is one of the EPA's principal responsibilities. The agency prepares and issues regulatory actions that define the technical and operational details of environmental programs to implement environmental laws. The agency developed the *EPA's Action Development Process: Guidance for EPA Staff on Developing Quality Actions*⁶ to "ensure that agency actions are of consistently high quality, involve senior managers early in the development process, are supported with strong analysis and are developed via an open process." The EPA's Action Development Process (ADP) is intended to make certain that scientific, economic and policy issues are adequately addressed at the appropriate stages in action development. The ADP facilitates compliance with pertinent statutes and EOs, including EOs 12866 and 13045.

The ADP has multiple stages, from "tiering" the action through developing the final action. Tiering determines the complexity of the process used to develop an action based on the need for cross-agency input, controversy or visibility, as well as the need for involvement by top-level managers. Tier 1 and 2 actions have a larger scope, cost, level of impact or level of public interest than other tiers.

For Tier 1 actions, the Administrator or Deputy Administrator is the lead decision-maker, while for Tier 2 actions the lead Assistant Administrator is the lead decision-maker. As part of the tiering process, the lead office charters a workgroup that comprises appropriate staff who are involved in the primary day-to-day activity of the rulemaking.

The ADP is not intended to be a rigid process and, when needed, may be adjusted to address timing and sequencing concerns with the addition or deletion of milestones. While the ADP allows flexibility, exercising this flexibility needs to be approved, documented and explained in the ADP tracking system.

⁶ The OIG reviewed both the September 2015 and March 2018 versions of this document.

Requirements of EOs 12866 and 13045

EOs are issued by Presidents. EO 12866⁷ directs that “significant regulatory actions” be submitted to the Office of Management and Budget’s (OMB’s) Office of Information and Regulatory Affairs (OIRA) for review. According to EO 12866, a regulatory action⁸ is deemed “significant” if it is likely to result in a rule that meets any of the four conditions cited in Table 1.

Table 1: Definition of “significant” regulatory actions

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
(4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive order.

Source: EO 12866, Section 3(f).

An action is deemed “economically significant” if the first of the four conditions is met (see blue highlight in Table 1). EO 13045⁹ applies to regulatory actions that are determined to be “economically significant” under EO 12866 and that “concern an environmental health or safety risk that an agency has reason to believe may disproportionately affect children.”

Table 2 describes the analyses requirements of EOs 12866 and 13045 for “significant” and “economically significant” regulatory actions.

⁷ EO 12866, *Regulatory Planning and Review* (September 30, 1993).

⁸ EO 12866, Section 3(e), defines a “regulatory action” as “any substantive action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking.”

⁹ EO 13045, *Protection of Children from Environmental Health Risks and Safety Risks* (April 23, 1997), amended by EO 13229 (2001) and EO 13296 (2003).

Table 2: EOs 12866 and 13045 analyses requirements

If action is identified by EPA as or is determined by OIRA to be:	EO 12866 analysis requirements	EO 13045 analysis requirements
Significant under EO 12866	<ul style="list-style-type: none"> Assessment of the potential costs and benefits of the action. 	<ul style="list-style-type: none"> Not applicable.
Economically Significant under EO 12866	<ul style="list-style-type: none"> Assessment of the benefits anticipated from the action. Assessment of the costs anticipated from the action. Assessment of costs and benefits of potentially effective and reasonably feasible alternatives to the planned action, and an explanation why the planned action is preferable to the identified potential alternatives. 	<ul style="list-style-type: none"> Evaluation of the environmental health or safety effects of the planned regulation on children. Explanation of why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

Source: OIG analysis.

OIRA and the EPA share the responsibility to determine whether a regulatory action is “significant” or “economically significant.”¹⁰ As such, either entity can designate an action as significant or economically significant.

EO 12866 requires that the EPA provide OIRA the opportunity to review all “significant” and “economically significant” regulatory actions prior to issuance.¹¹ Unless it opts to waive review, OIRA reviews “significant” and “economically significant” regulatory actions to “provide meaningful guidance and oversight so that each agency’s regulatory actions are consistent with applicable law, the President’s priorities, and the principles set forth in [EO 12866] and do not conflict with the policies or actions of another agency.”¹² According to EO 12866, any substantive changes made to the regulatory action at the suggestion or recommendation of OIRA must be identified for the public.

¹⁰ Section 6(a)(3)(B) of EO 12866 requires that “for each *matter identified [by the issuing agency] as, or determined by the Administrator of OIRA to be*, a significant regulatory action, the issuing agency shall provide to OIRA” certain information (emphasis added). Similarly, section 6(a)(3)(C) of EO 12866 requires that, “for those *matters identified [by the issuing agency] as, or determined by the Administrator of OIRA to be*, [an economically significant regulatory action], the agency shall also provide to OIRA” certain information (emphasis added).

¹¹ EO 12866, Section 6(a)(3).

¹² EO 12866, Section 6(b).

Federal Records Act and EPA's Record-Keeping Requirements

According to the Federal Records Act, every federal agency is required to:

make and preserve records containing adequate and proper documentation of the organization, function, policies, decisions, procedures and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities.¹³

For purposes of the Federal Records Act, "record" means:

all recorded information, regardless of form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of data in them.¹⁴

Pursuant to the EPA's *Interim Records Management Policy*, "these records are public property and must be managed according to applicable laws and regulations." Further, to comply with National Archives and Records Administration record-keeping regulations,¹⁵ the *Interim Records Management Policy* requires that EPA personnel create and maintain records that "[d]ocument the formulation and execution of basic policies and decisions and the taking of necessary actions, including all substantive decisions and commitments reached orally (person-to-person, by telecommunications, or in conference) or electronically."¹⁶

Additionally, in an August 2018 memorandum addressed to EPA staff, Administrator Andrew Wheeler outlined the importance of public participation and transparency in EPA operations. The memorandum stated, "Much of EPA's business is conducted through rulemaking. EPA employees must ensure that the basis for the agency's decision appears in the public record."

¹³ 44 U.S.C. § 3101.

¹⁴ 44 U.S.C. § 3301(a).

¹⁵ 36 CFR § 1222.22.

¹⁶ The EPA's *Interim Records Management Policy*, [CIO 2155.4](#) (August 22, 2018), superseded its *Records Management Policy*,¹⁶ [CIO 2155.3](#) (February 10, 2015), which was in place during the actions reviewed in this report. Although the *Records Management Policy* did not contain text specifically referencing documentation of decisions and commitments reached orally, it required that EPA personnel "create, receive and maintain records providing adequate and proper documentation and evidence of EPA's activities." Regardless, the *Interim Records Management Policy* text cited implements National Archives and Records Administration regulations promulgated in 2009, long before the events at issue in this report. See 74 Fed. Reg. 51004 (October 2, 2009).

Responsible Offices

The EPA's Office of Air and Radiation was the program office responsible for developing the proposed Glider Repeal Rule. The EPA's Office of Policy, within the Office of the Administrator, manages the regulatory development process for the agency by providing support and guidance to the EPA's program offices as they develop regulations. The Office of Policy also serves as a liaison to the OMB and to other agencies involved in regulatory action development. The Office of Policy further has primary responsibility for the ADP and manages the interpretation and implementation of the main EOs and statutes that apply to the ADP.

Scope and Methodology

We performed our work from December 2018 through July 2019. We conducted this audit in accordance with generally accepted government auditing standards. Generally accepted government auditing 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 objective.

We encountered an impediment to obtaining all the desired information to complete our audit, as described below. We were still able to obtain enough information to answer our objective, although this impediment impacted our ability to definitively determine the rationale for the significance determination for the proposed rule. However, we believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

To answer our objective, we reviewed documents relevant to our review, including the NPRM, EOs 12866 and 13045, the EPA's ADP, the Phase 2 final rule, and the docket for the proposed Glider Repeal Rule. We also interviewed agency staff, managers and officials in the Office of Air and Radiation, Office of Policy, and Office of the Administrator involved in the proposed regulatory action.

Additionally, we obtained access to emails of former Administrator Pruitt and key officials involved in the proposed regulatory action. We reviewed those emails for information relevant to our objective. The OIG reviewed the retained emails in the accounts at the time of the search (March 2019), including sent and received emails, as well as deleted emails. Per the EPA's email management protocols, items in the deleted folder are permanently deleted after 90 days, and items in the junk folder are permanently deleted after 30 days. Any emails placed in the deleted folder more than 90 days before the OIG request or in the junk folder more than 30 days before the OIG request would have been permanently deleted and not available for review.

OMB Impeded OIG from Obtaining Information

The Inspector General Act of 1978 (IG Act), as amended,¹⁷ authorizes each Inspector General “to request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this Act from any Federal, State, or local governmental agency or unit thereof.”¹⁸ The IG Act further provides that, in response to such requests, “the head of any Federal agency involved shall, insofar as is practicable and not in contravention of any existing statutory restriction or regulation of the Federal agency from which the information is requested, furnish to such Inspector General . . . such information or assistance.”

Section 12(5) of the IG Act defines “Federal agency” by reference to 5 U.S.C. § 552(f), which states that “‘agency’ as defined in section 551(1) includes *the Executive Office of the President*” (emphasis added). Further, the IG Act provides that “[w]henver information or assistance requested under subsection . . . (a)(3) is, in the judgment of an Inspector General, unreasonably refused or not provided, the Inspector General shall report the circumstances to the head of the establishment involved without delay.”¹⁹

The OMB refused to provide the OIG with specific responses or documentation related to OIG questions regarding OIRA’s involvement in this rulemaking and the decisions made, stating that the information sought was “particularly sensitive.” In April 2019, the acting EPA Inspector General notified both the OMB Director and Congress that the OMB failed to respond to our request for information, which “constitutes a clear impediment to our audit” (Appendix B).

We reviewed EPA emails to obtain limited information pertaining to OIRA communications. If discussions between EPA officials and the OIRA were held telephonically or without written records, we were unable to access that information. Additionally, we did not speak with former Administrator Pruitt and two former EPA officials closely involved with this proposed regulatory action, as they had left the agency.

Other Report

In addition to this congressional request, the OIG received separate congressional requests pertaining to the EPA’s testing of gliders. The final report, *EPA’s 2017 Glider Vehicle Testing Complied with Standard Practices* ([Report No. 19-P-0252](#)), was issued on July 31, 2019.

¹⁷ 5 U.S.C. app.

¹⁸ IG Act § 6(a)(3).

¹⁹ IG Act § 6(c)(2).

Chapter 2

EPA Failed to Develop Required Cost and Benefit Analyses and to Assess Impacts to Children’s Health for the Proposed Glider Repeal Rule

The EPA did not comply with analyses requirements for EOs 12866 and 13045, nor did it follow its ADP in the development of the proposed Glider Repeal Rule. Although EPA officials were aware that available information indicated the proposed rulemaking was “economically significant” pursuant to EO 12866, EPA managers and officials said that then Administrator Pruitt directed that the Glider Repeal Rule be promulgated and that the Office of Air and Radiation not conduct any analyses required by EOs 12866 and 13045. 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 1, 2018. The absence of analyses resulted in the public not being informed—either during the public comment period or thereafter—of the proposed rule’s benefits, costs, potential alternatives and impacts on children’s health.

No Benefit, Cost, Alternatives or Children’s Health Analyses Completed for Proposed Glider Repeal Rule

Per EO 12866, any regulatory action having an annual effect on the economy of \$100 million or more is considered “economically significant.” In the Phase 2 final rule, the EPA estimated that the removal of all unrestricted glider vehicle emissions could yield between \$6 billion and \$14 billion in health benefits annually (in 2013 dollars). The proposed Glider Repeal Rule would eliminate the very Phase 2 regulation generating such substantial projected health benefits and economic impacts.

We found that the EPA did not conduct any of the analyses required of it by EO 12866 for either a “significant” or “economically significant” regulatory action, nor did the EPA include feasible alternatives in the proposed rule, as required by EO 12866. We also found that the EPA did not conduct analyses of the health or safety effects on children required by EO 13045 for an “economically significant” regulatory action.

Table 3 lists analyses requirements of EOs 12866 and 13045 and whether the EPA completed the requirements.

Table 3: EOs 12866 and 13045 analyses requirements completed for the proposed Glider Repeal Rule NPRM

If action is deemed to be:	EO 12866 requirements	Completed by EPA?	EO 13045 requirements	Completed by EPA?
Significant under EO 12866	Assessment of the potential costs and benefits	No	Not applicable	Not applicable
Economically Significant under EO 12866	Assessment of the benefits anticipated from the regulatory action	No	Evaluation of the environmental health or safety effects of the planned regulation on children	No
	Assessment of the costs anticipated from the regulatory action	No		
	Assessment of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, and an explanation why the planned action is preferable to the identified potential alternatives.	No	Explanation of why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency	No

Source: OIG analysis.

Not completing the analyses required by EO 12866 for a “significant” or “economically significant” rulemaking resulted in the public not knowing the costs and benefits of (such as the associated health risks with PM and NOx), and feasible alternatives to, the proposed rulemaking. Not completing the analysis required by EO 13045 resulted in the public not knowing the impacts of the proposed rule on children’s health. Because no alternatives were considered, as required by EOs 12866 and 13045, it is also unknown whether the proposed rule is preferable to potential alternative actions.

Day Before Signature, Rule Downgraded from Economically Significant to Significant

According to information reviewed by the OIG, EPA managers and officials believed that the proposed Glider Repeal Rule was an “economically significant” regulatory action per EO 12866. However, 1 day prior to receiving the former Administrator’s signature, the rule was downgraded from “economically significant” to “significant.” Table 4 details the timeline for the proposed Glider Repeal Rule.

Table 4: Timeline for Proposed Glider Repeal Rule

Date	Event
<p>August–September 2017</p>	<p>Managers and officials of the EPA Office of Air and Radiation’s Office of Transportation and Air Quality characterized the proposed repeal rule as “economically significant” in emails, as well as in briefings provided to EPA officials in the Office of Air and Radiation, Office of General Counsel, and Office of the Administrator on August 11, 2017, and September 22, 2017. The September 22 briefing also included time-frame estimates needed to complete analyses required for the economically significant regulatory action. The briefing projected that the EPA would complete its analyses and the OMB would begin its review in April 2018.</p>
<p>October 6, 2017</p>	<p>An EPA official conveyed to staff via email that:</p> <p style="padding-left: 40px;">they [Administrator Pruitt and Administrator Pruitt’s senior advisor for the Office of Air and Radiation] are now asking for and expecting a proposal to repeal the glider requirements next week. Based solely on a legal argument and no analysis. Apparently they [Administrator Pruitt and Administrator Pruitt’s senior advisor for the Office of Air and Radiation] have a commitment from OMB that they [OMB] will not require any analysis at all for this [proposed Glider Repeal Rule] action.</p> <p>However, based on the OIG’s review of EPA records, we found no such documented agreement between the EPA and OMB/OIRA, and EPA officials told us such an arrangement did not exist.</p>
<p>October 20, 2017</p>	<p>The proposed rule was listed as “economically significant” in the draft sent to OIRA for review on this date. However, the proposed rule did not include the required EO 12866 and 13045 analyses.</p>
<p>October 24, 2017</p>	<p>In OIRA’s comments back to the EPA, it asked the EPA to explain how the agency arrived at the “economically significant” designation under EO 12866 and requested that the agency include the required benefit and cost analyses to support the designation.</p>
<p>October 27, 2017</p>	<p>The Senior Counsel for the Office of Air and Radiation stated the following to other EPA officials in relation to responding to OIRA’s October 24 comments on the NPRM:</p> <p style="padding-left: 40px;">You should note that this draft does not address any of the “back end” issues raised by OMB and others during the interagency review, nor does it attempt to provide any of the cost/benefit type analysis that OMB and others were seeking. It is my understanding that such analysis (and data) does not exist; that such analysis will not be produced in the timeframe in which we are working; and that, in any event, if such analysis were ever to be produced, it would most likely not be as “supportive” of the proposal as OMB and others might like. (emphasis from original email)</p> <p>Thus, EPA officials were aware that the required EOs 12866 and 13045 analyses were not completed and that OIRA’s comments regarding the need for such analyses were not addressed.</p>
<p>November 2, 2017</p>	<p>The EPA provided a revised version of the proposed rule to OIRA. The EPA edited various sections of the proposed rule, though there was no change to the “economically significant” determination and the EPA still did not include any EO 12866 or 13045 analyses. The OIG did not find any analyses or justification for not addressing OIRA’s comments.</p>

Date	Event
November 8, 2017	<ul style="list-style-type: none"> • According to the emails from EPA staff, OIRA felt strongly that the EPA needed to provide the accompanying EO 12866 analysis because the EPA designated the proposed rule as “economically significant.” OIRA would “demand something substantive” [required EO analyses] if the proposed rule was not downgraded to “significant.” • Absent any analysis from the EPA, an OIRA staff member responsible for reviewing the rule conveyed to another EPA staff member a belief that the rule should be changed from “economically significant” to “significant.” We attempted to verify why OIRA requested this change but OIRA refused to provide the OIG further explanation.* • An EPA official in the Office of Policy approved the change from “economically significant” to “significant.” According to emails obtained, the Deputy Associate Administrator for the Office of Policy was “fine with” the change from “economically significant” to “significant” “given that the OMB was the one proposing” the change. • The EPA changed text in the proposed rule as the rule changed to “significant” under EO 12866. Rather than stating that this regulatory action was subject to EO 13045, the text was changed to: “This action is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866” (emphasis added). With these changes associated with EOs 12866 and 13045, OIRA and the EPA agreed to proceed with issuing the proposed rule as “significant.”
November 9, 2017	Administrator Pruitt signed the proposed rule.
November 16, 2017	The Proposed Glider Repeal Rule was posted in the Federal Register and released for public comment. The public comment period concluded on January 5, 2018.

Source: OIG analysis.

* On April 30, 2019, the OIG notified the EPA’s congressional committees of jurisdiction that the OMB had not responded to the OIG’s request. As of the date of this report, the OMB has not provided the requested information.

ADP Not Followed for Proposed Glider Repeal Rule

The EPA’s ADP is intended to serve as a comprehensive framework to govern the use of quality information to support EPA rulemakings, and to make certain that scientific, economic and policy issues are adequately addressed at the appropriate stages in action development. While the ADP allows flexibility, exercising this flexibility needs to be approved and documented, per the EPA’s ADP guidance.

The EPA did not follow its principal rulemaking guidance in developing the proposed Glider Repeal Rule and lacked documentation showing that the ADP deviations were approved. The proposed Glider Repeal Rule did not have an ADP workgroup and, based on documents we reviewed, it was not tiered until after the NPRM was sent to OIRA on October 20, 2017.²⁰ When requested by the OIG, an

²⁰ As described in Chapter 1, tiering determines the complexity of the process used to develop an action based on the need for cross-agency input, controversy or visibility, as well as the need for involvement by top-level managers.

EPA manager could not provide a date for when the rulemaking was designated as a Tier 1 action. However, the manager was able to tell us that the rule was down-tiered to Tier 2 on March 8, 2019. According to EPA managers and officials familiar with this rulemaking, this rulemaking did not follow the traditional rulemaking process.

Developing environmental regulations is one of the agency's principal responsibilities. Much of the EPA's environmental success and organizational credibility is directly linked to the quality of this work. The ADP is the EPA's primary guidance to "ensure that agency actions are of consistently high quality, involve senior managers early in the development process, are supported with strong analysis and are developed via an open process." By not following the ADP, the EPA failed to issue a proposed Glider Repeal Rule that was developed via an open process, was supported with high-quality analyses, and met the requirements of EOs 12866 and 13045.

Current Status of Proposed Glider Repeal Rule

As the public comment period for the proposed rule closed on January 5, 2018, and there is no public comment period for final rules, the public was not provided the opportunity to review and comment on the benefits, costs and alternatives associated with the proposed Glider Repeal Rule or the potential impacts the rule could have on children's health. (See Table 3 for the EO analyses requirements and status of the agency's fulfillment of these requirements.)

Based on information reviewed by the OIG, the EPA developed a draft final rule dated April 18, 2018, and returned at that point to designating the rule as "economically significant," despite having downgraded the proposed rule to "significant" the day before signature of the proposed rule on November 9, 2017. This draft final rule did not include any analyses required by EOs 12866 and 13045. We found no evidence that the draft final rule was formally submitted to OIRA. However, on April 23, 2018, OIRA conveyed to the EPA that OIRA would require analysis under EO 12866 for the final rule. We sought clarification from OIRA on why it waited until after the proposed rule was issued to require the benefit and cost analyses, but OIRA refused to provide information to the OIG.

As of the date of this report, the proposed Glider Repeal Rule is listed on the EPA's Fall 2019 Regulatory Agenda²¹ as an "economically significant" long-term action. A long-term action is one that is under development and upon which the EPA does not expect to act within 12 months of publication of the Regulatory Agenda. The EPA also changed the name of the rule to "Revision to Emission Requirements for Glider Vehicles, Glider Engines, and Glider Kits."

²¹ The Fall 2019 Regulatory Agenda is the latest version as of the date of this report.

EPA's Rationale for Not Completing Required Analyses

The EPA is responsible for developing regulations and assuring that the regulations are consistent with applicable law, the President's priorities and the principles set forth in EO 12866.²² According to EPA managers and officials, as the Phase 2 compliance deadline of January 1, 2018, was approaching, then Administrator Pruitt directed that the Glider Repeal Rule be promulgated as quickly as possible without conducting the analyses required by EOs 12866 and 13045. EPA officials in the Office of Air and Radiation, the Office of General Counsel, and the Office of Policy were aware that available information indicated that the proposed rulemaking was "economically significant" and thus subject to the requirements of EOs 12866 and 13045. An Office of General Counsel manager told the OIG that, for the proposed Glider Repeal Rule, the Office of General Counsel deferred to the Office of Policy and the OMB regarding the significance determination and whether the analyses were required by the EOs.

According to one EPA official, Administrator Pruitt requested that all rulemakings be completed as quickly as possible. EPA officials also told us that, during this time, processes such as this rulemaking were being done "fast and loose," and the atmosphere was described as the "wild west." Officials described this rulemaking as abnormal and unusual due to the lack of program office involvement in deciding to develop the rule.

EPA Failed to Meet Federal Records Act Requirements

The EPA failed to satisfy record-keeping requirements pertaining to the substantive decision to change the NPRM's designation from "economically significant" to "significant." The Federal Records Act requires that the agency "make and preserve records containing adequate and proper documentation of the ... decisions ... and essential transactions of the agency."²³ Pursuant to regulations issued by the National Archives and Records Administration,²⁴ the EPA in its *Interim Records Management Policy* states:

EPA must properly and adequately document Agency business in accordance with NARA [National Archives and Records Administration] regulations. To meet these obligations, EPA employees and non-employees who manage records must create and maintain records that: . . . Document the formulation and execution of basic policies and decisions and the taking of necessary actions, including all substantive decisions and

²² EO 12866 Section 2(a).

²³ 44 U.S.C. § 3101.

²⁴ "To meet their obligation for adequate and proper documentation, agencies must prescribe the creation and maintenance of records that: . . . (e) Document the formulation and execution of basic policies and decisions and the taking of necessary actions, including all substantive decisions and commitments reached orally (person-to-person, by telecommunications, or in conference) or electronically." 36 CFR § 1222.22.

commitments reached orally (person-to-person, by telecommunications, or in conference) or electronically.

Although the EPA generated records capturing fragments of discussions precipitating the oral decision to designate the NPRM as “significant” rather than “economically significant,” as well as of discussions implementing the decision once it was apparently made, the agency did not make or preserve adequate records of the formulation and execution of the decision. Inherent to the formulation of a decision are supporting information and supporting rationale. The agency failed to make and preserve adequate records of either, leaving entirely unexplained the NPRM’s change in designated significance 1 day prior to signature by the EPA Administrator. Additionally, the agency failed to “[i]dentify for the public those changes in the regulatory action that were made at the suggestion or recommendation of OIRA,” as required by EO 12866. As the EPA observes in its *Interim Records Management Policy*, “The accuracy and consistency of how records are identified, captured, stored and retrieved provide the cornerstone to the effective functioning and transparent operation of the Agency.”

Conclusion

The EPA did not comply with analyses requirements in EOs 12866 and 13045, nor did the EPA follow its ADP for the proposed Glider Repeal Rule or meet Federal Records Act requirements. Such actions call into question the quality of EPA rulemaking processes and leave the public and stakeholders without the information necessary to make informed comments on EPA regulatory actions. Should the EPA finalize the glider repeal rulemaking, the EPA needs to conduct the required analyses prior to issuance of the final rule and provide the public a means to comment on the analyses supporting the rulemaking. As rulemaking is one of the EPA’s principal responsibilities, the EPA must ensure that the basis for the agency’s substantive rulemaking decisions appears in the public record.

Recommendations

We recommend that the Assistant Administrator for Air and Radiation, in consultation with the Associate Administrator for Policy:

1. For the proposed Glider Repeal Rule, per Executive Order 12866, identify for the public (e.g., via the public docket) the substantive change of economic significance between the draft submitted to the Office of Information and Regulatory Affairs for review and the action subsequently announced, and identify whether that change was made at the suggestion or recommendation of the Office of Information and Regulatory Affairs.
2. Should the EPA finalize the glider repeal rulemaking, prior to issuance of the final rule, conduct the required analyses to comply with Executive Orders 12866 and 13045; include all analyses in the public docket;

identify for the public any substantive changes between the draft submitted to the Office of Information and Regulatory Affairs for review and the action subsequently announced, and any changes made at the suggestion or recommendation of the Office of Information and Regulatory Affairs; and provide the public a means to comment on the analyses supporting the rulemaking.

3. Document the decisions made during the glider repeal rulemaking process, including substantive decisions reached orally, to comply with applicable record-keeping and docketing requirements, including those found in the Federal Records Act, the EPA's Interim Records Management Policy, and the EPA's Action Development Process guidance.

Agency Response and OIG Evaluation

The acting Assistant Administrator for Air and Radiation provided a response to this draft report on August 21, 2019 (Appendix C). This initial response did not provide sufficient corrective actions or corrective action milestones. On October 3, 2019, we met with the EPA and informed the agency of the shortcomings of the response. On October 16, 2019, the agency provided a revised response that adequately addressed Recommendations 1 and 2 (Appendix D). The OIG clarified Recommendation 1 to specify that the information sought was which agency (EPA or OMB) requested the change to the economic significance determination. For Recommendation 1, the agency has identified the substantive change of economic significance in the public docket and the OIG accepts the agency's corrective action to provide information regarding whether that change was made at the suggestion or recommendation of OIRA in the public docket. For Recommendation 2, the OIG accepts the agency's corrective action to follow EOs 12866 and 13045, if the agency decides to finalize the Glider Repeal rulemaking. Recommendations 1 and 2 are therefore resolved with corrective actions pending.

With regard to Recommendation 3, the EPA provided the relevant documentation pertaining to the Glider Repeal Rule but did not provide a corrective action plan that addressed how this documentation complies with applicable record-keeping and docketing requirements. Recommendation 3 is unresolved.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS

Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Potential Monetary Benefits (in \$000s)
1	16	In consultation with the Associate Administrator for Policy, for the proposed Glider Repeal Rule, per Executive Order 12866, identify for the public (e.g., via the public docket) the substantive change of economic significance between the draft submitted to the Office of Information and Regulatory Affairs for review and the action subsequently announced, and identify whether that change was made at the suggestion or recommendation of the Office of Information and Regulatory Affairs.	R	Assistant Administrator for Air and Radiation	12/31/19	
2	16	In consultation with the Associate Administrator for Policy, should the EPA finalize the glider repeal rulemaking, prior to issuance of the final rule, conduct the required analyses to comply with Executive Orders 12866 and 13045; include all analyses in the public docket; identify for the public any substantive changes between the draft submitted to the Office of Information and Regulatory Affairs for review and the action subsequently announced, and any changes made at the suggestion or recommendation of the Office of Information and Regulatory Affairs; and provide the public a means to comment on the analyses supporting the rulemaking.	R	Assistant Administrator for Air and Radiation	6/30/20	
3	17	In consultation with the Associate Administrator for Policy, document the decisions made during the glider repeal rulemaking process, including substantive decisions reached orally, to comply with applicable record-keeping and docketing requirements, including those found in the Federal Records Act, the EPA's Interim Records Management Policy, and the EPA's Action Development Process guidance.	U	Assistant Administrator for Air and Radiation	12/31/19	

¹ C = Corrective action completed.

R = Recommendation resolved with corrective action pending.

U = Recommendation unresolved with resolution efforts in progress.

Comprehensive Timeline of Significant Dates for Proposed Glider Repeal Rule

Date	Event
October 25, 2016	The EPA finalized the “Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2.”
May 8, 2017	Administrator Pruitt met with representatives of a major glider assembler.
July 10, 2017	Members of the glider industry petitioned the EPA to reconsider applying the Phase 2 final rule to glider kits, glider vehicles and rebuilt engines installed in gliders.
August 11, 2017	Managers and officials in the Office of Transportation and Air Quality briefed other EPA officials on gliders, stating a proposed rulemaking would be economically significant.
August 17, 2017	Administrator Pruitt responded to the glider industry petition, saying that the EPA had decided to revisit the provisions of the Phase 2 final rule that related to gliders. The response also stated that the EPA intended to develop and issue a Federal Register NPRM on this matter, consistent with requirements of the Clean Air Act.
September 22, 2017	Managers and officials in the Office of Transportation and Air Quality briefed other EPA officials on gliders. The briefing included the time-frame estimates needed to complete analyses required for economically significant regulatory actions.
October 6, 2017	<p>An EPA official conveyed to staff via email that:</p> <p style="padding-left: 40px;">they [Administrator Pruitt and Administrator Pruitt’s senior advisor for the Office of Air and Radiation] are now asking for and expecting a proposal to repeal the glider requirements next week. Based solely on a legal argument and no analysis. Apparently they [Administrator Pruitt and Administrator Pruitt’s senior advisor for the Office of Air and Radiation] have a commitment from OMB that they [OMB] will not require any analysis at all for this [proposed Glider Repeal Rule] action.</p> <p>However, based on the OIG’s review of EPA records, we found no such documented agreement between the EPA and OMB/OIRA, and EPA officials told us such an arrangement did not exist.</p>
October 20, 2017	The EPA sent the draft NPRM to OIRA listed as “economically significant.”
October 24, 2017	OIRA provided comments back to the EPA on the draft NPRM. In the comments, OIRA asked the EPA to explain how the agency arrived at its designation of “economically significant.” OIRA requested that the agency include benefit and cost analyses to support the suggested designation.
October 27, 2017	<p>The Senior Counsel for the Office of Air and Radiation stated the following to other EPA officials in relation to responding to OIRA’s October 24 comments on the NPRM:</p> <p style="padding-left: 40px;">You should note that this draft does not address any of the “back end” issues raised by OMB and others during the interagency review, nor does it attempt to provide any of the cost/benefit type analysis that OMB and others were seeking. It is my understanding that such analysis (and data) does not exist; that such analysis will not be produced in the timeframe in which we are working; and that, in any event, if such analysis <i>were</i> ever to be produced, it would most likely not be as “supportive” of the proposal as OMB and others might like.</p> <p style="padding-left: 40px;">(emphasis from original email)</p>

Date	Event
	Thus, EPA officials were aware that the required EO 12866 and 13045 analyses were not completed and that OIRA's comments regarding the need for such analyses were not addressed.
November 2, 2017	The EPA sent a revised version of the draft NPRM back to OIRA listed as "economically significant."
November 6, 2017	Teleconference held between EPA and OMB staff.
November 7, 2017	Teleconference held between EPA and OMB staff.
November 8, 2017	OIRA told an EPA staff member that it believed the rule should be changed from "economically significant" to simply "significant." In an email reviewed, an EPA staff member indicated that OIRA felt strongly that the EPA needed to have an accompanying analysis to support that the action was "economically significant" and OIRA would demand something substantive if it were not changed. An EPA official in the Office of Policy approved this change, given that OIRA was proposing the change from "economically significant" to "significant." OIRA approved the NPRM. The NPRM was listed as "significant."
November 9, 2017	The NPRM was signed by Administrator Pruitt.
November 16, 2017	The NPRM was posted in the Federal Register and released for public comment.
November 20, 2017	The Office of Transportation and Air Quality issued the EPA's National Vehicle and Fuel Emissions Laboratory document on "Chassis Dynamometer Testing of Two Recent Model Year Heavy-Duty On-Highway Diesel Glider Vehicles." This document found that glider vehicles emit many times the level of pollutants over the standards for new heavy-duty engines. According to the Office of Transportation and Air Quality, the emissions from the glider vehicles tested are consistent with those estimated by the model used to support the Phase 2 final rule regulating glider vehicles.
January 5, 2018	The NPRM public comment period closed.
April 18, 2018	The EPA developed a draft final rule dated April 18, 2018 and returned to designating the rule as "economically significant" despite having downgraded the proposed rule to "significant" the day before signature on November 9, 2017. This draft final rule did not include any analyses required by EOs 12866 and 13045. We found no evidence that the draft final rule was formally submitted to OIRA.
April 23, 2018	OIRA conveyed to the EPA that OIRA would require analyses for the final rule.
December 2019	The Glider Repeal rule is listed on the EPA's Fall 2019 Regulatory Agenda as an "economically significant" long-term action.

Source: OIG analysis.

April 2019 Letter to OMB Requesting Information



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
INSPECTOR GENERAL

APR 25 2019

The Honorable Mick Mulvaney
Director
Office of Management and Budget
725 17th Street, NW
Washington, D.C. 20503

RE: Request for Information Regarding the Glider Repeal Proposed Rule

Dear Director Mulvaney:

The U.S. Environmental Protection Agency (EPA) Office of Inspector General (OIG) is currently conducting an audit¹ in response to a congressional request to review activities related to the development of the proposed EPA rule titled “Repeal of Emission Requirements for Glider Vehicles, Glider Engines, and Glider Kits” (Glider Repeal Proposed Rule).² Starting in early December 2018, my office began requesting specific information from the Office of Management and Budget’s (OMB’s) Office of Information and Regulatory Affairs (OIRA) regarding its role in the development of the Glider Repeal Proposed Rule. With this letter, I bring to your attention that, to date, the OMB has not responded to our request for certain information—specifically, four questions put to the OMB on March 7, 2019.

I do not accept today’s response from OMB that, while “very supportive of EPA OIG’s work,” it declines to support our work due to the supposed deliberative character of the sought information. If full and complete answers to these questions are not received by April 29, 2019, I intend to notify Congress immediately thereafter.

The Inspector General Act of 1978, as amended (IG Act),³ authorizes each Inspector General “to request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this Act from any Federal, State, or local governmental agency or unit thereof.”⁴ The IG Act further provides that, in response to such requests, “the head of any Federal agency involved shall, insofar as is practicable and not in contravention of any existing statutory restriction or regulation of the Federal agency from which the information is requested, furnish to such Inspector General . . . such information or assistance.”⁵ Further, it provides that “[w]henver information or assistance requested

¹ See the [Project Notification](#) for Project No. OA&E-FY19-0053.

² 82 Fed. Reg. 53442 (Nov. 16, 2017).

³ 5 U.S.C. app.

⁴ IG Act § 6(a)(3).

⁵ IG Act § 6(c)(1). Please note that section 12(5) of the IG Act defines “Federal agency” by reference to 5 U.S.C. § 552(f), which states that “‘agency’ as defined in section 551(1) of this title includes any executive department, military department,

under subsection ... (a)(3) is, in the judgment of the requesting Inspector General, unreasonably refused or not provided, the Inspector General shall report the circumstances to the head of the establishment involved without delay.”⁶

As part of this audit, the EPA OIG seeks to understand what decisions and directives may have precipitated the possible modification of certain text pertaining to the Proposed Rule’s significance determination. Since significance determinations involve not only EPA personnel but OIRA personnel, it was “necessary” under the IG Act for the EPA OIG to gather information from OIRA as well as EPA personnel.⁷ The following timeline shows when and how we corresponded with OIRA personnel regarding this matter:

- December 10, 2018 – The OIG first contacted OMB personnel via email to arrange a meeting to discuss information related to the subject audit.
- December 12, 2018 – The OMB’s Assistant General Counsel responded via email stating it is OMB protocol to manage requests for information through the OMB’s Office of General Counsel, and requested that the EPA OIG send its request for information in the form of written questions.
- December 14, 2018 – The EPA OIG provided a set of six questions to the OMB Assistant General Counsel via email.
- December 18, 2018 – The EPA OIG project manager spoke with the OMB Assistant General Counsel via telephone. The OMB Assistant General Counsel stated he was working with the subject matter expert to provide written responses by December 21, 2018.
- January 28, 2019⁸ – Having not received a response, the EPA OIG sent a second email to the OMB Assistant General Counsel. The OMB Assistant General Counsel informed the EPA OIG that their staff had just returned from the furlough and they would put this matter at the “top of our queue.” The OMB Assistant General Counsel did not provide an estimated timeframe and told the EPA OIG to follow up in a week.
- February 5, 2019 – The EPA OIG sent a third email to the OMB Assistant General Counsel. The OMB Assistant General Counsel did not reply.
- February 11, 2019 – Having received no response or communication, the EPA OIG sent a fourth email to the OMB Assistant General Counsel. The OMB Assistant General Counsel said he would “touch base with the subject matter expert” but did not provide an estimated timeframe when the EPA OIG could expect a response.
- February 28, 2019 – The OMB Assistant General Counsel directed the OIG team to the record for a Senate hearing titled “Reviewing the Office of Information and Regulatory Affairs.”⁹ The OIG team reviewed the responses to the Questions for the Record and identified OIG questions that still remained unanswered.

Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (*including the Executive Office of the President*), or any independent regulatory agency.” (Italics added for emphasis.)

⁶ IG Act § 6(c)(2).

⁷ IG Act § 6(a)(3).

⁸ A partial federal government shutdown occurred from December 22, 2018, until January 25, 2019.

⁹ [Reviewing the Office of Information and Regulatory Affairs](#), Committee on Homeland Security and Governmental Affairs United States Senate, Subcommittee on Regulatory Affairs and Federal Management (Apr. 12, 2018). The record included

- March 7, 2019 – The EPA OIG provided a narrowed set of four questions (attached) to the OMB Assistant General Counsel, requesting a response by March 28, 2019.

As of today, the OMB has not answered any of our four revised questions. Such protracted delay constitutes a clear impediment to our audit. It undermines our ability to fully answer the congressional request that led to our audit. Accordingly, and as required by the IG Act in the event of information being requested by an Inspector General and being unreasonably refused or not provided, “the Inspector General shall report the circumstances to the head of the establishment involved without delay.”¹⁰ Please consider this letter my report to you of such circumstances.

Abiding also by IG Act direction to keep Congress “fully and currently informed,”¹¹ if the OMB fails to fully and completely answer our March 7, 2019, questions by April 29, 2019, I intend to report this failure to Congress immediately thereafter.

If you or your staff would like to discuss this matter further, please contact Eric Hanger, Acting Counsel to the Inspector General, at hanger.eric@epa.gov.

Sincerely,



Charles J. Sheehan
Acting Inspector General

cc: Paul Ray, Acting Administrator, OIRA, OMB

Attachment

Questions for the Record with answers from then-OIRA Administrator Neomi Rao related to the Glider Repeal Proposed Rule.

¹⁰ IG Act § 6(c)(2).

¹¹ IG Act § 4(a)(5).

Attachment: Questions Sent to OMB Assistant General Counsel on March 7, 2019

The following questions pertain to RIN 2060-AT79, "Repeal of Emission Requirements for Glider Vehicles, Glider Engines, and Glider Kits."

- 1.) In late October 2017, OIRA provided passback comments asking the EPA to explain how it arrived at the "economically significant" designation under EO 12866. OIRA also requested the EPA to include additional benefit/cost analysis in the proposed rule to support the suggested significance determination. Up until the day prior to signature by the EPA Administrator, the text of the proposed action contained a determination that the action was "economically significant."
 - a. What information did the EPA provide to OIRA to address OIRA's comment requesting additional benefit/cost analysis to support the suggested significance determination?
 - b. What information did OIRA use to make the determination that this proposed rule was significant rather than economically significant?
- 2.) The Notice of Proposed Rulemaking (NPRM) was approved and determined to be "Significant" by OIRA.
 - a. What specific information did OIRA rely on to conclude that the requirements of EO 12866 Section 6(a)(3)(B)(i) and (ii) were met, particularly the costs and benefits requirements of Section 6(a)(3)(B)(ii)?
- 3.) For the Proposed Rule¹² stage, this action was listed as "Other Significant." For the Final Rule stage, it is listed as "Economically Significant" (Spring 2018¹³; Fall 2018¹⁴).
 - a. When and why was this change in significant determination made?
 - b. Was additional information presented in the public comments or elsewhere that led to this significant determination change? If so, please explain.
- 4.) On April 23, 2018, the EPA was told by OIRA that it would not review the draft final rule without a Regulatory Impact Analysis.
 - a. Why was a Regulatory Impact Analysis determined necessary for the final rule when it does not appear that one was completed for the notice of proposed rulemaking?
 - b. Our understanding is that by not including a Regulatory Impact Analysis during the NPRM stage, the public misses an opportunity to review and comment on this information allowing the agency to potentially avoid negative comments on the analysis. Is there an advantage in waiting until the draft final rule stage to do the Regulatory Impact Analysis?

¹² NPRM.

¹³ Spring 2018.

¹⁴ Fall 2018.

Office of Air and Radiation's Initial Response to Draft Report



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

August 21, 2019

OFFICE OF
AIR AND RADIATION

MEMORANDUM

SUBJECT: Office of Air and Radiation's Final Response to Office of Inspector General's report, *EPA Failed to Develop Required Benefits and Cost Analysis and Assess Impacts on Children's Health for the Proposed Glider Repeal Rule (OA&E-FY19-0053)*

FROM: Anne L. Idsal
Assistant Administrator

A handwritten signature in blue ink, appearing to read "Anne L. Idsal", is written over the typed name and title.

TO: Kevin Christensen
Assistant Inspector General
Office of Audit and Evaluation
Office of Inspector General

The Office of Air and Radiation (OAR) appreciates the opportunity to review and comment on the Office of Inspector General's (OIG) report titled *EPA Failed to Develop Required Benefits and Cost Analysis and Assess Impacts on Children's Health for the Proposed Glider Repeal Rule* (Draft Report).

The Clean Air Act requires the U.S. Environmental Protection Agency (EPA) to establish and implement regulations to protect human health and the environment, including regulations to control emissions from cars, trucks, and other mobile sources of air pollution. EPA's Office of Transportation and Air Quality (OTAQ) within OAR fulfills this responsibility for EPA by setting motor vehicle emission standards and by monitoring compliance with requirements.

OAR agrees with the principles of transparency and public participation in the rulemaking process that the OIG highlights in this report, including its recommendations. Furthermore, OAR appreciates the OIG's recommendations to further strengthen EPA's rulemaking process. OAR's response to OIG's specific recommendation follows.

Recommendation 1: For the proposed Glider Repeal Rule, per Executive Order 12866, [the AA for OAR should] identify for the public (e.g., via the public docket) any substantive changes between the draft submitted to the Office of Information and Regulatory Affairs for review and the action subsequently announced, and any changes made at the suggestion or recommendation of the Office of Information and Regulatory Affairs.

Response 1: EPA is committed to transparency in the rulemaking process and believes that public input is critical to improving regulations. OAR, in consultation with the Office of Policy, has reviewed the public rulemaking docket for the Glider Repeal Rule (EPA-HQ-OAR-2014-0827-2368) to ensure it contains a complete record.

Planned Completion Date: Complete.

Recommendation 2: Should EPA finalize the glider repeal rulemaking, prior to issuance of the final rule, [the AA for Air OAR should] conduct the required analyses to comply with Executive Orders 12866 and 13045; include all analyses in the public docket; identify for the public any substantive changes between the draft submitted to the Office of Information and Regulatory Affairs for review and the action subsequently announced, and any changes made at the suggestion or recommendation of the Office of Information and Regulatory Affairs; and provide the public a means to comment on the analyses supporting the rulemaking.

Response 2: If EPA moves forward with a final action regarding the glider repeal rulemaking, OAR plans to work with OP to follow Executive Orders 12866 and 13045 prior to issuing the final action and provide the public an opportunity to comment on accompanying analyses supporting the rulemaking. Furthermore, if EPA moves forward with a final action regarding the glider repeal rulemaking, OAR plans to identify for the public any substantive changes between the draft submitted to the Office of Information and Regulatory Affairs for review and the action subsequently announced, and any changes made at the suggestion or recommendation of the Office of Information and Regulatory Affairs.

Planned Completion Date: Complete.

Recommendation 3: [The AA for OAR should] document the decisions made during the glider repeal rulemaking process, including substantive decisions reached orally, to comply with applicable recordkeeping and docketing requirements, including those found in the Federal Records Act, the EPA's Interim Records Management Policy, and the EPA's Action Development Process guidance.

Response 3: OAR is committed to transparency in the rulemaking process. For any potential future action, OAR agrees to work with OP to ensure that all internal decision documents created comply with applicable recordkeeping and docketing requirements. Those include requirements found in the Federal Records Act, the EPA's Interim Records Management Policy, and the EPA's Action Development Process guidance.

Planned Completion Date: Complete.

If you have any questions regarding this response, please contact William Charmley, Director of the Assessment and Standards Division, Office of Transportation and Air Quality, at (734) 214-4466.

cc: Betsy Shaw
Sarah Dunham
Benjamin Hengst
Bill Nickerson
Marc Vincent

Office of Air and Radiation's Revised Response to Draft Report



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

October 16, 2019

OFFICE OF
AIR AND RADIATION

MEMORANDUM

SUBJECT: Office of Air and Radiation's Final Response to Office of Inspector General's report, *EPA Failed to Develop Required Benefits and Cost Analysis and Assess Impacts on Children's Health for the Proposed Glider Repeal Rule (OA&E-FY19-0053)*

FROM: Anne L. Idsal
Acting Assistant Administrator

TO: Kevin Christensen
Assistant Inspector General
Office of Audit and Evaluation
Office of Inspector General

The EPA's Office of Air and Radiation (OAR) appreciates the opportunity to review and comment on the Office of Inspector General's (OIG) report titled *EPA Failed to Develop Required Benefits and Cost Analysis and Assess Impacts on Children's Health for the Proposed Glider Repeal Rule* (Draft Report).

The Clean Air Act requires the U.S. Environmental Protection Agency (EPA) to establish and implement regulations to protect human health and the environment, including regulations to control emissions from cars, trucks, and other mobile sources of air pollution. EPA's Office of Transportation and Air Quality (OTAQ) within OAR fulfills this responsibility for EPA by setting motor vehicle emission standards and by monitoring compliance with requirements.

OAR agrees with the principles of transparency and public participation in the rulemaking process that the OIG highlights in this report, including its recommendations. Furthermore, OAR appreciates the OIG's recommendations to further strengthen EPA's rulemaking process. OAR's responses to OIG's specific recommendations are below.

Recommendation 1: For the proposed Glider Repeal Rule, per Executive Order 12866, [the AA for OAR should] identify for the public (e.g., via the public docket) any substantive changes between the draft submitted to the Office of Information and Regulatory Affairs [OIRA] for review and the action subsequently announced, and any changes made at the suggestion or recommendation of the Office of Information and Regulatory Affairs.

Response 1: EPA is committed to the transparency of the rulemaking process and believes that public input is critical to improving regulations. To address the OIG's concerns in this audit and to provide further context for the draft submitted to OIRA and the redline drafts reflecting subsequent substantive changes to the proposed Glider Repeal Rule that are already in the public docket, EPA will draft and docket a memo explaining more clearly whether the change to the proposed Glider Repeal Rule's designation from "economically significant" to "significant" was made at the suggestion or recommendation of OIRA.

Planned Completion Date: End of Q1, FY 2020.

Recommendation 2: Should EPA finalize the glider repeal rulemaking, prior to issuance of the final rule, [the AA for OAR should] conduct the required analyses to comply with Executive Orders 12866 and 13045; include all analyses in the public docket; identify for the public any substantive changes between the draft submitted to the Office of Information and Regulatory Affairs for review and the action subsequently announced, and any changes made at the suggestion or recommendation of the Office of Information and Regulatory Affairs; and provide the public a means to comment on the analyses supporting the rulemaking.

Response 2: If EPA moves forward with a final action regarding the Glider Repeal rulemaking, OAR will work with Office of Policy to follow Executive Orders 12866 and 13045 prior to issuing the final action, and provide the public an opportunity to comment on accompanying analyses supporting the rulemaking. Furthermore, if EPA moves forward with a final action regarding the Glider Repeal rulemaking, OAR will identify for the public any substantive changes between the draft submitted to OIRA for review and the action subsequently announced, and any changes made at the suggestion or recommendation of OIRA.

Planned Completion Date: OAR anticipates any decision about the Glider Repeal rulemaking status will be reflected in the Spring 2020 Regulatory Agenda (Q3, FY 2020).

Recommendation 3: [The AA for OAR should] document the decisions made during the glider repeal rulemaking process, including substantive decisions reached orally, to comply with applicable recordkeeping and docketing requirements, including those found in the Federal Records Act, the EPA's Interim Records Management Policy, and the EPA's Action Development Process guidance.

Response 3: Based on additional discussions with EPA's Office of General Counsel and in turn, OIG, EPA has complied with all applicable recordkeeping requirements and provided supporting documentation to the OIG on October 3, 2019. Regarding the docketing requirements specified in this recommendation, please see EPA's response to Recommendation #1 above.

Planned Completion Date: For the recordkeeping requirements specified in this recommendation, this corrective action is complete. For the docketing requirements, see the Planned Completion Date for Recommendation #1.

If you have any questions regarding this response, please contact William Charmley, Director of the Assessment and Standards Division, Office of Transportation and Air Quality, at (734) 214-4466.

Cc: Betsy Shaw
Sarah Dunham
Ben Hengst
Bill Nickerson
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