



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

June 22, 2022

OFFICE OF MISSION SUPPORT

Devin Watkins, Attorney
Sam Kazman, General Counsel
Competitive Enterprise Institute
1310 L St NW, 7th Floor
Washington, DC 20005

Dear Mr. Watkins and Mr. Kazman:

This letter is in response to your Request for Reconsideration (RFR), received by the U.S. Environmental Protection Agency on March 11, 2022, which was assigned RFR number 19002A for tracking purposes. Your RFR requests that the Agency reconsider its denial of your [Request for Correction \(RFC\) 19002](#), in which you requested that EPA determine that its 2009 Endangerment Finding for Greenhouse Gases Under Section 202(a) of the Clean Air Act (2009 Endangerment Finding) and supporting Technical Support Document (TSD) “do not meet the requirements of the [Information Quality Act](#)” (IQA) and are “subject to correction requests under the IQA,” and that as a result, “EPA should cease distributing its Endangerment Finding and TSD until they have gone through the proper peer review process” (RFC at pp. 1-2).

In accordance with EPA’s [Information Quality Guidelines](#) (IQG), a three-member executive panel met on May 16, 2022, to review your request and the information you provided. The panel determined that the original reasoning behind EPA’s denial of the RFC 19002 remains sound and appropriately considered all relevant IQA Guidelines. The panel found that the RFR was inconsistent with how final agency actions are considered in the IQA process.

In particular, the RFR quotes EPA Guidelines¹ as stating that EPA “will usually address information quality issues in connection with the final *Agency action* or information product” (RFR, p. 1, italics added to original quote by CEI). In context, it becomes clear that the EPA IQG are exactly contrary to the assertions of CEI. The full quote is provided here (EPA IQG, p. 32), with the quoted CEI snippet in italics:

“When EPA provides opportunities for public participation by seeking comments on information, the public comment process should address concerns about EPA’s information. For example, when EPA issues a notice of proposed rulemaking supported by studies and other information described in the proposal or included in the rulemaking docket, it disseminates this information within the meaning of the Guidelines. The public may then raise issues in comments regarding the

¹ Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency, EPA/260R-02-008, October 2002. Available at https://www.epa.gov/sites/default/files/2020-02/documents/epa-info-quality-guidelines_pdf_version.pdf

information. If a group or an individual raises a question regarding information supporting a proposed rule, EPA generally expects to treat it procedurally like a comment to the rulemaking, addressing it in the response to comments rather than through a separate response mechanism. This approach would also generally apply to other processes involving a structured opportunity for public comment on a draft or proposed document before a final document is issued, such as a draft report, risk assessment, or guidance document. EPA believes that the thorough consideration provided by the public comment process serves the purposes of the Guidelines, provides an opportunity for correction of any information that does not comply with the Guidelines, and does not duplicate or interfere with the orderly conduct of the action. In cases where the Agency disseminates a study, analysis, or other information prior to the final Agency action or information product, it is EPA policy to consider requests for correction prior to the final Agency action or information product in those cases where the Agency has determined that an earlier response would not unduly delay issuance of the Agency action or information product and the complainant has shown a reasonable likelihood of suffering actual harm from the Agency's dissemination if the Agency does not resolve the complaint prior to the final Agency action or information product. EPA does not expect this to be the norm in rulemakings that it conducts, and thus *will usually address information quality issues in connection with the final Agency action or information product.*"

In context the Guidelines are stating that information quality issues can be addressed through the normal rulemaking process of notice and comment during the preparation of the final Agency action, and the Agency does not need to consider requests for correction of supporting material for the final action if considering such a request would lead to an undue delay in issuance of the action. This statement says nothing about final agency actions themselves being subject to requests for correction after the point at which they are issued.

Without providing any new arguments or evidence, the RFR raises issues that were thoroughly addressed in the Agency's response to [CEI's RFC 19002](#). As CEI's RFR hinges on the invalid claim that an RFC can lead to the cessation of distribution of a final agency action, the RFR is invalid. EPA also denies the other assertions in the RFR, including the claim that the Administrator must personally decide the request for reconsideration. The consideration of CEI's RFR by this panel is the appropriate procedure, as laid out in the EPA IQG, p.35.

Therefore, the panel determined that the Agency's decision and related determinations and judgments are not subject to the RFC process made on January 3, 2022, and that the 2009 Endangerment Finding and TSD are consistent with EPA's information quality standards. As a result, EPA is denying your RFR.

EPA remains committed to the guidelines established by the Office of Management and Budget for maximizing the quality, integrity, objectivity, and reproducibility of information we disseminate to the public.

Thank you for your interest in EPA's information quality.

Sincerely,

VAUGHN NOGA Digitally signed by VAUGHN
NOGA
Date: 2022.06.22 09:02:13 -04'00'

Vaughn Noga, Chief Information Officer and
Deputy Assistant Administrator for Environmental Information