



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

January 3, 2022

OFFICE OF  
AIR AND RADIATION

Mr. Devin Watkins, Attorney  
Sam Kazman, General Counsel  
Competitive Enterprise Institute  
1310 L Street, NW, 7<sup>th</sup> floor  
Washington, D.C. 20005

Dear Mr. Watkins and Mr. Kazman:

This letter is in response to the Competitive Enterprise Institute (CEI) Request for Correction (RFC), received by the U.S. Environmental Protection Agency (EPA) on May 13, 2019, which was assigned RFC# 19002 for tracking purposes. In the RFC letter, CEI asks 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).

### Summary of the CEI Request

The CEI RFC makes its request based on the following assertions: 1) “*the 2009 GHG Endangerment Finding is a scientific assessment*” (RFC at p. 2); 2) “*the 2009 GHG Endangerment Finding has been highly influential*” (RFC at p. 2); 3) there were a “*variety of problems with the peer review process*” (specifying 8 asserted “violations” of the IQA) (RFC at pp. 3-6); and 4) “*EPA’s Inspector General concluded EPA failed to follow IQA Guidelines*” (RFC at pp. 6-7).

The RFC presents various quotes from the 2009 Endangerment Finding record and from a 2011 report from EPA’s Office of Inspector General (“OIG”) entitled “Procedural Review of EPA’s Greenhouse Gas Endangerment Finding Data Quality Processes.”<sup>1</sup> The 7-page RFC references Office of Management and Budget (OMB) Guidelines in providing definitions of “scientific assessments” and “highly influential scientific assessments.” Finally, it sets forth the relief that CEI is seeking (*i.e.*, that EPA should end its dissemination of the 2009 Endangerment Finding (and supporting TSD) and restart the peer review process). The RFC has one attachment with a single table providing the list of names of the federal experts who reviewed the draft TSD and their affiliations at the time.<sup>2</sup>

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<sup>1</sup> Office of Inspector General 2011 Report No. 11-P-0702, *Procedural Review of Greenhouse Gases Endangerment Finding Data Quality Processes*

<sup>2</sup> The CEI RFC also references several petitions seeking reconsideration of the 2009 Endangerment Finding, including three petitions from CEI and the Science and Environmental Policy Project, the Concerned Household

## Summary of EPA Response

Having reviewed the RFC, EPA concludes that the information included within the 2009 Endangerment Finding and associated TSD are consistent with EPA's Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency (IQGs),<sup>3</sup> as are the underlying scientific assessments on which these documents rely. Numerous related documents in the record, including responses to CEI's comments submitted during the 2009 Endangerment Finding process and a subsequent Petition for Reconsideration, speak to the quality of the information used by the Agency to inform the 2009 Endangerment Finding and demonstrate that, contrary to CEI's claims, no correction is warranted. To the extent that CEI's RFC seeks to change the agency decision and related determinations and judgments in the 2009 Endangerment Finding, we decline to do so as such matters are not appropriately addressed through the RFC process.<sup>4</sup>

## Detailed EPA Response to CEI Request for Correction

The 2009 Endangerment Finding is a final agency action that was taken under section 307(d) of the Clean Air Act in 2009. *See* 74 Fed. Reg. 66,496. (Dec. 15, 2009). As a final agency action, the agency decision in the 2009 Endangerment Finding falls outside the scope of the IQA and the RFC process. The information quality concerns raised in the RFC have been previously addressed in the records for other proceedings, including in the 2009 Endangerment Finding itself; the agency's 2010 denial of petitions for reconsideration of the 2009 Endangerment Finding; the 2011 OIG Report and EPA's response thereto; and the decision of the U.S. Court of Appeals for the District of Columbia Circuit in 2012, in which the court upheld the 2009 Endangerment Finding. *See Coalition for Responsible Regulation, Inc. v. EPA*, 684 F.3d 102, 117, 120 (D.C. Cir. 2012). EPA finds that a number of these issues were raised by CEI itself in comments submitted during the public participation process for the 2009 Endangerment Finding<sup>5</sup> and in a subsequent Petition for

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Electricity Consumers Council, and the Texas Public Policy Foundation, respectively. These petitions are outside the scope of this response and are being addressed separately by the agency.

<sup>3</sup> Environmental Protection Agency, EPA/260R-02-008, "Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency" ("IQGs") (October 2002). Available at [https://www.epa.gov/sites/default/files/2020-02/documents/epa-info-quality-guidelines\\_pdf\\_version.pdf](https://www.epa.gov/sites/default/files/2020-02/documents/epa-info-quality-guidelines_pdf_version.pdf).

<sup>4</sup> *See, e.g.*, IQGs, *supra* n.3, at pp. 15-16 (illustrating the distinction between the information addressed by the IQGs (i.e., the "communication or representation of knowledge such as facts or data") and the regulations, guidance, or other agency decisions or positions that the distributed information is used to formulate or support and clarifying that the IQGs do not apply to items that are not considered "information"). *See also*, Office of Management and Budget M-19-15, "Improving Implementation of the Information Quality Act," Implementation Update 4.2 (April 24, 2019). Available at <https://www.whitehouse.gov/wp-content/uploads/2019/04/M-19-15.pdf>.

<sup>5</sup> Comment submitted by Christopher C. Horner, Competitive Enterprise Institute (CEI), at <https://www.regulations.gov/document?D=EPA-HQ-OAR-2009-0171-3316>

Reconsideration<sup>6</sup>, and EPA responded to those issues in the Response to Comments and Response to Petitions documents, respectively.<sup>7</sup>

Information relevant to this response can be found in the following *public documents*:

*2009 Endangerment Finding*

<https://www.epa.gov/climate-change/endangerment-and-cause-or-contribute-findings-greenhouse-gases-under-section-202a>

*Response to Comments for 2009 Endangerment Finding (“RTC”), 2009*

<https://www.epa.gov/climate-change/appendices-and-pdf-versions-epas-response-public-comments-proposed-endangerment-and>

*Response to the Petitions to Reconsider the Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act, 2010*

<https://www.epa.gov/climate-change/denial-petitions-reconsideration-endangerment-and-cause-or-contribute-findings>

*OIG 2011 Report No. 11-P-0702, Procedural Review of Greenhouse Gases Endangerment Finding Data Quality Processes, 2011 (“OIG Report”) (relevant EPA responses in Appendix G)*

<https://www.epa.gov/sites/production/files/2015-10/documents/20110926-11-p-0702.pdf>

*EPA Response to Final OIG Report Dated September 26, 2011, “Procedural Review of Greenhouse Gases Endangerment Finding Data Quality Processes”, Report No. 11-P-0702*

[https://www.epa.gov/sites/production/files/2015-10/documents/11-p-0702\\_agency\\_response.pdf](https://www.epa.gov/sites/production/files/2015-10/documents/11-p-0702_agency_response.pdf)

*EPA Office of the Inspector General. Close-Out of OIG Report No. 11-P-0702, Procedural Review of Greenhouse Gases Endangerment Finding Data Quality Processes, September 26, 2011*

[https://www.epa.gov/sites/production/files/2015-10/documents/11-p-0702\\_ig\\_comment\\_on\\_response.pdf](https://www.epa.gov/sites/production/files/2015-10/documents/11-p-0702_ig_comment_on_response.pdf)

*Slip Copy of U.S. Court of Appeals, District of Columbia Circuit decision in Coalition for Responsible Regulation, Inc. v. EPA (D.C. Cir. 2012)*

<https://www.epa.gov/sites/production/files/2016-08/documents/09-1322-1380690.pdf>

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<sup>6</sup> Petition for Reconsideration of the Nongovernmental International Panel on Climate Change, the Science and Environmental Policy Project, and the Competitive Enterprise Institute, at

[https://www.epa.gov/sites/production/files/2016-08/documents/petition\\_for\\_reconsideration\\_competitive\\_enterprise\\_institute.pdf](https://www.epa.gov/sites/production/files/2016-08/documents/petition_for_reconsideration_competitive_enterprise_institute.pdf)

<sup>7</sup> EPA’s IQGs explain that when the agency allows for public participation by providing an opportunity for public comment on information, it expects that the public comment process would address concerns about the information and that any information quality issues would be addressed in connection with the final agency action. Accordingly, under the IQGs EPA generally will “not consider a complaint that could have been submitted as a timely comment in the rulemaking or other action but was submitted after the comment period.” IQGs, *supra* n.3, at pp. 32-33. Although issues in CEI’s RFC could have been, and in many cases were, raised during the robust public participation process for the 2009 Endangerment Finding, for purposes of transparency and clarity, EPA has elected to both identify places in prior documents where these issues were previously raised and addressed, as well as providing additional responses to aid public understanding of the measures taken to ensure the quality of information that supported the 2009 Endangerment Finding.

EPA also notes that the RFC does not identify any information or scientific evidence within either the 2009 Endangerment Finding or the associated TSD that is said to be incorrect. Finally, we note that throughout the RFC, CEI appears to conflate the TSD for the 2009 Endangerment Finding and the 2009 Endangerment Finding itself. As discussed below, there is an important distinction between the 2009 Endangerment Finding, the scientific assessment literature that informed the Administrator's judgments in the 2009 Endangerment Finding, and the TSD that summarized relevant portions of those same scientific assessments. EPA reiterates that as explained above the agency decisions and judgments in the 2009 Endangerment Finding are outside the scope of the IQA and the RFC process.

Following are responses to each of CEI's specific assertions in the RFC.

A.) CEI asserts that "the 2009 GHG Endangerment Finding is a Scientific Assessment" Drawing on the 2005 OMB definition of the term "scientific assessment," the RFC claims that the 2009 Endangerment Finding and TSD are scientific assessments, because "EPA evaluated the current state of the science." RFC at p. 2 This action, the RFC goes on to argue, triggered a number of information quality requirements for such assessments. *Id.*

A "scientific assessment" (a prerequisite for being a Highly Influential Scientific Assessment or "HISA") is defined in OMB's Peer Review Bulletin<sup>8</sup> as "an evaluation of a body of scientific or technical knowledge, which typically synthesizes multiple factual inputs, data, models, assumptions, and/or applies best professional judgment to bridge uncertainties in the available information" (70 Fed. Reg. 2667). Neither the 2009 Endangerment Finding nor the TSD are scientific assessments. The 2009 Endangerment Finding is a final agency action presenting the EPA Administrator's determinations and the reasoning that led the Administrator to her conclusions, judgments, and ultimate decision. The Endangerment Finding was informed by scientific assessments of the International Panel on Climate Change (IPCC), the U.S. Climate Change Science Program (CCSP)/US Global Change Research Program (USGCRP), and the National Academies of Science (NAS).

The TSD summarized relevant portions of the scientific assessments that provided the scientific basis that informed the Administrator's conclusions. It did not provide an analysis or evaluation of the assessment statements summarized in the TSD. No weighing of information, data and studies occurred in developing the TSD. It was in the underlying assessments where the scientific synthesis occurred and where the state of the science was assessed. The scientific statements found in the TSD are not the result of EPA's having processed the scientific literature or assessments to synthesize multiple factual inputs, data, models, and assumptions. The TSD did not synthesize or alter the findings of the underlying assessment reports. Nor does the TSD bridge uncertainties in the available information or otherwise use "professional judgment" to resolve scientific issues. The TSD summarizes the underlying assessments of the NAS, the CCSP/USGCRP, and IPCC.

OMB, in a written response to the OIG, stated that EPA reasonably determined that the TSD itself (as opposed to the underlying peer-reviewed scientific assessments of the NRC,

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<sup>8</sup> Office of Management and Budget, 2005. Final Information Quality Bulletin for Peer Review (70 Fed. Reg. 2664).

IPCC, and USGRCP summarized in the TSD) did not have the impacts or characteristics required to meet the OMB Peer Review Bulletin's definition of a HISA.<sup>9</sup>

B.) CEI asserts that “the 2009 GHG Endangerment Finding has been highly influential” CEI claims that the 2009 Endangerment Finding is a highly influential scientific assessment because “many of the regulations issued based on the 2009 Endangerment Finding had more than a \$500 million potential impact” and because it was also “novel, controversial, and precedent-setting.” RFC at pp. 2-3. As support, the RFC partially quotes a statement in the OMB Peer Review Bulletin, which in full states that: “A scientific assessment is considered ‘highly influential’ if the agency or the OIRA Administrator determines that the dissemination could have a potential impact of more than \$500 million in any one year on either the public or private sector or that the dissemination is novel, controversial, or precedent-setting, or has significant interagency interest.” 70 Fed. Reg. 2671. Given that neither the 2009 Endangerment Finding nor the TSD are “scientific assessments,” the question of whether either document should be considered “highly influential” is irrelevant. As explained above, as a final agency action, the decision in the 2009 Endangerment Finding is outside the scope of the IQA and the RFC process, so the question of whether the 2009 Endangerment Finding is “highly influential” is irrelevant for that reason as well. The TSD (a summary of extensively peer-reviewed assessments) constitutes Influential Scientific Information (ISI), while the underlying assessments referenced in the TSD do constitute HISA-level documents. According to the OMB Peer Review Bulletin, “highly influential scientific assessments, [...] are a subset of influential scientific information” and are subject to “stricter minimum requirements” for peer review. *Id.* at 2665.

In light of this distinction, the OIG report recognized that OMB's Peer Review Bulletin distinguishes between a HISA and ISI, affords agencies more discretion for the peer review of ISI, and noted that EPA's approach to the TSD was within the discretion for peer review of influential scientific information. OIG report at pp. 15-16. For example, the OIG stated that guidelines for ISI provide agencies broad discretion in determining what type of peer review is appropriate and what procedures should be employed to select appropriate reviewers. In an OMB memo to the EPA Inspector General, OMB confirmed this discretion, noting the statement in the OIG's draft report that “EPA had the TSD reviewed by a panel of climate change scientists, and that the methodology employed for this review was an appropriate exercise of the discretion afforded the agency for peer reviews of ‘influential scientific information,’ as defined in OMB's Final Information Quality Bulletin for Peer Review.” OIG report, Appendix H, at p. 87. Provided that the ISI has not substantially changed after the original peer review, agencies do not have to subject ISI to additional peer review if the information has already been subjected to adequate peer review for the intended purpose (Section 3.3.2, EPA Peer Review Handbook<sup>10</sup> and Implementation Update 1-3, OMB M-19-15<sup>11</sup>): EPA considers the peer review processes of the NAS, USGCRP, and IPCC adequate for the purposes of the TSD. Further, while the

<sup>9</sup> See Appendix H (pp. 87-91) from Office of Inspector General (“OIG”) 2011 Report; Close-Out of OIG Report No. 11-P-0702, Procedural Review of Greenhouse Gases Endangerment Finding Data Quality Processes, 2011.

<https://www.epa.gov/sites/production/files/2015-10/documents/20110926-11-p-0702.pdf>

<sup>10</sup> EPA, 2015. Peer Review Handbook, 4<sup>th</sup> Edition. Science and Technology Policy Council, EPA/100/B-15/001.

<sup>11</sup> OMB, 2019. M-19-15, available at <https://www.whitehouse.gov/wp-content/uploads/2019/04/M-19-15.pdf>

final Close-Out of the OIG Report memorandum provided several recommendations to the Agency to clarify methods of documenting certain data quality processes, each of the Agency's subsequent responses to those recommendations were accepted by the OIG.<sup>12</sup>

C.) CEI asserts that there were “a variety of problems with the peer review process” CEI provided a list of 8 asserted “violations” of IQA regarding peer review that it claims arose from EPA's failure to apply OMB's Information Quality Standards:

1.) “EPA did not consider allowing the public, including scientific and professional societies, to nominate potential reviewers.”

Because EPA did not approach the 2009 Endangerment Finding nor the TSD as a scientific assessment, the HISA peer review requirement of allowing the public to nominate potential reviewers was not applicable. Nevertheless, both documents did undergo extensive review. As an Agency action providing the EPA Administrator's determination, the 2009 Endangerment Finding was subject to the complete set of requirements outlined by the EPA Regulatory Development Process, and the Agency followed the requirements of section 307(d) of the Clean Air Act in taking this action. Accordingly, the process for the 2009 Endangerment Finding included a determination that it was a Tier 1 action (this ensures agency and interagency participation); development of an EPA workgroup (this ensures agency office participation, review, and clearance); public review and comment; interagency review and clearance; consideration of petitions for reconsideration; and judicial review.

The agency also developed a TSD as part of the action. As a summary of extensively peer reviewed scientific assessments, the agency properly treated the TSD as ISI rather than as a HISA, and it underwent peer review by federal experts, workgroup review, public review, and interagency review and clearance. The charge for the peer review of the TSD was to ensure that the TSD was “a fair and accurate reflection of the current state of climate change science as embodied in the major assessment reports such as IPCC, USGCRP/CCSP and NRC.” OIG report at p. 83. All the science summarized in the TSD was derived from scientific assessments which met the requirements for a HISA, including solicitation of potential reviewers from the public. Therefore, EPA's decision to draw from federal experts for the review of the TSD was appropriate and consistent with both the OMB peer review guidelines and with EPA's IQGs. See Responses 1-10 and 1-70 from Volume 1 of the RTC document. Volume 1 of the RTC also provides extensive discussion of the development, review and transparency processes of these major scientific assessments that provided the scientific basis that informed the 2009 Endangerment Finding.

2.) “The peer review panel had a substantial conflict of interest because it was largely reviewing its own work.”

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<sup>12</sup> Memorandum from EPA Inspector General Arthur A. Elkins, Jr. (dated February 7, 2012) to Assistant Administrators for the Offices of Research and Development, Policy, and Air and Radiation Re: “Close-Out of OIG Report No. 11-P-0702, *Procedural Review of Greenhouse Gases Endangerment Finding Data Quality Processes*, September 26, 2011”.

See the response to #1 above. The charge to the reviewers of the TSD was to determine whether the TSD was a fair reflection of the major assessment reports rather than to peer review a new scientific assessment. OIG report at p. 83. For that reason, the authors of those underlying reports were well-positioned to evaluate the charge question and ensure that EPA did not modify or misstate key findings of the major scientific assessment products. See Responses 1-10 and 1-70 from the RTC, which also note that the federal experts were not involved with developing the TSD nor the 2009 Endangerment Finding other than in their review role, thereby avoiding any conflict of interest.

3.) “The peer review panel was not sufficiently independent as it contained an EPA employee.”

As previously stated, because EPA did not consider the TSD to be a scientific assessment, the requirement of the 2005 OMB memorandum cited in the RFC, which bars scientists employed by the agency from participating in the peer review is not applicable. The EPA employee was chosen because her expertise in the human health impacts of climate change helped fill the balance of expertise needed. This employee participated in the peer review in the same independent role as the other reviewers. As such, the employee was not involved in the drafting of the TSD, was not involved in the process to address comments from all 12 reviewers and was independent from the TSD development process. The EPA employee also did not influence the reviews of the 11 non-EPA reviewers, as reviewers provided individual sets of written comments to EPA only and did not meet among themselves.

4.) “The public was not allowed to participate in the peer review process.”

As previously stated, because EPA did not consider the TSD to be a scientific assessment, the requirements imposed by the 2005 OMB memorandum and cited by the RFC regarding *simultaneous* peer review and public review, “[w]henver feasible and appropriate”, are not applicable. RFC at p. 4 (quoting 70 Fed. Reg. 2676). In any event, the 2009 Endangerment Finding and associated documents (including the TSD) were in fact provided to the public for comment, including public hearings, before they were finalized. As stated in the TSD, the “proposed findings and TSD were subject to a 60-day public comment period as well as two public hearings. An earlier version of the TSD was released July 11, 2008, to accompany the Advance Notice of Proposed Rulemaking on the Regulation of Greenhouse Gases under the Clean Air Act (73 FR 44353, EPA-HQ-OAR-2008-0318), which was subject to a 120-day public comment period.” TSD at p. 2. Comments received during the public participation process were responded to in 11 RTC volumes.



5.) “No Peer Review Report was prepared.”

EPA submitted a memorandum to the record (see EPA-HQ-OAR-2009-0171-11639) documenting all changes to the TSD in response to all levels of comments, both from the expert reviewers and from the public. Expert reviewers were disclosed, and EPA has maintained documentation of all comments received and before-and-after versions of the TSD.

6.) “EPA failed to certify how it was complying with the IQA.”

EPA notes that Section III.A. of the Findings, “The Science on Which the Decisions Are Based,” and portions of the RTC document, especially Section 1.5 of the RTC document “Information Quality Act Requirements for Independent Assessment,” clearly explain how the agency complied with the OMB IQA requirements. EPA described how the information in the TSD was developed, referring to EPA’s IQGs. And the public did provide comments on this process, to which EPA replied in the RTC document (see Responses 1-10, 1-25, and 1-60 through 1-75).

7.) “EPA did not state how the underlying information supporting the Endangerment Finding met the requirements of the OMB Information Quality Bulletin for Peer Review.”

Specifically, the requestor argues that “EPA failed to explain why the use of the data and models of the IPCC, NRC, and USGCRP meet the requirements of the OMB Information Quality Bulletin.” RFC at p. 5.

EPA explained how it evaluated and considered the use of data and modeling output of the IPCC, NRC, and USGCRP, and therefore did in fact adhere to the IQGs, as further explained in the 2009 Endangerment Finding and the RTC document (see Responses 1-25, 1-64, 1-67, 1-68, 1-72). Also see Section III.A. of the 2009 Endangerment Finding, “The Science on Which the Decisions Are Based,” and Section 1.1 of Volume 1 of the RTC document, for a detailed description of EPA’s evaluation of the procedures used by IPCC, USGCRP, CCSP, and NRC in developing the assessment reports. For example, processes undertaken by the USGCRP included, but were not limited to:

- public and expert review of the draft prospectus for the assessment, with public posting of comments and responses to comments
- solicitation of additional input through hearings and workshops
- expert peer review of the first draft (often by the National Academies, but with public notice and exclusion of agency experts if otherwise) including public posting of all comments
- public review of the second draft, with posting of all comments
- interagency review of the third draft.



Relatedly, the United States Court of Appeals for the District of Columbia Circuit addressed whether EPA improperly relied upon the IPCC, USGCRP and NRC assessments. The court rejected that argument. *Coalition for Responsible Regulation, Inc. v. EPA*, 684 F.3d 102, 120 (D.C. Cir. 2012).

8.) “IPCC peer review is not adequate to satisfy OMB guidelines on conflict of interest requirements to be used.”

EPA addressed the IPCC peer review process and CEI’s objections to the reliance on the IPCC in Responses 1-14 and 1-68 from the RTC document. In addition, Sections 2.2.2 and 2.2.3 in Volume 2 of the Response to Petitions Document addressed petitioner concerns about conflict of interest procedures in IPCC assessments. Section III.A of the 2009 Endangerment Finding also describes how “these assessment reports undergo a rigorous and exacting standard of peer review by the expert community, as well as rigorous levels of U.S. government review and acceptance.”<sup>74</sup> Fed. Reg. 66551.

EPA documented how IPCC review procedures are designed to avoid conflict of interest among authors and peer reviewers in detail in Section 1 and Appendix A of Volume 1 of the RTC document for the 2009 Endangerment Finding, and in Section 2.2 of the Response to Petitions document. EPA explained in the RTC document that while IPCC procedures did not explicitly contain “conflict of interest” language, there are sufficient checks and balances built into the IPCC procedures such that there has been no evidence that the quality of IPCC reports suffer from potential conflict of interest issues.

For example, Response 1-14 of the RTC document quotes IPCC’s report development procedures, which state that the review should entail, “a wide circulation process, ensuring representation of independent experts (*i.e.*, experts not involved in the preparation of that particular chapter) from developing and developed countries and countries with economies in transition should aim to involve as many experts as possible in the IPCC process. ... [T]he review process should be objective, open and transparent... To help ensure that Reports provide a balanced and complete assessment of current information, each Working Group/Task Force Bureau should normally select two Review Editors per chapter... Review Editors should not be involved in the preparation or review of material for which they are an editor.”

D) CEI asserts that “EPA’s Inspector General Concluded EPA Failed to Follow IQA Guidelines.”

The IG concluded that “EPA met statutory requirements for rulemaking and generally followed requirements and guidance related to ensuring the quality of the supporting technical information.” OIG report at p. 3. The IG did provide recommendations for clarifying several EPA internal processes in the future such as to revise a flowchart in EPA’s Peer Review Handbook for clarification and provide clarification to ensure that language is included in the preamble of proposed and final rules that specifically states that an action was supported by either influential scientific information or highly influential scientific assessment along with appropriate peer review certification statements. The IG

closeout memo stated that in “accordance with EPA Manual 2750, your response included a proposed corrective action plan addressing each of the open recommendations. The proposed corrective actions and proposed timelines for completion meet the intent of our recommendations.” The OIG report also noted that “EPA Employed Procedures to Ensure Data Quality and Fulfilled the Basic Requirements for Federal Rulemaking and Other Statutory and Executive Order Requirements.” OIG report at p. 15. Further, as noted above, the OIG report stated that the method used for the peer review of the TSD was “within the discretion afforded by OMB guidance for peer reviews of influential scientific information.” *Id.* While the OIG report did find that EPA’s review of the TSD “did not meet all of OMB’s peer review requirements for highly influential scientific assessments,” *id.*, it recognized the implication of this statement depends on whether the TSD is a HISA. As explained above, it is not. Further, as reflected in the OIG report, OMB clarified that it “believes that EPA reasonably determined that the Endangerment TSD itself ...did not have the impacts or characteristics required to meet the OMB Bulletin’s definition of a highly influential scientific assessment.” OIG report at p. 18. The IG closed out their report and action plan in 2012 and did not make any recommendation regarding the 2009 Endangerment Finding.

### **Third-Party Correspondence**

EPA received three items of third-party correspondence: two in opposition to this RFC from the Environmental Defense Fund (“EDF”) and from 15 State Attorneys General, DC, and the California Air Resource Board (together “States”), and one in support of the RFC from Murray Energy Corporation. Third-party correspondence related to this RFC can be found at <https://www.epa.gov/quality/epa-information-quality-guidelines-requests-correction-and-requests-reconsideration#19002>.

### **Conclusion**

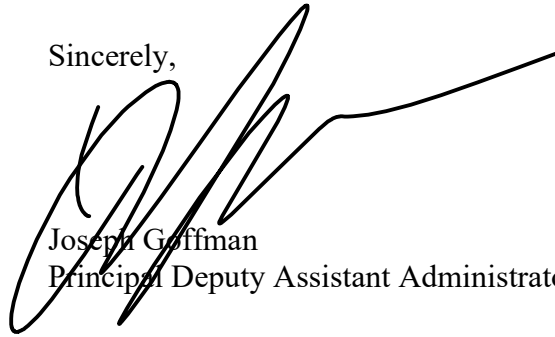
As a final agency action, the decision in the 2009 Endangerment Finding is outside the scope of the IQA and the RFC process. Moreover, the information contained in the 2009 Endangerment Finding and associated TSD are consistent with EPA’s IQGs, as are the underlying scientific assessments on which these documents rely. The various related documents in the record, including responses to comments CEI previously submitted, address in greater detail the quality of the information used by the Agency to inform the 2009 Endangerment Finding.

### **Your Right to Appeal**

If you are dissatisfied with this response, you may submit a Request for Reconsideration (RFR). EPA requests that any such RFR be submitted within 90 days of the date of EPA’s response. If you choose to submit a RFR, please send a written request to the EPA IQGs Processing Staff via mail (Enterprise Quality Management Division, Mail Code 2821T, USEPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460); or electronic mail ([quality@epa.gov](mailto:quality@epa.gov)). If you submit an RFR, please reference the IQG identifier assigned to this original RFC # 19002. Additional information about how to submit an RFR is listed on the EPA IQGs website at <http://epa.gov/quality/informationguidelines/index.html>.

I appreciate the opportunity to be of service and trust the information provided is helpful.

Sincerely,

A handwritten signature in black ink, appearing to be 'J. Goffman', written over the printed name and title.

Joseph Goffman  
Principal Deputy Assistant Administrator