At a Glance

EPA Does Not Always Adhere to Its Established Action Development Process for Rulemaking

What We Found

Based on analysis of the progression of 58 selected rules through the rulemaking process, we found wide variation in the EPA's adherence to its ADP, ranging from 44 to 100 percent. Using a checklist to assess adherence, we found approximately 81 percent adherence, 14 percent nonadherence, and 6 percent undetermined adherence to steps in the rulemaking process.

ADP goals are to deliver actions that are based on sound science, promote economic efficiency, and are implementable and enforceable.

We found variation in ADP adherence by program office, economic significance of the rulemaking, and major milestone. For example, adherence for economically significant rules was 5 percent less than overall adherence to the checklist. Additionally, average adherence for major ADP milestones was less than overall adherence to the checklist. We identified two reasons for nonadherence in the rules evaluated:

- The Office of Policy allowing milestones to be skipped by designating them as "moot," a term or practice not addressed in the *ADP Guidance*.
- The Office of Policy and program offices not maintaining documentation on major milestones in ADP Tracker. We found that 30 of 58 rulemakings contained less than half of major milestone documentation in the system.

Interviewees and notes in ADP Tracker indicated that reasons for designating milestones as moot included expediting rulemaking timelines and considering milestones as unnecessary for specific rulemakings. Missing documentation stemmed from inconsistent program office approaches to data entry, confusion on some items, and a lack of system monitoring by the Office of Policy for data quality. Interviewees said ADP training could be improved, and we found that resource constraints, staff unavailability, and competing demands have not allowed time to conduct formal, in-person training for several years. Key Agency stakeholders said that the ADP should be followed and that the ADP results in consistently high-quality rules when implemented appropriately.

Recommendations and Planned Agency Corrective Actions

We recommend that the Office of Policy annually reinforce the administrator's expectation on following the ADP, including waiver procedures for Tier 1 and 2 actions. We also recommend that the office query rulemaking stakeholders on the use of the moot designation and, if necessary, define and clarify its applicability and expected documentation. Additionally, we recommend that the office define key regulatory decisions and information, to include in the tracking database, and coordinate with program offices on periodic system checks. Finally, we recommend querying EPA staff on the adequacy of training. One recommendation is resolved with corrective actions pending, and four recommendations are unresolved with resolution efforts in progress.