



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

June 28, 2022

OFFICE OF
AIR AND RADIATION

MEMORANDUM

SUBJECT: Joint Agency Response to Office of Inspector General Final Report, *Concerns on the Process Employed for the SAFE Rule Demonstrate the Need for a Policy on the EPA's Role in Joint Rulemakings* (Report No. 21-E-0125)

FROM: Joseph Goffman
Principal Deputy Assistant Administrator
Office of Air and Radiation

Vicki Arroyo
Associate Administrator
Office of Policy

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Jeffrey Prieto
General Counsel

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TO: Patrick Gilbride
Director, Implementation, Execution, and Enforcement
Office of Special Review and Evaluations
Office of Inspector General

On behalf of EPA's Office of Air and Radiation, Office of Policy, and Office of General Counsel, thank you for the opportunity to respond to the issues and recommendations in the Office of Inspector General's (OIG) final report, *Concerns on the Process Employed for the SAFE Rule Demonstrate the Need for a Policy on the EPA's Role in Joint Rulemakings*, dated April 20, 2021 (Report No. 21-E-0125). As described in the Agency's response to the draft report from March 2021, EPA and OIG disagreed on several issues raised in the report. However, as noted in the OIG's May 2022 Semi-Annual Report to Congress, since March 2021, EPA and OIG staff have been meeting to discuss these differences and identify resolutions to the OIG's recommendations that are agreeable to both the Agency and the OIG. Below we provide revised corrective actions that are based on those constructive conversations. As requested, the relevant offices have coordinated and combined our responses in this memo.

Recommendation 1: In coordination with the Office of General Counsel, docket for the final Safer Affordable Fuel-Efficient Vehicles Rule and commit to docketing for future joint rulemaking actions covered by Clean Air Act § 307(d), 42 U.S.C. § 7607(d), whether the EPA docket for the joint rulemaking action reflects an interpretation that the partner agency is an “other agency” for purposes of the docketing requirements of Clean Air Act § 307(d)(4)(B)(ii), 42 U.S.C. § 7607(d)(4)(B)(ii). The docketed information should include whether written comments on the action by either partner agency during interagency review and responses to such comments are part of the docket, if applicable.

Response 1: EPA agrees with this recommendation. EPA will draft a memorandum describing EPA’s interpretation of Clean Air Act (CAA) Section 307(d) at the time of the Safer Affordable Fuel-Efficient Vehicles (SAFE part 2) rulemaking and add that memorandum to the SAFE part 2 rulemaking docket. Furthermore, for future joint rulemaking actions covered by CAA Section 307(d), EPA agrees to docket a memorandum describing EPA’s interpretation of whether or not it considers the partner agency as an “other agency” for purposes of the docketing requirements in the CAA Section 307(d)(4)(B)(ii), 42 U.S.C. § 7607(d)(4)(B)(ii).

Planned completion date: The new memorandum will be added to the SAFE part 2 rulemaking docket by the end of Q3, FY 2022.

Recommendation 2: In coordination with the Office of General Counsel, docket any written comments received from the National Highway Traffic Safety Administration regarding the draft final Safer Affordable Fuel-Efficient Vehicles Rule during interagency review from January 14, 2020, to March 30, 2020, and docket the EPA’s written responses to such comments.

Response 2: EPA believes that many of the documents that OIG recommends be made public are already in the SAFE part 2 rulemaking docket and notes that implementing this recommendation is inconsistent with EPA’s interpretation of CAA 307(d), which is detailed in the memorandum the EPA will provide to implement Recommendation #1. However, EPA appreciates and supports the intent of this recommendation to improve clarity in the rulemaking process for the public. Therefore, to further the EPA and OIG’s mutual goal of transparency and accountability, EPA will docket any written comments received from the National Highway Traffic Safety Administration regarding the draft final Safer Affordable Fuel-Efficient Vehicles Rule during interagency review from January 14, 2020, to March 30, 2020, and docket the EPA’s written responses to such comments.

Planned Completion Date: Q4, FY 2022.

Recommendation 3: In coordination with the Office of Policy, formally document decisions to not complete Action Development Process [ADP] milestones, including early guidance, analytic blueprint, options selection, and final agency review.

Response 3: EPA agrees with this recommendation. EPA will submit a memorandum to the rule file explaining that during the SAFE part 2 rulemaking, time did not allow for early guidance, analytic blueprint, options section, and final agency review to occur in the traditional way. Therefore, these milestones were considered “moot” for purposes of Action Development Process (ADP). As part of the agency’s records for this action, this memorandum will be available to the public through Freedom of Information Act requests.

Planned Completion Date: Q3, FY 2022.

Recommendation 4: In coordination with program offices, develop a policy for the Agency’s role in a joint rulemaking. The policy could build upon earlier recommendations from the U.S. Government Accountability Office and include:

- Expectations for addressing executive orders.
- Expectations for completing Action Development Process milestones or documenting decisions to skip milestones.
- A description of the rulemaking major process steps and deliverables, including timing.
- A description of interagency roles, responsibilities, and interactions, including resolving conflict.
- Identification of other stakeholders.
- Best practices that may have more general applicability and should be updated as appropriate to reflect process improvements.

Response 4: The Agency will develop a policy for the Agency’s role in a joint rulemaking by updating the ADP Guidance to include a new action aid specifically on joint rulemaking. This action aid would reiterate to all agency staff and managers that joint rulemakings are expected to follow the ADP, inclusive of having early workgroup level conversations with the partnering agency(s) to clarify:

- The expectations for addressing executive orders and other components of the regulatory package;
- The documentation of key regulatory process milestones; and
- The clarification of each agency’s roles and responsibilities within the joint rulemaking process.

In addition to establishing the overall process, the action aid would capture best practices and lessons learned from previous joint rulemaking actions. Moreover, development of the action aid corresponds with the timing of other updates to the ADP Guidance based on resolved recommendations from OIG’s final report *EPA Does Not Always Adhere to Its Established Action Development Process for Rulemaking*, dated March 31, 2021 (Report No. 21-P-0115).

Planned Completion Date: By end of Q3, FY22.

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
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