



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 17<sup>th</sup> 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 audit<sup>1</sup> 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).<sup>2</sup> 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),<sup>3</sup> 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.”<sup>4</sup> 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.”<sup>5</sup> Further, it provides that “[w]henver information or assistance requested

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

<sup>2</sup> 82 Fed. Reg. 53442 (Nov. 16, 2017).

<sup>3</sup> 5 U.S.C. app.

<sup>4</sup> IG Act § 6(a)(3).

<sup>5</sup> 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.”<sup>6</sup>

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.<sup>7</sup> 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, 2019<sup>8</sup> – 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.”<sup>9</sup> 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.)

<sup>6</sup> IG Act § 6(c)(2).

<sup>7</sup> IG Act § 6(a)(3).

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

<sup>9</sup> [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

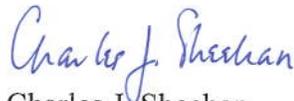
- March 7, 2019 – The EPA OIG provided a narrowed set of four questions (attached) to the OMB Assistant General Counsel, requesting a response by March 28, 2019.

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.”<sup>10</sup> Please consider this letter my report to you of such circumstances.

Abiding also by IG Act direction to keep Congress “fully and currently informed.”<sup>11</sup> 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](mailto: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.

<sup>10</sup> IG Act § 6(c)(2).

<sup>11</sup> 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 Rule<sup>12</sup> stage, this action was listed as “Other Significant.” For the Final Rule stage, it is listed as “Economically Significant” (Spring 2018<sup>13</sup>; Fall 2018<sup>14</sup>).
  - 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?

---

<sup>12</sup> [NPRM](#).

<sup>13</sup> [Spring 2018](#).

<sup>14</sup> [Fall 2018](#).