



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

*Congressionally Requested Report:
Improving air quality*

EPA's 2017 Glider Vehicle Testing Complied with Standard Practices

Report No. 19-P-0252

July 31, 2019



Report Contributors:

Patrick Gilbride
James Kohler
Sarah Mesrobian
Todd Goldman

Abbreviations

CAA	Clean Air Act
CFR	Code of Federal Regulations
EPA	U.S. Environmental Protection Agency
FOIA	Freedom of Information Act
FY	Fiscal Year
MOVES	Motor Vehicle Emission Simulator
OEM	Original Equipment Manufacturer
OIG	Office of Inspector General
OTAQ	Office of Transportation and Air Quality
U.S.C.	United States Code

Cover Photo: The back of a heavy-duty chassis dynamometer used for testing glider vehicles.
(EPA OIG photo)

Are you aware of fraud, waste or abuse in an EPA program?

EPA Inspector General Hotline

1200 Pennsylvania Avenue, NW (2431T)
Washington, DC 20460
(888) 546-8740
(202) 566-2599 (fax)
OIG_Hotline@epa.gov

Learn more about our [OIG Hotline](#).

EPA Office of Inspector General

1200 Pennsylvania Avenue, NW (2410T)
Washington, DC 20460
(202) 566-2391
www.epa.gov/oig

Subscribe to our [Email Updates](#)
Follow us on Twitter [@EPAoig](#)
Send us your [Project Suggestions](#)



At a Glance

Why We Did This Project

The U.S. Environmental Protection Agency's (EPA's) Office of Inspector General (OIG) conducted this audit in response to two congressional requests that raised concerns about glider vehicle testing conducted by the EPA in 2017.

A glider vehicle is a truck that uses a previously owned powertrain (including the engine, transmission and usually the rear axle) but has new body parts. In 2017, the EPA performed emissions testing on two glider vehicles, which it received by donation, at its National Vehicle and Fuel Emissions Laboratory in Ann Arbor, Michigan.

The OIG also has an ongoing audit related to the development of a November 2017 proposed rulemaking pertaining to glider vehicles (see *Project Notification: Response to Congressional Request on Glider Repeal Actions*, Project No. [OA&E-FY19-0053](#)).

This report addresses the following:

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

Address inquiries to our public affairs office at (202) 566-2391 or OIG_WEBCOMMENTS@epa.gov.

List of [OIG reports](#).

EPA's 2017 Glider Vehicle Testing Complied with Standard Practices

What We Found

We found that the EPA's selection and testing of the donated glider vehicles in 2017 was consistent with Clean Air Act authority, standard EPA practices, and relevant policies and procedures. We found that the EPA did not fully adhere to its delegation of authority related to the acceptance of donated property under the Clean Air Act. The delegation of authority establishes limitations that impede the EPA's ability to practically implement its donation acceptance authority. We also found that more direction on the solicitation and acceptance of donations would make the process more transparent, address concerns over preferential treatment, and potentially give the EPA more options to carry out its research objectives.

The EPA's 2017 glider vehicle testing complied with EPA standard practices.

We confirmed that EPA employees obtained approval to conduct glider vehicle testing and that EPA leadership received an August 2017 briefing on the potential for a glider vehicle test program before EPA career staff initiated the program. We found that EPA employees followed normal procedures in submitting the November 2017 glider vehicle test report to a public rulemaking docket.

We found no evidence that EPA staff deleted materials potentially responsive to Freedom of Information Act requests or records within the scope of our audit that were related to the EPA's 2017 glider vehicle testing.

We also found no evidence that a former Office of Transportation and Air Quality Center Director violated ethics restrictions either while serving as a federal employee or post federal employment.

Recommendations and Planned Agency Corrective Actions

We recommend that the Assistant Administrator for Air and Radiation, in consultation with the General Counsel, the Designated Agency Ethics Official, and the Assistant Administrator for Research and Development, revise the delegation of authority to enable practical implementation for the acceptance of donated property consistent with Section 104 of the Clean Air Act, and address pertinent ethics considerations. We also recommend that the Assistant Administrator for Air and Radiation, in consultation with the General Counsel and the Designated Agency Ethics Official, evaluate and document whether the Office of Transportation and Air Quality needs to develop further guidance or policies to implement the delegation of authority for the acceptance of donated property under Section 104 of the Clean Air Act; and, if needed, develop the guidance or policies. The recommendations are resolved with corrective actions pending.



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

OFFICE OF
INSPECTOR GENERAL

July 31, 2019

MEMORANDUM

SUBJECT: EPA's 2017 Glider Vehicle Testing Complied with Standard Practices
Report No. 19-P-0252

FROM: Charles J. Sheehan, Deputy Inspector General

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

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

This is our 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-FY18-0271. This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

The Office of Air and Radiation's Office of Transportation and Air Quality has primary responsibility for subjects covered in this audit.

In accordance with EPA Manual 2750, your office provided acceptable corrective actions and milestone dates in response to OIG recommendations. All recommendations are resolved and no final response to this report 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.

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

Table of Contents

Purpose	1
Background	1
Responsible Offices	5
Scope and Methodology	5
Results	6
EPA Followed Standard Practices in Selecting and Testing Glider Vehicles.....	6
EPA's Acquisition of Glider Vehicles Was Consistent with CAA but Inconsistent with Delegation of Authority Limitations	8
EPA Employees Obtained Approval and Followed Standard Practices to Conduct Glider Vehicle Testing and Submit Test Report to Rulemaking Docket.....	10
OIG Found No Evidence That EPA Staff Deleted Materials Potentially Responsive to FOIA Requests Within the Scope of Our Audit That Related to Glider Vehicle Testing	11
OIG Did Not Identify Ethics Violations by Former OTAQ Center Director.....	11
Conclusions	13
Recommendations	13
Agency Response and OIG Evaluation	13
Status of Recommendations and Potential Monetary Benefits	15

Appendices

A Office of Air and Radiation Response to Draft Report	16
B Distribution	19

Purpose

The U.S. Environmental Protection Agency's (EPA's) Office of Inspector General (OIG) received two congressional requests that raised concerns about glider vehicle testing conducted by the EPA in 2017. In response to the congressional requests, the OIG conducted an audit to examine the selection, acquisition and testing of glider vehicles at the EPA's National Vehicle and Fuel Emissions Laboratory, as well as the EPA's planning for this testing.

The OIG's audit answered the following questions that address congressional concerns and involve the EPA's November 20, 2017, report titled *Chassis Dynamometer Testing of Two Recent Model Year Heavy-Duty On-Highway Diesel Glider Vehicles* ([EPA-HQ-OAR-2014-0827-2417](#)):

- Did the selection and testing of glider vehicles violate any policies or procedures intended to ensure the objectivity and integrity of tests conducted at the EPA's laboratory? Also, did the selection and testing of glider vehicles as part of this study differ from the standard practice of selecting and testing of vehicles on the EPA's heavy-duty chassis dynamometer?¹
- Did EPA employees follow policies and procedures in seeking and obtaining approval from EPA leadership to conduct testing and submit the test results to the public rulemaking docket?
- Were email communications between the EPA and Volvo² deleted or not fully provided to EPA Freedom of Information Act (FOIA) personnel in response to a FOIA request(s) regarding the report? If so, was this done in accordance with FOIA laws, regulations, policies and procedures, and did any record management violations occur?

The OIG's audit also involved coordinating with the EPA's Ethics Office to determine whether a former Center Director in the EPA's Office of Transportation and Air Quality (OTAQ) violated any post-employment restrictions on federal officials. The OIG also examined ethics restrictions that applied to the former OTAQ Center Director while still a federal employee and negotiating employment with a trade association.

Background

The following timeline provides key dates and background context for the audit questions. A glider vehicle is a truck that uses a previously owned powertrain

¹ A chassis dynamometer consists of rollers connected to an electric motor. The vehicle being tested drives on the rollers, which simulate the speed and resistance of an actual road. Dynamometers simulate road surfaces and allow testing to be reproducible in a laboratory environment.

² Volvo is an external party identified in the congressional requests.

(including the engine, transmission and usually the rear axle) but has new body parts.³

October 25, 2016: The EPA finalized a rule titled *Final Rule for Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2* ([Phase 2 Final Rule](#)). Prior to October 2016, the EPA had not conducted any testing of glider vehicles. Part of the rule required that engines installed in glider vehicles meet the emission standards applicable in the year the glider vehicle was assembled.

While some heavy-duty engine Original Equipment Manufacturers (OEMs) also manufacture gliders, public comments from the OEMs on the rule were generally supportive because of the high level of investment that the OEMs make to build new engines that meet EPA emission standards. The glider industry did not have to meet those standards prior to the October 2016 Phase 2 Final Rule. The glider industry opposed this rule in public comments. The EPA based its estimates of glider vehicle emissions on the year the glider engine was originally manufactured, emission rates that the EPA developed for highway heavy-duty diesel vehicles for the EPA’s Motor Vehicle Emission Simulator (MOVES) model, and engineering principles demonstrating that an engine without emission controls will emit more pollution.

July 10, 2017: The glider industry [petitioned](#) the EPA and asked the agency to reconsider applying the Phase 2 Final Rule to glider vehicles. The petitioners argued that the Phase 2 Final Rule relied on the EPA’s authority under Section 202(a) of the Clean Air Act (CAA) to regulate emissions from “new motor vehicles.” However, because glider vehicles are not “new motor vehicles,” in the petitioners’ view, the petitioners argued that the EPA lacked the authority under this provision to apply the Phase 2 Final Rule to gliders. In addition, the petitioners highlighted results from a Tennessee Technological University (Tennessee Tech) study that claimed emissions from remanufactured engines used in glider vehicles performed roughly on par with—and, in some cases, outperformed—OEM “certified” engines⁴ with regard to emissions.

August 11, 2017: OTAQ staff briefed EPA senior leadership on options for responding to the petition to reconsider the glider portion of the Phase 2 Final Rule. The briefing addressed both the authority question and the Tennessee Tech study. OTAQ’s briefing noted that OTAQ considered the Tennessee Tech study to be incomplete and lacking critical details. The briefing included a potential EPA glider vehicle emissions test program and cited a request contained in a

³ This report uses the terms “glider vehicles” and “gliders” to refer to glider engines (remanufactured or refurbished) and glider kits (new cab and chassis), which are used to construct a glider vehicle.

⁴ Under the CAA, the EPA issues OEMs certificates of conformity, which are licenses to produce products for one model year consistent with the vehicle description and any terms of the certificate. “Certificates of conformity are generally issued to a group of vehicles or engines having similar design and emission characteristics,” per the EPA’s *2012–2013 Progress Report: Vehicle & Engine Compliance Activities*, [EPA-420-R-15-007](#), October 2015.

U.S. House of Representatives Appropriations Committee Report for the fiscal year (FY) 2018 Interior, Environment, and Related Agencies appropriations bill. The bill requested that the EPA study and compare the emissions impact of remanufactured engines used in glider vehicles with the emissions impact of new engines.⁵

August 17, 2017: The EPA Administrator [responded](#) to the petitioners by stating that the EPA decided to revisit the provisions in the Phase 2 Final Rule that relate to gliders and would develop and issue a notice of proposed rulemaking. Later in August, EPA staff began planning for the work to support the rulemaking, including a glider vehicle emissions testing program.



The front of a heavy-duty chassis dynamometer. (EPA OIG photo)

September 2017: OTAQ developed a glider vehicle test plan for testing gliders on the EPA laboratory's heavy-duty chassis dynamometer and began efforts to acquire glider vehicles for testing. According to OTAQ, the purpose of the testing was to (1) compare testing results with the Tennessee Tech study and support the development of a proposed glider rulemaking, (2) respond to the request from Congress to study emissions from glider vehicles, and (3) provide emissions data that could be used to update the EPA's MOVES model.

October 3, 2017: The OTAQ laboratory received the first of two glider vehicles for testing.

November 16, 2017: The EPA published a proposed rule⁶ repealing the emission standards for glider vehicles established by the October 2016 Phase 2 Final Rule. OTAQ staff did not rely on the Tennessee Tech study when developing the proposed rule to repeal regulations for glider vehicles. The Tennessee Tech study was never finalized, and the EPA only received partial results from the university's testing. The EPA's stated basis for the proposed rulemaking relied upon the interpretation of CAA Sections 202(a)(1), 216(2) and 216(3) regarding the definition of "new motor vehicle."

While the Tennessee Tech study is referenced in Section II of the proposed rulemaking preamble ("Background"), it is referenced as part of the petition that the EPA received and was not used as the EPA's basis for the proposed rulemaking (Section III of the preamble, "Basis for the Proposed Repeal"). The proposed rule also requested comments on the "expected emissions impacts if the

⁵ U.S. House of Representatives, *Department of the Interior, Environment, and Related Agencies Appropriations Bill, 2018*, [Report 115-238](#), page 61.

⁶ *Repeal of Emission Requirements for Glider Vehicles, Glider Engines, and Glider Kits*, [82 Fed. Reg. 53442](#) (Nov. 16, 2017).

regulatory requirements at issue here were to be repealed or were to be left in place.”⁷ The proposed rule did not mention the EPA’s own glider vehicle testing.

November 17, 2017: The OTAQ laboratory completed glider vehicle testing.

November 20, 2017: OTAQ finalized the glider vehicle test report. The report showed that glider vehicles emit many times the level of pollutants over the standards for new heavy-duty engines—contrary to conclusions from the Tennessee Tech study. According to OTAQ, emissions from the glider vehicles tested are consistent with those estimated by the MOVES model used to support the Phase 2 Final Rule regulating glider vehicles. The EPA’s final glider vehicle test report was posted to the public rulemaking docket for the proposed rule repealing emission standard for glider vehicles on November 22, 2017.

February 19, 2018: The President of Tennessee Tech sent a letter to the EPA Administrator requesting that the EPA not use or reference the university’s glider study, pending the conclusion of a Tennessee Tech internal investigation on the methodology and accuracy of the study.

April 2018: OTAQ staff provided a draft final rule to EPA leadership. OTAQ transmitted the draft final rule to the EPA’s Office of Air and Radiation’s Immediate Office, and then to the EPA’s Office of Policy for transmittal to the Office of Management and Budget.

June 21, 2018: The OIG received two congressional requests. The requests raised concerns about the EPA’s glider vehicle testing, including the agency’s collaboration with an OEM (Volvo), as well as the potential ethics violations of a former EPA employee in connection with the Phase 2 Final Rule.

August 21, 2018: The Assistant Administrator for Air and Radiation responded to a congressional request addressed to the EPA. The congressional request raised similar concerns as those described in the June 21, 2018, letters sent to the OIG. In its response, the EPA explained its reasons for initiating a glider vehicle test program, why the EPA worked with Volvo to acquire glider vehicles for testing, and that the EPA’s test results from the glider vehicles were consistent with the expected emissions performance of highway diesel engines produced without modern emission-control technology.

October 23, 2018: Tennessee Tech completed its internal investigation of the glider study. The investigation found that the study’s field-testing procedures were not sufficient to justify comparisons with EPA emissions standards, and the data did not support the conclusion that remanufactured engines performed equally as well as OEM “certified” engines.

⁷ Ibid., at 53447.

As of July 2019: The EPA has not taken final action on the 2017 proposed rule repealing the Phase 2 Final Rule emissions requirements for glider vehicles. OTAQ staff have not been directed to work on any additional analysis supporting a final rule. The EPA’s Spring 2019 regulatory agenda lists the proposed repeal of emission requirements for glider vehicles as a “long-term action.” The OIG has an ongoing audit related to the development of the 2017 proposed rulemaking pertaining to glider vehicles (see *Project Notification: Response to Congressional Request on Glider Repeal Actions*, Project No. [OA&E-FY19-0053](#)).

Responsible Offices

OTAQ, within the EPA’s Office of Air and Radiation, develops mobile source regulations for on-road, heavy-duty vehicles that include glider vehicles. OTAQ also manages the EPA’s National Vehicle and Fuel Emissions Laboratory, which conducted the 2017 glider vehicle testing on the laboratory’s heavy-duty chassis dynamometer. The Air and Radiation Law Office, as well as the Ethics Office within the EPA’s Office of General Counsel, have responsibility for updating certain CAA delegation authorities relevant to this audit. The EPA’s Office of Research and Development shares certain CAA delegation authorities with the Office of Air and Radiation relevant to this audit.

Scope and Methodology

We conducted our audit from September 2018 to May 2019 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objectives. As noted below in our discussion on the EPA’s email management protocols, there was a potential limitation of email information available. However, we believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

To answer our audit objectives, we analyzed key background and criteria documents, including:

- Policies and procedures on the selection, acquisition and testing of vehicles on the EPA’s heavy-duty chassis dynamometer.
- Documents related to the planning, selection, acquisition and testing of vehicles as part of the November 20, 2017, report (e.g., vehicle selection methodology, testing plans).
- The utilization log and history of all vehicles tested on the heavy-duty chassis dynamometer, including who requested the testing, the purpose of testing, and how vehicles were selected and acquired.

- OTAQ policies, procedures and standard practices relevant to obtaining approval to use the EPA’s laboratory to conduct testing.
- EPA guidance relevant to inserting materials into a rulemaking docket.
- FOIA regulations and the EPA’s FOIA policy and procedures.

We conducted a site visit to the EPA’s National Vehicle and Fuel Emissions Laboratory in Ann Arbor, Michigan, where glider vehicle testing was performed. We interviewed key staff and managers involved in the planning, selection and testing of glider vehicles. We also contacted the highway heavy-duty OEMs that the EPA contacted for assistance in acquiring in-use glider vehicles for testing.

We obtained access to the EPA’s FOIA eDiscovery review system—Relativity—which enabled us to review potentially responsive materials that the EPA collected to respond to all glider-related FOIA requests that the agency received as of December 2018.

To determine whether all potentially responsive materials were provided to the EPA’s FOIA personnel, we worked with the EPA’s Office of Environmental Information (now part of the Office of Mission Support) to access email accounts of key EPA personnel involved in the EPA’s glider vehicle test program and most likely to have communications with external parties related to the glider testing. The email accounts that the OIG reviewed included content that was in the account at the time the Office of Environmental Information received the OIG’s email access request (August 2018), including deleted and sent/received items. The EPA’s email management protocols indicate that 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 90 days before the OIG requested the email account content would have been permanently deleted.

To determine compliance, we reviewed ethics restrictions that applied to the former OTAQ Center Director while that person was still a federal employee and negotiating employment with a trade association. We also reviewed applicable post-employment ethics restrictions.

Results

EPA Followed Standard Practices in Selecting and Testing Glider Vehicles

We found that the EPA’s selection and testing of glider vehicles for the November 20, 2017, report titled *Chassis Dynamometer Testing of Two Recent Model Year Heavy-Duty On-Highway Diesel Glider Vehicles* ([EPA-HQ-OAR-](#)

[2014-0827-2417](#)) were consistent with standard EPA practices and relevant policies and procedures.

Glider Vehicle Selection

The EPA's selection of glider vehicles was consistent with the standard EPA practice of developing selection criteria based on the goals of the test program, as evidenced by our analysis of test plans from other testing that the EPA has conducted on its heavy-duty chassis dynamometer. The goals of the glider test program were to obtain a representative emission profile of glider vehicles in order to compare results with the Tennessee Tech study and inform the proposed rulemaking; compare those results with the emissions from new engines, as requested by Congress; and update the EPA's MOVES model. The EPA established test selection criteria based on those goals. The EPA's primary criterion was testing pre-2002 engines that comprise most of the on-road, in-use glider vehicle population. According to the EPA test report, the glider vehicles tested contained rebuilt, pre-2002 engines.

Glider Vehicle Testing

The EPA followed standard practices for testing glider vehicles. The glider vehicles were tested according to the protocols found in 40 CFR Part 1066, which help ensure the repeatability and quality of the data. EPA highway certification diesel fuel was used to test the glider vehicles (the as-received fuel was drained), and the coolant and oil were as-received.

The OIG did not find any evidence that the development of the EPA's glider test plan was unduly influenced by external parties. The OIG confirmed that the types of tests conducted on glider vehicles were consistent with the types of tests conducted on other vehicles that the EPA had tested on its heavy-duty chassis dynamometer. As described in the November 2017 report, test emissions from glider vehicles were compared with two other conventionally manufactured OEM-certified tractors of similar model year, whose data were collected by the EPA using the same test cell, test equipment and test procedures.

One glider vehicle that the EPA tested was received with its check engine light illuminated. The EPA diagnosed and corrected the issue. The EPA tested the vehicle before and after the repair. According to OTAQ, this is not uncommon when conducting in-use testing for research purposes, given that the EPA is interested in emission rates from normal or real-world operating vehicles. This existing condition was described in the test report.

EPA's Acquisition of Glider Vehicles Was Consistent with CAA but Inconsistent with Delegation of Authority Limitations

For the November 2017 report, we found that the EPA's acquisition of the glider vehicles, with the assistance of Volvo, was consistent with the terms of Section 104(b) of the CAA. However, the EPA did not adhere to its delegation of authority regarding CAA Section 104(b), which places limitations on the process for, and content of, the EPA's receipt of donations. The OIG also found that the pertinent delegation impedes the EPA's ability to implement CAA Section 104(b) in light of current EPA policy.

Glider Vehicle Acquisition

According to the EPA, it reached out to four diesel engine OEMs with dealerships near the EPA's Ann Arbor laboratory for assistance in locating in-use glider vehicles for testing. Volvo was one OEM that connected OTAQ with a local dealership. The dealership helped to acquire the in-use glider vehicles—that met OTAQ's selection criteria—from private owners. The practice of using OEMs or external parties to help locate and test certain types of vehicles is not uncommon, especially when testing is conducted for research instead of compliance purposes. Historically, vehicles have been purchased, leased or loaned for testing on the EPA's heavy-duty chassis dynamometer. According to OTAQ, in-use glider vehicles make up a small fraction of the total population of on-road, heavy-duty vehicles. Thus, it would have been difficult to acquire glider vehicles that met testing criteria without help from external parties.

The EPA did not compensate any party in connection with glider vehicle testing. According to Volvo, it reimbursed the dealer for costs incurred to make the first glider available for testing (e.g., paid for a rental truck used by the private owner of the glider vehicle while it was being tested by the EPA). Per Volvo, another OEM, Navistar, reimbursed the same dealer for the second glider vehicle tested by the EPA. Section 104(b) of the CAA⁸ gives the EPA the authority—in connection with conducting research related to the control of pollution resulting from the combustion of fuels—to acquire “an interest in lands, plants, and facilities, and other property or rights by purchase, license, lease, or *donation*.” (emphasis added).⁹ Therefore, the EPA's receipt of two glider vehicles on a temporary basis as donations for research purposes is consistent with the terms of Section 104(b) of the CAA.

Pursuant to ethics regulations, EPA employees generally may not solicit or accept “gifts” (defined to include nearly anything of market value above a nominal value) from outside sources.¹⁰ However, these regulations expressly

⁸ 42 U.S.C. § 7404(b).

⁹ 42 U.S.C. § 7404(b)(4).

¹⁰ 5 CFR § 2635.101(b)(4) and § 2635.203(b).

allow for the acceptance of gifts by employees the receipt of which is specifically authorized by statute.¹¹ Additionally, the definition of “gift” expressly excludes from its scope items accepted by the government pursuant to specific statutory authority.¹²

EPA Delegation of Authority

EPA Delegation of Authority 7-170 covers the CAA authority to accept donated property and delegates this authority from the EPA Administrator to the Assistant Administrator for Air and Radiation and the Assistant Administrator for Research and Development. Delegation of Authority 7-170 also places limitations on how the donation acceptance authority may be used.

The OIG found that this Delegation of Authority impedes the ability of the EPA to practically implement its CAA donation acceptance authority. The Delegation of Authority states that it delegates authority “to accept donations of the items specified at Section 104(b)(4) of the CAA including personal property in the form of equipment.”¹³ It also states, “Agency employees may not directly or indirectly solicit or accept donations under CAA 104(b)(4) from parties that EPA directly regulates ... but may respond to questions from parties who are otherwise interested in making unsolicited donations.”¹⁴ It is unclear whether the “parties” to whom agency employees may respond refers to all parties interested in making unsolicited donations or specifically to parties directly regulated by the EPA, as referenced earlier in the sentence. If the latter, given the remainder of the sentence, it is unclear what substantive response agency employees could provide aside from a simple declination. In either case, the delegation leaves unclear the nature of the response EPA employees may provide. It is unclear to the OIG how external parties would know what to donate unless the EPA informs them of its specific research needs. Additionally, the delegation does not specify—nor did the OIG identify any guidance on—whether a broad announcement of agency research needs amounts to a solicitation for donation, which is prohibited under the delegation.

Nevertheless, the EPA did not adhere to the terms of Delegation 7-170. To exercise the donation acceptance authority, Delegation 7-170 requires that the relevant Assistant Administrator must consult with the Director of the Office of Administration (within the EPA’s Office of Mission Support), and approval must be obtained through the appropriate Deputy Ethics Official. OTAQ was unable to provide the OIG with a record of the requisite consultation or the requisite approval.

¹¹ 5 CFR § 2635.204(l).

¹² 5 CFR § 2635.203(b)(8).

¹³ Delegation of Authority 7-170(3)(a).

¹⁴ Delegation of Authority 7-170(3)(b).

The donation authority under Section 104(b) of the CAA is framed in broad terms (bearing none of the limitations contained in Delegation 7-170) and creates an important exclusion to ethics gifts rules. The OIG found that the EPA did not fully adhere to Delegation 7-170 but operated within the bounds of Section 104(b) of the CAA. Further, the EPA's Ethics Office indicated to the OIG that the limitations in Delegation 7-170 do not reflect current agency policy and concurred with the OIG's analysis that the delegation should be revised.

The EPA's Ethics Office indicated that it had no ethics concerns with how the glider vehicles at issue were acquired. If the EPA accepts a broader range of donations than those authorized under Delegation 7-170, the delegation and relevant guidance should be revised to reflect current agency policy. For example, if the EPA's research needs could be met by a broad community, announcing these needs (i.e., what the EPA needs and when the EPA needs it) consistent with applicable ethics rules through a more public forum, such as the EPA's public website, could make the donation process more transparent. Having this information available through a public forum could also address concerns over preferential treatment and potentially give the EPA more options to carry out its research objectives.

EPA Employees Obtained Approval and Followed Standard Practices to Conduct Glider Vehicle Testing and Submit Test Report to Rulemaking Docket

For the November 20, 2017, report, the OIG confirmed that EPA employees obtained approval to conduct testing and that EPA senior leadership was briefed on the potential for a glider vehicle test program. EPA staff received both OTAQ Center Director (General Schedule-15 level) and Division Director (Senior Executive Service level) approval and direction to conduct the testing.

We found that in August 2017, OTAQ staff briefed EPA senior leadership on a potential glider emissions test program in the context of responding to petitions to reconsider the October 2016 Phase 2 Final Rule pertaining to gliders. The briefing also cited the U.S. House of Representatives Appropriations Committee Report for the FY 2018 Interior, Environment, and Related Agencies appropriations bill. The report urged the EPA to study and compare the emissions impact of remanufactured engines used in glider vehicles with the emissions impact of new engines.

EPA senior leaders chose not to rely on the results of the agency's glider vehicle testing program for the 2017 repeal proposal. Instead, EPA senior leaders focused on the issue of statutory interpretation. The OIG found that EPA employees followed normal procedures when submitting the November 2017 glider vehicle test report to the public rulemaking docket.

OIG Found No Evidence That EPA Staff Deleted Materials Potentially Responsive to FOIA Requests Within the Scope of Our Audit That Related to Glider Vehicle Testing

OIG found no evidence that EPA staff deleted potentially responsive FOIA materials or records within the scope of our audit that related to the glider vehicle testing in the EPA's November 2017 report. As of December 2018, there have been 10 FOIA requests made to the EPA related to glider vehicles. One FOIA request has been closed; the rest are pending.¹⁵ The EPA has collected potentially responsive material (all of which consists of emails and attachments) for these requests through its eDiscovery Division email collection process. The EPA is in the process of reviewing this material for responsiveness and determining whether any FOIA exemptions apply to the responsive material.¹⁶

The OIG obtained access to the EPA's eDiscovery review system, known as Relativity, containing potentially responsive material for all glider-related FOIAs. In coordination with the EPA's Office of Environmental Information (now part of the Office of Mission Support), we also obtained access to emails (as of August 2018, including those that may have been deleted in the prior 90 days) from key EPA personnel who were involved in the glider testing program and who may have communicated with Volvo or other external parties regarding glider vehicle testing (refer to "Scope and Methodology" section for more details). We compared these emails with emails contained in the FOIA eDiscovery review system. Based on this comparison, we determined that it is unlikely that email communications between the EPA and Volvo, or any other external parties, were deleted, not fully captured in the eDiscovery system or not provided to FOIA personnel.

Although the OIG cannot be completely certain that emails were not improperly deleted (given that emails in the deleted items folder 90 days prior to the OIG's request for the emails would have been purged), we conclude that it is unlikely any were deleted, since we did not find any gaps in email timelines or inconsistencies in content. We did not determine whether the materials have been appropriately released because most of the glider-related FOIAs had not been fully completed by the EPA as of March 2019. The OIG did not review any of the records provided in FOIA interim responses.

OIG Did Not Identify Ethics Violations by Former OTAQ Center Director

The OIG did not identify ethics violations within the scope of our audit by a former OTAQ Center Director. After employment at the EPA, this person began work at a trade association whose members are impacted by the regulatory work for which this person was responsible. Ethics restrictions applied to the former Center Director while the person was still a federal employee and negotiating

¹⁵ As of March 2019, the EPA has partially responded to some of the pending FOIA requests.

¹⁶ FOIA establishes certain categories of information that are exempt from the mandatory disclosure requirements. A detailed explanation of these categories is available at the FOIA.gov [website](#).

employment with the trade association. Post-employment ethics restrictions also applied. In consultation with the EPA's Ethics Office, the OIG examined both types of restrictions.

The OIG confirmed that the former employee was contacted by the trade association about the possibility of potential employment in June 2017, after which the employee contacted the EPA's Ethics Office for advice. The EPA's Ethics Office provided the employee guidance on how to comply with ethics restrictions in the context of negotiating employment while still a federal employee. Based on our email review, we found evidence that the former Center Director waited until after receiving ethics guidance before corresponding with the trade association about potential employment. The OIG identified evidence that the former Center Director followed the ethics guidance, which included developing a recusal memo in July 2017 that explained specific circumstances and limitations surrounding the recusal. The OIG also identified another case in August 2017 where the former Center Director followed the ethics guidance and the limitations described in the recusal memo.

The OIG provided the EPA's Ethics Office with the relevant facts related to our review of compliance with post-employment restrictions, including supervisory status, pay grade, duties, dates of employment and the approximate time frame the former OTAQ Center Director began representing the trade association. Based on these facts, the EPA's Ethics Office determined that no post-employment restrictions on federal officials had been violated because the employee worked on particular matters of general applicability while employed at the EPA (i.e., rulemakings related to an industry and not a specific company) and was not representing the trade association on any specific party matter back to the agency.¹⁷ The OIG also confirmed that, based upon the available information as of August 2018, no post-employment restrictions on federal officials had been violated.

We confirmed that, based upon the available information, the former Center Director did not violate ethics restrictions while still serving as a federal employee and negotiating employment with a potential future employer. We also determined that, based upon the available information as of August 2018, the former Center Director did not violate post-employment ethics restrictions.

¹⁷ The EPA Ethics Office noted that because the former Center Director was in a supervisory position, the person is subject to the permanent restriction found at 18 U.S.C. § 207(a)(1) and the 2-year cooling-off period for supervisors found at 18 U.S.C. § 207(a)(2). Under these provisions, the former Center Director is permanently precluded from representing the interests of another (e.g., the trade association for which the person now works) back to the United States by making any appearance or communication to influence any federal official in connection with any specific party matter that the former Center Director worked on personally and substantially [pursuant to 18 U.S.C. § 207(a)(1)] or for 2 years on any specific party matter that was pending in the former Center Director's area of responsibility during their last year of federal service [pursuant to 18 U.S.C. § 207(a)(2)].

Conclusions

The EPA complied with standard practices and relevant policies and procedures covering objectivity and integrity in planning and conducting its testing of glider vehicles in 2017. We found that OTAQ employees obtained approval before planning and conducting glider vehicle testing and followed normal procedures in submitting the test report to the rulemaking docket. The OIG found no evidence that EPA staff deleted potentially responsive FOIA materials or records related to the EPA's 2017 glider vehicle testing. The OIG also did not identify ethics violations within the scope of our audit by a former OTAQ Center Director.

The OIG did find that the EPA did not fully adhere to its Delegation of Authority covering the acceptance of donated property under Section 104 of the CAA. However, the EPA did acquire the glider vehicles consistent with the terms of Section 104 of the CAA, which uses a broad framing to articulate the donation acceptance authority. If the text of the delegation no longer reflects agency policy, the delegation and relevant guidance should be revised to allow practical implementation and to address pertinent ethics considerations.

Recommendations

We recommend that the Assistant Administrator for Air and Radiation, in consultation with the General Counsel, the Designated Agency Ethics Official, and the Assistant Administrator for Research and Development:

1. Revise EPA Delegation of Authority 7-170 to enable practical implementation for the acceptance of donated property consistent with Section 104 of the Clean Air Act and address pertinent ethics considerations.

We recommend that the Assistant Administrator for Air and Radiation, in consultation with the General Counsel and the Designated Agency Ethics Official:

2. Evaluate and document whether the Office of Transportation and Air Quality needs to develop further guidance or policies to implement the Delegation of Authority for the acceptance of donated property under Section 104 of the Clean Air Act and, if determined necessary, develop further guidance or policies as appropriate.

Agency Response and OIG Evaluation

The agency concurred with both recommendations and provided acceptable planned corrective actions and milestones. Recommendations 1 and 2 are resolved with corrective actions pending. Based on discussions with the Office of General Counsel and the Office of Air and Radiation, we changed the action official for Recommendation 1 to the Assistant Administrator for Air and Radiation, and we

modified the recommendation language accordingly. The Office of Air and Radiation subsequently provided a planned completion date for Recommendation 1 that is not reflected in its original response.

Appendix A provides the Office of Air and Radiation's original response to the draft report. In addition, the Office of Air and Radiation provided specific suggestions for our consideration, and we applied edits as appropriate.

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	13	In consultation with the General Counsel, the Designated Agency Ethics Official, and the Assistant Administrator for Research and Development, revise EPA Delegation of Authority 7-170 to enable practical implementation for the acceptance of donated property consistent with Section 104 of the Clean Air Act and address pertinent ethics considerations.	R	Assistant Administrator for Air and Radiation	9/30/20	
2	13	In consultation with the General Counsel and the Designated Agency Ethics Official, evaluate and document whether the Office of Transportation and Air Quality needs to develop further guidance or policies to implement the Delegation of Authority for the acceptance of donated property under Section 104 of the Clean Air Act and, if determined necessary, develop further guidance or policies as appropriate.	R	Assistant Administrator for Air and Radiation	9/30/20	

¹ C = Corrective action completed.

R = Recommendation resolved with corrective action pending.

U = Recommendation unresolved with resolution efforts in progress.

Office of Air and Radiation Response to Draft Report



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

OFFICE OF
AIR AND RADIATION

MEMORANDUM

SUBJECT: Office of Air and Radiation's Final Response to Office of Inspector General's report, *EPA's Glider Vehicle Testing: Inspector General Response to Congressional Requests* (OA&E-FY18-0271)

FROM: William L. Wehrum
Assistant Administrator
Office of Air and Radiation

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

W. L. Wehrum
6-10-19

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's Glider Vehicle Testing: Inspector General Response to Congressional Requests* (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 the OAR fulfills this responsibility for EPA by setting motor vehicle emission standards and by monitoring compliance with requirements. In order to fulfill this responsibility, and in association with regulatory actions, OTAQ tests a wide variety of vehicles for compliance with national emissions standards at the EPA's National Vehicle and Fuel Emissions Laboratory in Ann Arbor, Michigan.

We want to thank the OIG for their comprehensive review and are pleased that OIG has concluded that EPA complied with standard practices and relevant policies and procedures covering objectivity and integrity in planning and conducting its testing of the glider vehicles in 2017.

OAR agrees with the recommendations OIG has provided in its draft report. OAR is currently working with the Office of General Counsel and the Acting Designated Agency Ethics Official on both of OIG's recommendations. OAR's response to OIG's OAR specific recommendation follows.

Recommendation 1: OIG recommends that the General Counsel, in consultation with the Designated Agency Ethics Official, the Assistant Administrator for Air and Radiation and the Assistant Administrator for Research and Development:

Revise EPA Delegation of Authority 7-170 to enable practical implementation for the acceptance of donated property consistent with Section 104 of the Clean Air Act and address pertinent ethics considerations.

Response 1: OAR supports Recommendation 1 and has already begun consulting with the Director of the Ethics Office, who is the Alternate Designated Agency Ethics Official, in support of this recommendation. OAR acknowledges that existence of the delegation was not previously known to current OTAQ employees and, now that we are aware of it, OTAQ also agrees that the current delegation is impractical. We commit to work expeditiously with the Office of General Counsel (including the media, appropriations, and ethics lawyers) to develop an Office level policy/process and to revise the existing delegation of authority.

Recommendation 2: OIG recommends that the Assistant Administrator for Air and Radiation, in consultation with the General Counsel and the Designated Agency Ethics Official:

Evaluate and document whether the Office of Transportation and Air Quality needs to develop further guidance or policies to implement the Delegation of Authority for the acceptance of donated property under Section 104 of the Clean Air Act and, if determined necessary, develop further guidance or policies as appropriate.

Response 2: OAR agrees with this recommendation. OAR is currently working with the Office of General Counsel and the Alternate Designated Agency Ethics Official to develop an interim OTAQ policy/process for the acceptance of donated property under Section 104 of the Clean Air Act. OAR also intends to finalize an office policy in conjunction with a revised delegation memo. OAR also agrees that the current delegation is impractical and would benefit from revision.

Planned Completion Date: OAR will implement this recommendation in three phases: 1) develop an interim OAR/OTAQ policy in consultation with the Office of General Counsel, including the media, appropriations attorneys, and the Acting Designated Agency Ethics Official; 2) operate under the interim policy until a revised delegation is in place and thereafter revise or finalize the OTAQ Office policy/process consistent with the revised delegation; 3) use the final policy and any revised delegation to support implementation of Section 104 moving forward. We project that this will be a two-year process. Step one will be completed by the end of Q1, FY2020. Step two will be completed at the end of Q4, FY2020, and step three will be ongoing.

If you have any questions regarding this response, please contact Leila Cook, Associate Office Director, Office of Transportation and Air Quality, at (734) 214-4820.

Cc: Betsy Shaw
Chris Grundler
Leila Cook
Bill Charmley
Mark Vincent
Eleanor Marusiak
Dave Cozad, Acting Designated Agency Ethics Official

Distribution

The Administrator
Deputy Administrator
Chief of Staff
Deputy Chief of Staff
Assistant Administrator for Air and Radiation
Agency Follow-Up Official (the CFO)
Agency Follow-Up Coordinator
General Counsel
Assistant Administrator for Research and Development
Principal Deputy Assistant Administrator for Science and EPA Science Advisor,
Office of Research and Development
Deputy Assistant Administrator for Research and Development, Office of Research and
Development
Deputy Assistant Administrator for Management, Office of Research and Development
Associate Administrator for Congressional and Intergovernmental Relations
Associate Administrator for Public Affairs
Director, Office of Continuous Improvement, Office of the Administrator
Principal Deputy Assistant Administrator for Air and Radiation
Deputy Assistant Administrator for Air and Radiation
Senior Advisor to the Assistant Administrator, Office of Air and Radiation
Director, Office of Transportation and Air Quality, Office of Air and Radiation
Principal Deputy General Counsel
Deputy General Counsel and Agency Ethics Official
Audit Follow-Up Coordinator, Office of the Administrator
Audit Follow-Up Coordinator, Office of Air and Radiation
Audit Follow-Up Coordinator, Office of Transportation and Air Quality, Office of Air and
Radiation
Audit Follow-Up Coordinator, Office of General Counsel
Audit Follow-Up Coordinator, Office of Research and Development