Why Now, Why the EPA, and Who’s Paying Attention

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Abstract

The promulgation of the Mandatory Reporting of Greenhouse Gases Rule stands as the first step to developing a comprehensive national approach to climate change. However, what role, if any, did interest groups play in the development of this rule? This paper applies Kingdon’s multiple streams model as a descriptive framework to analyze interview data for this rule to better understand interest group involvement across *all* the stages of the rulemaking process (rule development, notice and comment phase, and rule finalization). Our research suggests that interest groups were indeed influential throughout the process, but those involved during rule development were clearly at an advantage.

The U.S. Congress has yet to pass comprehensive legislation to address global climate change. One pathway around this congressional policy gridlock is administrative rulemaking (McGrory Klyza & Sousa, 2007). Yet, very few scholars (Kamieniecki, 2006; Rinfret, 2011a; Rinfret & Furlong, 2012) have begun to unpack this avenue for environmental policymaking. Thus, we illustrate that Kingdon’s Multiple Streams Framework (MSF) can be a helpful tool to explain policy outcomes at the administrative level, more specifically within the Environmental Protection Agency (EPA).

Moreover, many rulemaking scholars have argued that interest groups exert influence during different stages of the rulemaking process from rule development to rule finalization (Golden, 1998; Yackee & Yackee, 2006; Rinfret, 2011a; Kerwin & Furlong, 2011, Rinfret & Furlong, 2012). However, these scholars tend to analyze interest group[[1]](#footnote-1) involvement at particular stages of the rulemaking process, rather than an analysis of the role of stakeholders throughout the process. As such, we do not have a complete understanding of how interest groups impact the process or how agencies interact with these groups throughout a given rulemaking. Therefore, we analyze the role that interest groups play in the EPA’s first-ever rulemaking to address global climate change (Mandatory Reporting of Greenhouse Gases Rule, 2009). Interviews conducted with a variety of policy actors (e.g.. rule writers, environmental and industry groups) provided a firsthand account of interest group involvement in the creation of this particular rule. Ultimately, the following analysis illustrates that interest groups were heavily involved across *all* the stages of this EPA rulemaking, while those involved during the earliest stage (rule development) had a clear advantage.

Understanding Rulemaking Processes

We cannot discuss EPA rulemaking processes without a discussion of the Administrative Procedure Act (APA) of 1946. The APA establishes basic guidelines for the development of substantive rules by requiring all U.S. federal agencies to provide notice, a period for public comment, and reserve time to respond to those comments (5 U.S.C. §553). Essentially, the U.S. Federal rulemaking process can be broken down into three major segments: (1) the origins of an individual rulemaking; (2) the pre-proposal stage; and (3) the formal proposal stage. Stage 1 begins when an agency has received the consent of Congress to conduct a rulemaking, usually through a statutory delegation of authority. With statutory authority, the process moves to stage 2 in which a particular agency can begin the rulemaking process by evaluating the problem, contacting affected parties, and collecting information to produce a solution for the issue at hand. Then, the agency submits the rulemaking for an internal and external review process. After this review, the third stage of the process begins and the agency publishes a Notice of Proposed Rulemaking (NPRM) in the *Federal Register*. It is at this point that the public can formally participate in the process, with a comment period that ranges from 30-90 days. When this timeframe elapses, the agency examines the comments and responds to them. After responding, the agency can publish a final rule in the *Federal Register*. Once published, the final rule carries the same weight as a congressional law (Kerwin & Furlong, 2011).

Like all U.S. federal agencies, the agency studied here must follow this basic framework. But, agencies still have considerable discretion regarding the more specific procedures they follow (Kerwin & Furlong, 2011). The EPA employs the work group model, a bottom up approach, where agency staff work with stakeholders to build consensus and recommend regulatory proposals to top-level personnel (McGarity, 1991; Furlong,1995; Fiorino, 2012; Kerwin & Furlong, 2011). The idea is that agency decision makers will know what the concerns of stakeholders are early on in the process, and they can address those concerns as they write the rule (Kerwin & Furlong, 2011).

*Interest Group Influence and the Rulemaking Process*

Rulemaking scholars have sought to examine the role interest groups play in the specific stages of rulemaking. In general, the vast majority of scholars examine the formal proposal stage and in particular the “notice and comment” phase to determine if public comments impact the language of the final rule. Scholars argue that businesses have been the most influential during this phase (Fritschler, 1975; Magat, Krupnick & Harrington, 1986; Furlong, 1993; Golden, 1998; West, 2005). Golden (1998) and West (2005) in particular, noted that business organizations dominated U.S. rulemaking processes because they hired consultants to track the *Federal Register* and provide comments for all agency rules pertaining to their interests.

Most recently, a few scholars have begun to unpack the pre-proposal stage of the rulemaking process to assess interest group influence during this phase of the process (Rinfret 2011a; 2011b; Rinfret & Furlong 2012; Yackee, 2012). This stage is where an agency and interest groups embark on off the record (ex parte) discussions prior to the publication of an NPRM. Rinfret (2011b) argues that interest groups have a significant impact on EPA regulations at this pre-proposal stage. Yet, what is missing is a holistic analysis of interest group influence across *all* the stages (Yackee, 2012). This study fills this void through a study of interest group involvement in the Mandatory Reporting Rule.

*Kingdon and the Rulemaking Stages*

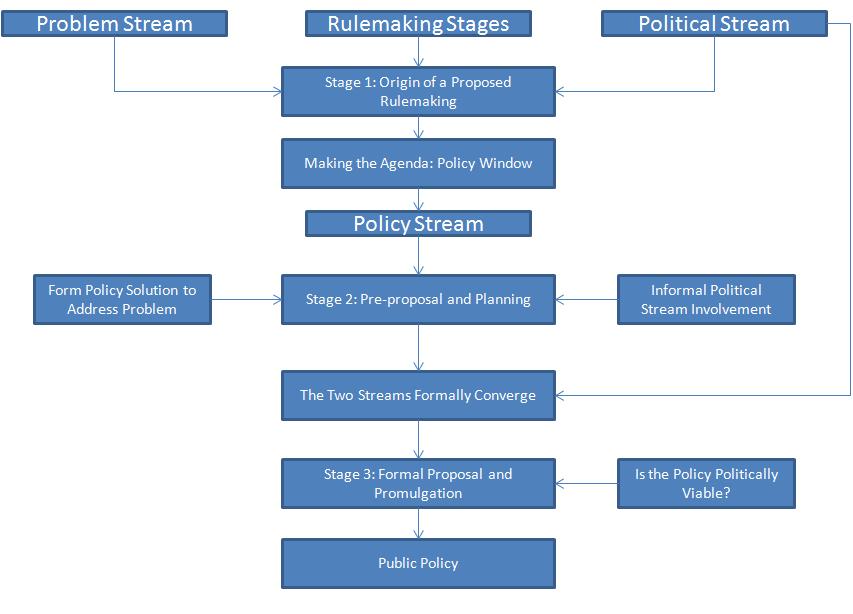
In order to analyze the role of interest groups in the Mandatory Reporting Rule, we employ Kingdon’s Multiple Streams Framework (MSF). Kingdon’s model has been used by Golden (2003), Kamieniecki (2006), and Rinfret (2011a) to evaluate interest group involvement in the agenda setting process at the federal agency level.[[2]](#footnote-2) In addition, Rinfret (2011a) suggests that components of Kingdon’s (2003) political stream are present in the pre-proposal stage of the rulemaking process. Therefore, we build upon this literature by arguing that models such as Kingdon’s MSF can and should be used to explain the entire administrative policymaking process. This model is particularly helpful in explaining the role of interest groups throughout the rulemaking process, not just the pre-proposal stage. Thus, it is important to understand the basic premise of Kingdon’s MSF and how it applies to this project. Kingdon (2003) argues that three streams, the problem, policy, and political stream impact the policymaking process and its outcomes.

The problem stream includes indicators, focusing events, and feedback. These indicators can include research or policy studies, which can establish a database for the magnitude of the condition. Focusing events usually take the form of major catastrophes or disasters that draw attention to the problem. Feedback loops can develop within the problem stream as experts and government officials review policies, which can affect the way a problem is understood or defined (Kingdon, 2003).

In turn, the policy stream includes ideas and proposals to address the problem. Many of these policy proposals arise from policy communities or networks that can include “researchers, congressional staffers, people in planning and budget offices, academics, and special interest group analysts” (Kingdon, 2003, p.116). These groups ultimately develop the solutions to problems that arise from the problem stream.

Finally, the political stream includes the national mood, interest group campaigns and election results that impact the policy makers involved in the process (Kingdon, 2003). The national mood is the concept that “a rather large number of people out in the country are thinking along certain common lines . . .and this national mood changes from one time to another” (Kingdon, 2003, p. 146). This national mood can be conceptualized as the prevailing public opinion regarding a policy issue or problem. Government officials can gauge this national mood and respond by implementing policies that support the prevailing mood. Similarly, organized interest groups can pressure government to act, if they determine the national mood is on their side for a particular issue (Kingdon, 2003). Not surprisingly, election results can impact the policymaking process, by changing the makeup of the legislature or executive branch.

Kingdon argues that at certain points in time, these three streams will converge and a problem will be discussed and acted upon. Kingdon terms these openings as policy windows where advocates (policy entrepreneurs) can promote their favored policy position, or push Congress to address specific problems (Kingdon, 2003). However, in terms of rulemaking, scholars have argued (Golden, 2003; Rinfret, 2011a) that all three streams do not necessarily have to converge for a policy window to open. With this basic understanding of the driving components within Kingdon’s MSF, we next demonstrate how the three streams apply to the rulemaking process in Figure 1-1.



*Figure 1-1 depicts the areas in which the three streams are present and influential within the rulemaking process.*

Figure 1-1 demonstrates that Kingdon’s political and problem streams are very influential during the first stage of the rulemaking process and are, in most cases, required to converge to put a particular rulemaking on the agenda of the agency. It is at this point when elements of the problem stream, including indicators and feedback, and elements of the political stream, including interest groups and political officials, bring issues to the agenda of the agency. This opens the policy window for the agency to act. However, the agency must produce a solution to the problem outlined previously in the political stream, and thus the policy stream comes into play during Stage 2.

At this point, agency personnel become very influential in the actual development of a solution to the problem and Kingdon’s policy communities are consulted to help draft the language of the rule. These policy communities are typically linked to trade associations and nonprofit organizations that are also impacted by the outcome, therefore the political stream remains influential during the pre-proposal stage as well. However, it is not until Stage 3, of the rulemaking process, that the policy and political stream formally converge in order to assure the rulemaking becomes public policy. In particular, politically appointed officials within the agency and across the executive branch must approve of the policy proposal produced by the agency staff. In turn, the public and interest groups can be influential through the public comment period and the litigation phase associated with Stage 3. Thus, Figure 1-1 provides a conceptual understanding of how Kingdon’s three streams impact the stages of the rulemaking process and how elements within those streams can guide the outcome.

Methods: A Qualitative Approach

Therefore, we apply Kingdon’s MSF with the goal of examining interest group influence across all stages of the EPA’s first-ever global climate change rulemaking. This study employs an exploratory single-case study research design, which Yin (2003) suggests is beneficial in answering why or how a series of events occurred. Yin (2003) documents a number of sources that can provide significant data for a case study analysis for the purpose of this research we relied upon archival records and interviews. We consulted archival records including agency memorandum, meeting agendas, agency outreach calendars, public hearing transcripts, and internal agency email correspondence in order to provide chronological information regarding who the agency discussed the rule with and what particular steps the agency took in developing this rulemaking.

*Semi-Structured Interviews*

To supplement the archival information, telephone interview data were collected during summer and fall 2011 to provide the necessary primary information regarding how agency personnel conducted the rulemaking and what involvement stakeholders had in the process. The snowball method was used to ascertain a large sample size of interviewees. This method is an approach that locates important key players within a particular case as interviewees are encouraged to recommend additional players with important information (Patton, 1990).

More specifically, we conducted interviews with three EPA personnel most involved with the actual writing and processing of the rule throughout the three stages. These interviews focused on the Mandatory Reporting of Greenhouse Gases rulemaking process and the interactions between stakeholders and the EPA during that process.[[3]](#footnote-3) In addition, we also conducted interviews with fourteen individual stakeholders involved in direct discussions of the Mandatory Reporting Rule from national industry and business trade associations, state and regional interest coalitions, and national environmental advocacy groups.[[4]](#footnote-4) This allowed us to compare the perceptions, determinations, and actions of the EPA personnel, with that of the stakeholders involved in the process. The schematic model (Figure 1-1) served as the organizing system for the analysis of the interview responses.

We relied upon this qualitative approach and particularly these interviews for our primary data because interactions between agency staff and stakeholders generally occur informally, outside of the public comment period. Because these interactions occur off the record, quantitative approaches can only provide a limited perspective of the rulemaking process, particularly during the pre-proposal phase (Jewell and Bero, 2006; Rinfret, 2011c). Moreover, Hacker (1997) argues that understanding stakeholder and agency personnel actions and “strategies can only be fully understood by speaking with the actors themselves” (pg. 6). Therefore, a qualitative approach is essential in providing the most in-depth understanding of agency and stakeholder interactions within the rulemaking process.

*Rulemaking Case Selection*

Finally, we selected the Mandatory Reporting of Greenhouse Gases Rule for this analysis, because it was the first GHG regulatory measure produced by the EPA. Further, we selected this rulemaking in part due to its number one ranking on the Office of Management and Budget’s (OMB) five-point priority scale[[5]](#footnote-5) illustrating this particular rule was a high priority and also economically significant. It is also important to note that, with over 16,000 comments, this rule was particularly salient (Mandatory Reporting of Greenhouse Gases Rule, 2009).

Results

The following pages outline the development of the Mandatory Reporting Rule through the application of Kingdon’s MSF to the three stages of the rulemaking process. We argue that the Mandatory Reporting Rule reached the EPA agenda through the convergence of the problem and political stream as outlined in Figure 1-1. In order to understand why this occurred, it is important to discuss the Mandatory Reporting Rule within the structure of Kingdon’s MSF and how components of the problem and political stream placed the issue of reporting GHG emissions firmly on the EPA agenda.

*Climate Change: So What’s the Problem?*

As noted, Kingdon (2003) illustrates that indicators, including routine program monitoring and studies, are important devices in the problem stream that suggest that problems within a given policy area exist. Additionally, Kingdon notes that strong indicators coupled with feedback can be enough to push policy makers to act on the problem at hand. In the case of the Mandatory Reporting Rule, it is clear the above components were all present in some form, illustrating the important role the problem stream plays in the early stages of the rulemaking process.

For example, the Intergovernmental Panel on Climate Change (IPCC) published its much anticipated Fourth Assessment Report in 2007, regarding the science behind climate change. This Fourth Assessment Report not only affirmed the notion that human induced climate change existed, but also suggested immediate action was necessary to mitigate the issue (IPCC, 2007). This report represents one of Kingdon’s (2003) indicators because it garnered significant media attention and was used by environmental organizations and politicians to advocate for GHG emission regulations at the national level (Revkin, 2007; Rosenthal & Revkin, 2007).In addition, later that same year, the Supreme Court relied on the IPCC report to make the case that carbon dioxide was an air pollutant that required EPA attention (*Massachusetts v. EPA*, 2007). The U.S. Supreme Court decision can be described as one of Kingdon’s feedback elements, as the court decision rebuked the findings of the EPA that carbon dioxide was not an air pollutant. This ruling opened the door for new policy approaches to deal with carbon dioxide emissions and climate change.

At the same time, Al Gore’s 2006 documentary, *An Inconvenient Truth*, discussing climate change was still in the minds of the public, and its Oscar award garnered significant media attention for the film and its climate change message (Mayerson, 2007). Thus, these elements appeared to contribute to a shift in the public mood as opinion polls indicated for the first time that over 54 percent of respondents viewed protecting the environment and climate change mitigation as a top priority of the government in 2007-08 (Revkin, 2009). With these elements of the problem stream and the accompanying shifts in public opinion, it appeared environmental organizations could use these numbers to convince Congress and the EPA that the time was ripe to act on climate change. These organizations were about to get help from changes in the political stream as well.

*Enter Congress*

The 2006 congressional elections provided a favorable political environment for national climate change policy (McGrory Kylza & Sousa, 2007). After the elections, one interviewee, representing a national environmental group, noted that they and other environmental advocacy groups began to “actively lobby Congress to push the EPA to monitor GHG emissions” (personal communication). More specifically, this group argued that they pushed Congress to include requirements in the annual budget to push the EPA to lay the groundwork for a national GHG reduction program. Moreover, their goal was to target the relevant congressional chairpersons of the committees of jurisdiction including Rep. Henry Waxman, Rep. Barbara Boxer, and Sen. Diane Feinstein. One interviewee suggested Boxer, Waxman, and Feinstein were “very keen on implementing a national climate change policy,” but they also understood that any “GHG regulation required accurate emissions data” (personal communication).

This emissions data represented the missing link between legislative action and regulating climate change. Therefore, an interviewee within the EPA suggested these elected officials were “big policy drivers” behind incorporating the GHG mandatory reporting language into the must pass FY 2008 Appropriations Act(personal communication). The Appropriations Act passed both houses of Congress and was signed into law by President Bush, requiring the EPA to:

Develop and publish a draft rule not later than nine months after the date of enactment of the Act, and a final rule not later than 18 months after the date of enactment of the act, to require mandatory reporting of greenhouse gas emissions above appropriate thresholds in all sectors in the economy[[6]](#footnote-6)

Therefore, Congress brought the need to produce a mandatory reporting rule to the EPA, but Congress did not give the agency much guidance in how to carry out this rulemaking.

*Reaching the EPA Agenda*

Thus, this discussion suggests that one of Kingdon’s (2003) problem stream windows opened for the EPA to seriously look at producing the first ever climate change regulation. It is clear that elements of the problem stream, including indicators and feeback, began to promote regulatory action at the agency level. However, components of the political stream, including shifts in public opinion, political turnover, and aggressive lobbying at the congressional level ultimately led to the statutory language enabling the agency to act. Therefore, if these two streams had not converged this particular problem would not have reached the agenda of the EPA. In fact, one interviewee mentioned that EPA Administrator Stephen Johnson and other top political figures in the executive branch “did not want to regulate carbon dioxide,” which suggests this problem would have had difficulty gaining traction within the agency otherwise (personal communication).

Nevertheless, the elements driving the problem and political stream opened the door for policy action. However, for a particular policy issue to stay on the agenda, Kingdon (2003) suggests a politically viable solution to the problem must be available. At this point in the rulemaking process the policy stream enters as the EPA must develop a rulemaking to address this issue (see Figure 1-1).

*The Mandatory Reporting Rule and the Policy Soup*

How the EPA went about producing a policy to solve this issue is the most interesting part of the story. As Figure 1-1 illustrates, the policy stream comes into play during Stage 2, the pre-proposal stage of the rulemaking process. Kingdon (2003) suggests policy proposals are developed through a series of steps in which proposals are vetted based on a set of criteria, including technical feasibility, political viability, and value acceptability among other criteria. Throughout this stage, components of the political stream, especially the involvement of interest groups, impact the policy produced here.

Because the numerous industries across the country are so diverse, finding a reporting rule that adequately encompassed all emissions costs effectively was a considerably difficult task. For example, an EPA official commented that a reporting program developed for one sector of the economy could look significantly different than the requirements of another sector based on “different manufacturing processes and products” (personal communication). As a result, going into the rulemaking the EPA had a number of policy issues to deal with including: what GHGs should be reported, what sectors of the economy should report, what types of facilities should report, what threshold of GHGs would be sufficient, how to verify those emissions, what methodologies should be used for each sector, and how the GHGs should be measured among many other policy decisions.

Kingdon (2003) notes that the policy short list, or the best of the best policy alternatives, is typically developed based on feasibility, acceptability, and cost efficiency of each proposal. This is evident throughout this rulemaking as one EPA official noted the workgroup’s[[7]](#footnote-7) number one goal was to develop a rule that “produced the best quality data at the lowest cost” (personal communication). In order to do this, one interviewee noted the agency responded by “developing a workgroup comprising over 100 people to find out what types of reporting programs are happening now and what needs to happen in the future” (personal communication).

In order to determine what reporting program options were feasible, EPA officials began to assess reporting programs across the government dealing with GHG emissions “including some atmospheric programs, the Acid Rain Program, Department of Energy programs, and voluntary programs to see what methodologies might work for some particular industries” (personal communication). After this assessment EPA officials began to lay the groundwork for what a reporting rule might look like. Agency officials noted the workgroup had determined early on within the process “what individual GHGs they wanted facilities to report” and what the “minimum reporting methodologies might look like” (personal communication). These two instances represent some of the issues the EPA decided upon early on in the development stage, which illustrates Kingdon’s (2003) assertion that in order for policy proposals to advance they have to be compatible with the mission and values of the agency. Throughout the pre-proposal stage the EPA had to decide what was acceptable to the agency prior to discussions with outside groups in order to structure the debate around acceptable terms.

*Writing the Rule and Bringing in Stakeholder Input*

In order to conduct this “massive rulemaking,” one member of the workgroup suggested outreach to the regulated community was key “to make sure they produced a reporting rule that produced quality data at a low cost” (personal communication). Therefore, the agency began to “identify and contact different trade groups, state entities, and nongovernmental organizations that may have experience in this type of reporting process” (personal communication). Agency personnel argued that these stakeholders “would share their experiences with this type of reporting program” (personal communication). One EPA official stated that the agency usually acts as a “sponge in these meetings to absorb important information regarding emissions levels, facility numbers, and data collection processes” (personal communication). This illustrates where Kingdon’s (2003) policy communities begin to play an active role in promoting particular ideas within a policy area.

In this case, these communities consisted of groups that specialize in air pollutant or GHG reporting programs including the California Air Resources Board, the Environmental Coalition of the States, the Climate Registry, the U.S Chamber of Commerce, and the American Petroleum Institute among many others (EPA, 2009b). More specifically, the EPA held over 100 formal meetings with 250 different interest groups in an attempt to determine what types of methodology would be most feasible and practical for the different sectors of the economy (EPA, 2009a).

During this process, agency officials began to notice that “some sectors of the economy and some states had been very active in monitoring GHG emissions, while others had done nothing” (personal communication). Thus, the EPA had to deal with a landscape in which some policy options could be feasible in one area or within one sector, while those same options would be unpractical in others. As a result, one interviewee noted the EPA took a unique approach and conducted this rulemaking as “39 different rulemakings all in one” (personal communication). EPA officials suggested individuals within the group “worked on different parts of the rulemaking in areas that they had expertise and then added those into the final rule” (personal communication).

After these meetings the EPA began to determine how a rulemaking for reporting GHG emissions would take shape. According to agency personnel, the “workgroup really understood the methods and worked with industry to produce the requirements of the rule” (personal communication). For example, EPA officials commented that the agency elected not to require “continuous emission monitors because they were too costly for industry” (personal communication). Additionally, the agency was now “pretty confident that the EPA itself could cost effectively verify GHG emissions reported from particular facilities” as opposed to allowing those facilities to verify data themselves or require a third party to do it (personal communication).

*Seizing the Moment*

After the agency had gained the input of stakeholders, the EPA formally completed the draft rule and submitted it to the Office of Management and Budget (OMB). However, one interviewee involved with this process noted that “the OMB never reviewed the proposed regulation and it just sat in limbo until the next administration came into office” (personal communication). In fact, one EPA official commented that the Bush administration had no intention to publish this rulemaking “because they thought other policy options might be better” (personal communication). So, for those few months remaining in the Bush administration, it appeared that this policy was not politically viable.

However, as Kingdon (2003) notes, political turnover can be a driving factor in the movement of a particular idea from the policy stream into national policy. It is clear that the political turnover that occurred after the 2008 presidential and congressional elections that ushered in a new Democratic President, Barack Obama, and strong Democratic majorities in Congress, made the macro level political stream much more favorable to climate change regulation (Vig & Kraft, 2013). More specifically, President Obama had the opportunity to change the landscape of the political stream in this particular rulemaking, by replacing top level Bush appointees at the OMB and the EPA with advocates for climate change regulations.

Newly elected President Obama did just that with his strong commitment to climate change regulation early in his term. President Obama unveiled his administration’s ambitious goal of an 80 percent reduction in greenhouse gas emissions by 2050 (Broder, 2008). He suggested the best way to achieve these reductions was for Congress to produce cap and trade legislation; however, he left the door open for EPA action if this avenue failed (Broder, 2008; Capehart, 2010). In order to achieve these ambitious climate goals, the president appointed Lisa Jackson head of the EPA.

Lisa Jackson, Obama’s EPA Administrator, has served as a strong supporter of the President in the climate change policy arena, but more importantly she has acted as a policy entrepreneur for climate change regulation and the Mandatory Reporting Rule more specifically (DuBois, 2010). She has made over 125 public speeches and addresses regarding the need for climate change and other environmental regulations, which is more than the former EPA administrator conducted over his entire four year term (DuBois, 2010).

EPA officials noted that Jackson sat down with staff early in her tenure to discuss “what regulations were currently pending in regards to climate change at the agency” (personal communication). At this meeting, EPA officials commented that Administrator Jackson gave the agency the “go ahead to continue pushing the reporting rule forward” (personal communication). Additionally after the 2008 elections, members of Congress, including Waxman, Boxer, and Feinstein again urged the EPA to move ahead on the Mandatory Reporting Rule (Jackson, 2009a; Jackson, 2009b).

These events rekindled the fire to push the Mandatory Reporting Rule forward. In fact, one EPA official noted that there “was now a lot of excitement around the agency and the capital for this rule” (personal communication). It is unclear, without the support of Lisa Jackson and other political appointees, what would have happened to the language and overall fate of the Mandatory Reporting Rule. Additionally, this renewed political interest began to increase the opportunity for success, as Kingdon (2003) asserts that this support can begin to speed up the process of policy acceptance, by setting the stage for policy compromise.

The EPA rode the wave of support from the administration and resubmitted the Mandatory Reporting Rule to the OMB for interagency review. After the Obama administration’s OMB approved the rule, the agency published a Notice of Proposed Rulemaking (NPRM) in the *Federal Register*. The Mandatory Reporting Rule found itself back on track, and had cleared the hurdles set up by Kingdon’s (2003) administrative gatekeepers who had finally given the OK to see to it that a policy proposal regarding GHG reporting became formal public policy.

*Public Comments and Interest Group Involvement*

However, this did not guarantee that this EPA rulemaking would make it out of the political stream and ultimately be published. The issuance of the NPRM opened Stage 3, the public comment period, and offered interest groups their first formal opportunity to impact the language of the rulemaking. For example, one stakeholder with an industry group mentioned they did not review the rule until it was proposed because at that point they believed “the rule was now much more likely to actually be published” (personal communication). Therefore, they wanted to make sure that the rule was not overly burdensome on their particular members. This illustrates Kindgon’s (2003) bandwagon and tipping point discussion, where groups begin to understand that a policy is on the horizon and they would like to be at the table when the details are finalized.

Furthermore, the EPA had left several important policy questions open ended including the threshold emission level, what sectors should report, how individual facilities should report, and what data should be publicly available in the proposed rule. Therefore, the final language of the rule was dependent on what comments the agency received regarding these particular questions. The EPA achieved two major goals by leaving these questions unanswered. First, the agency allowed stakeholders, especially those who had not been directly contacted in the pre-proposal stage, an opportunity to play some role in developing the policy to report GHG emissions. Secondly, this provided the agency a chance to placate the concerns of members within individual sectors without jeopardizing the whole rulemaking.

These two initiatives allowed the agency to avoid some of the pitfalls of the political stream. Kingdon (2003) notes that being able to first communicate with interest groups and other political forces to illustrate the merits of a particular policy, and then be able to broadcast wide support can be the main driver behind implementing that policy. Thus, agency personnel took a proactive approach to foster discussion and increase the involvement of groups and stakeholders who may not typically be heavily involved with EPA rulemakings. For example, one EPA official argued that the agency “distributed over 10,000 postcards to particular facilities that may be impacted by the proposed rule, in order to bring these groups into the rulemaking process” (personal communication). By the end of the comment period, agency officials suggested that they in fact reached out and “discussed this rule in some way with over 20,000 stakeholders” (personal communication).

*Compromise and the Final Rule*

After the public comment period the EPA had to respond those comments and make changes as they found necessary. Here Kingdon’s (2003) discussion of the importance of coalition building and more specifically bargaining and persuasion is most apparent. For example, in regards to threshold levels, one interviewee suggested that generally “environmental groups supported a 10,000 metric ton threshold, while industry groups tended to favor either the 25,000 or 100,000 metric ton threshold” (personal communication). In the final rule, the EPA selected a 25,000 metric ton threshold, because the agency felt it had “gotten enough support from the public, and it represented a nice compromise between those who wanted a lower or higher threshold level” (personal communication).

Furthermore, in order to assure the passage of the reporting rule and maintain a strong coalition, the EPA postponed a final ruling on ten different source categories in order to produce a more effective reporting program for these categories separately (Mandatory Reporting of Greenhouse Gases Rule, 2009). An EPA official mentioned that this allowed the EPA to finalize a reporting rule for those categories in which the agency had adequately “addressed the concerns of stakeholders, and provide more time for those sectors that were more complicated or where stakeholders were more divided” (personal communication). This divide and conquer approach allowed the EPA to localize concerns to particular portions of the rule, while gaining a consensus to publish the vast majority of the rule to put in place a policy that addresses the concerns of the President and Congress.

Again, Kingdon’s discussion of the need for political support comes into play here. This was a political calculation by the EPA to publish a rule for those areas in which they had the political support from all parties to implement a policy to appease the very vocal supporters of the program within Congress, the agency, and the public. Additionally, this was a way for the EPA to avoid very vocal opposition to the reporting rule in general, and focus on addressing the valid concerns of some groups representing these individual sectors without jeopardizing the whole rule. For example, a member affiliated with one of the above groups commented that the “agency had done some very sloppy rulemaking in regards to reporting requirements and the calculations that went along with those for their sector” (personal communication).

*Post Rulemaking Activity and Litigation*

In the end, the agency folded many of these sectors into the Mandatory Reporting Rule over the course of the following several months, and it was not until after the EPA incorporated these final changes that interest groups filed grievances with the EPA (personal communication). As noted by agency staff “virtually every rule is litigated to some extent” (personal communication), thus it is not surprisingly that it occurred here. In particular, the American Petroleum Institute (API) and the National Petrochemical and Refiners Association (NPRA) filed suit in the form of a petition of reconsideration. Officials interviewed with knowledge of this lawsuit suggested the two trade associations filed suit because the rule had been “published with little testing of reporting processes, and how they would work at the facility level” (personal communication).

Conversely, the Environmental Defense Fund (EDF) filed suit suggesting that the EPA was not adequately addressing the problem as outlined by Congress, because they were not requiring the reporting of GHG emissions from all sectors of the economy (Hansen, 2009). This particular ability of interest groups to derail a policy proposal by filing lawsuits represents a particularly strong bargaining chip for interest groups within Kingdon’s political stream that they typically do not have at the congressional level. If the agency does not do a good job of appeasing the concerns of particular groups, those groups can turn around and file suit against the agency, at least delaying the agency’s efforts or downright ending them.

However, in this case, it does not appear that the litigants were attempting to stop the implementation of this rule indefinitely but rather they wanted to “make sure the rule was done right” (personal communication). Interviewees involved with this litigation suggested the EPA had been in talks with these litigants to develop more “feasible and practical rules for the particular industries” and commented that the agency did “appreciate their input” (personal communication). As a result, it appears with more time and discussion, the EPA has been able to alleviate the concerns of these interests as EPA officials have commented that “all of these lawsuits have been settled, and the one outstanding lawsuit is on a similar track” (personal communication).

*Litigation, Kingdon’s Framework, and the Political Stream*

Therefore, the Mandatory Reporting Rule was published due in part to changes in the political stream. Furthermore, interest groups were particularly influential in this rulemaking, because of the nature of the EPA rulemaking process in which they foster stakeholder involvement. This involvement led to changes in the rulemaking during the formal public comment period[[8]](#footnote-8) and the litigation phase, which goes along with Kingdon’s (2003) suggestion that interest groups play a role in tailoring the language of policy proposals to become more favorable for their prospective interests. However, in the case of rulemakings it appears interest groups may have more power in changing the policy proposal than they might have at the congressional level, considering their earlier involvement during policy development and acceptance. This could be due to the fact that if the agency does not invite this input, the agency could become bogged down in a much more unmanageable slew of legal battles.

Discussion

*Interest Group Influence and at What Stage?*

The preceding analysis illustrates that interest groups were heavily involved within all the stages of this EPA rulemaking, especially within Stages 2 and 3. However, the question remains, who was the most influential and within what stage? In regards to the first question, it appears that neither business groups nor environmental groups were more dominant during the pre-proposal or formal proposal stage. This may have been caused by the agency’s efforts to gain consensus regarding the basic tenants of the rulemaking. In particular, the agency’s decision regarding verification methods in Stage 2 and threshold levels in Stage 3 seems to provide the basis for this conclusion.

Beginning with the verification issue, it is clear that stakeholders had competing views on what type of verification process was most efficient. According to one industry group, they had urged the agency to select “self verification or at most EPA verification over third party verification” (personal communication). Comparatively, environmental groups and some of the state and nongovernmental organizations interviewed suggested that they had supported third party verification, but “they would accept EPA verification of industry data” (personal communication). Therefore, agency personnel argued that they selected the latter method, EPA verification, “because we seemed to find a lot of agreement that this form of verification would be acceptable” (personal communication). One industry group confirmed this point and mentioned “that they were satisfied with this approach, because it meant less costs for our members. Similarly, environmental stakeholders commented “we were okay with this approach because the EPA assured us they could verify the data” (personal communication). Although, neither industry or environmental groups got their preferred policy option, they ultimately found the final outcome acceptable.

Similarly, as mentioned early, the EPA selected the 25,000 metric ton threshold level that fell in the middle of the competing camps, with environmentalists favoring a lower threshold and industry favoring a higher one. Here again, both sides were able to accept the policy decision as environmental groups were able to argue they had protected the magnitude of the GHG reporting program, while industry groups were able to shelter a substantial number of small emitters from reporting.

The aforementioned analysis and these particular examples illustrate that interest groups were influential throughout the rulemaking process. However, one could argue that this consensus building approach was not particularly effective due to the continued presence of litigation in the process. Yet, one stakeholder comment was particularly telling of what may explain this suggesting “this was a clear example of the effort of an agency to reach consensus regarding a rule, while dealing with time constraints imposed on the agency to act” (personal communication). Therefore, the agency effort to reach consensus did not necessarily fail because of the litigation phase, rather the agency simply had to produce a rule in a timely matter with as much consensus as they could garner.

Yet, if this influence is relatively balanced as it appears to be, does it really matter when these groups get involved? To answer this question it is relevant to evaluate when interest groups got involved, and what, if any, advantage some groups had over others based on their earlier or later entrance into the process. First, it seems that many of the groups interviewed were involved in the pre-proposal stage and continued to interact with the EPA throughout the public comment period. As discussed earlier, these groups impacted the language of the rule during Stage 2. However, these groups found their involvement during this stage was particularly beneficially because they “were better prepared to influence the EPA throughout the rest of the process” and they could focus on “persuading the EPA to select a particular approach in those areas that were still up for debate” (personal communication).

The above comments become more revealing if you compare this to the commentary from those interviewees who were only involved after the rule was formally published. These late arrivals had a much more difficult time influencing the agency. For example, one individual interviewed commented they did not have a good understanding of “where the agency was headed or what their intent was” (personal communication). Furthermore, another group argued they did not have “enough involvement with the EPA before the publication of the rule to address their concerns” (personal communication). Therefore, due to their late presence, these groups appeared to have a tougher time understanding what the rulemaking meant for their interest and then had trouble getting the attention of the EPA to voice their concerns when they did. As a result, this analysis concludes that interest group involvement in the pre-proposal stage is helpful in two ways 1) interest groups are able to influence the rulemaking at an early stage and can impact the language of the rule and 2) they are more prepared to produce comments and influence the language of the rule after its proposal.

Conclusion

This research tries to address several gaps in the literature through our analysis of the rulemaking process employed by the EPA and the role of stakeholders throughout the rulemaking process. We conclude that at least in this particular rule, the EPA incorporated significant stakeholder input with the goal of creating a more feasible and cost effective rulemaking. Moreover, this case reveals the EPA’s effort to include a broader set of interest groups in order to avoid the typical criticism that stakeholder participation is dominated by business interests. Finally, this research argues that interest groups involved in the pre-proposal stage, no matter their affiliation, are very well positioned to impact the language of the rulemaking.

On a theoretical level, this research strives to illustrate the effectiveness of Kingdon’s MSF in explaining the actions occurring within each stage of the rulemaking process. The conclusion that Kingdon’s MSF can be applied to the rulemaking process is not new, as both Golden (2003) and Rinfret (2011a) have noted the usefulness of this framework. However, their research focused solely on the pre-proposal stage, which does not provide a full understanding of the rulemaking process. Clearly, the rulemaking process does not end when a rulemaking is proposed in the *Federal Register*,and a multitude of factors continue to impact the rulemaking process, most notably politically appointed officials and interest groups in the final stage of the process. Therefore, focusing on the pre-proposal stage alone provides only an incomplete understanding of how Kingdon’s model applies to the rulemaking process. As a result, this research illustrates that elements of Kingdon’s model are indeed present throughout the rulemaking process and provide insight regarding why a rulemaking process unfolds as it does.

In sum, we argue that Kingdon’s MSF is a beneficial model to explain the policymaking processes at the congressional and administrative levels. Considering the increasing role of agency rulemakings in producing national policy, scholars will begin to analyze these rulemaking processes and the players involved more frequently. Therefore, the schematic model in Figure 1-1 should help future scholars to apply Kingdon’s model to the rulemaking process and begin to explain how agencies across the bureaucracy are making policy decisions. More specifically, this research adds to Kingdon’s model by outlining the significant role that interest groups can play in the policy stream at the administrative level. Additionally, agency officials both politically appointed and career civil servants can have significant impacts on the policy process by either spearheading initiatives or allowing the rulemaking to simply disappear when Congress and the public are not paying attention.

However, all research has its shortcomings and this study is no different. Ultimately, we apply Kingdon’s model to one rulemaking within the EPA. Therefore, much more research is necessary to unpack the role of interest groups throughout rulemakings and across the bureaucracy. One direction for future scholarship is to compare the findings from this project with similar EPA rulemakings to evaluate interest group involvement and what elements of Kingdon’s model impact the process. In turn, this research could expand by comparing the EPA with other environmental agencies such as the U.S. Fish and Wildlife Service or the U.S. Forest Service. If, in particular, agency consensus building approaches like those discussed here are apparent across agencies, this would be an important message to reveal.

Inevitably, the outlook for the future of environmental policy at the congressional level looks meek due to partisan battles and congressional gridlock. Yet, rulemaking is becoming an increasingly viable option for the future of U.S. environmental policy and it is about time we started paying attention to how this policy is being made. Ultimately, Kingdon’s MSF model provides the very pathway for future scholars to begin to understand this process and in particular how problems reach an agency’s agenda, how policies are developed, and what players impact the final language of the policy produced.

# References

Administrative Procedures Act of 1946, 5 U.S.C. § 553 (2010).

Broder, J. M. (2008, Nov 18). Obama affirms climate change goals. *The* *New York Times*. Retrieved from <http://www.nytimes.com/2008/11/19/us/politics/19climate.html>.

Capehart, J. (2010, Mar. 4). If congress won’t act the EPA must. *The Washington Post*. Retrieved from <http://voices.washingtonpost.com/postpartisan/2010/03/_efforts_by_congress_to.html>.

Clean Air Act of 1970 §202 (a), 42 U.S.C. § 7521 (2010).

Consolidated Appropriations Act 2008, H.R. 2764 Division F Title II (2008).

Dubois, S. (2010 Sept 29). EPA’s Jackson: The new face of tough regulation. *Fortune*. Retrieved from <http://money.cnn.com/2010/09/29/news/companies/EPA_Lisa_Jackson_fracking.fortune/index.htm>.

EPA. (2009a). Proposed mandatory greenhouse gas reporting rule fact sheet. Retrieved from <http://www.epa.gov/climatechange/emissions/archived/downloads/ProposedRule-FactSheet.pdf>.

EPA. (2009b). *Summary of outreach meetings on GHG reporting rule*. Retrieved from <http://www.regulations.gov>.

Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202 (a) of the Clean Air Act; Final Rule 74 Fed. Reg. 66496 (2009) (to be codified at 40 CFR Chapter 1).

Fiorino, D. (2012). Environmental bureaucracies: The Environmental Protection Agency chapter. Forthcoming in Michael E. Kraft and Sheldon Kamieniecki, *Oxford Handbook of U.S. Environmental Policy*.

**Fritschler**, A. L. (**1975)**. *Smoking and politics* (2nd ed.). Englewood Cliffs, NJ: Prentice-Hall.

Furlong, S. R. (1993). *Interest group influence on regulatory* *policy.* (Doctoral dissertation) American University. Washington, DC.

Furlong, S. (1995). Reinventing regulatory development at the Environmental Protection Agency*. Policy Studies Journal* *23*(3), 466-482.

Golden, M. (1998). Interest groups in the rule-making process: Who participates? Whose voices get heard? *Journal of Public Administration Research and Theory* *8* (2), 245-270.

Golden, M. (2003). *All of the above (but with Congress rising): Who sets the rulemaking agendas in federal agencies?* Paper presented at the annual meeting of American Political Science Association, Philadelphia, PA.

Hacker, J. S., (1997). *The Road to Nowhere: The Genesis of President Clinton’s Plan for Health Care Security.* Princeton, NJ: Princeton University Press.

Hansen, B. (2009). Both energy groups and environmentalists have legal objections to GHG reporting rule. *Electric Utility Week*, 5.

Intergovernmental Panel on Climate Change (2007). *Climate change 2007: Synthesis report. Contribution of working groups I, II, III to the fourth assessment report of the Intergovernmental Panel on Climate Change.* Geneva, Switzerland.

Jackson, L. (2009a). EPA administrator, letter to Senator Feinstein, Boxer, Snowe, and Klobuchar. Retrieved from [www.regulations.gov](http://www.regulations.gov).

Jackson, L. (2009b). EPA administrator, letter to the Honorable Congressperson Baldwin, Waxman, Inslee, and Holt. Retrieved from [www.regulations.gov](http://www.regulations.gov).

Jewell, C., & Bero, L. (2006). Public participation and claimsmaking: Evidence utilization and divergent policy frames in California’s ergonomics rulemaking. *Journal of Public Administration Research and Theory* (17), (625-650).

Kamieniecki, S. (2006). *Corporate America and environmental policy: How often does business get its way?* Stanford, CA: Stanford Law and Politics.

Kerwin, C. M., & Furlong, S. R. (2011). *Rulemaking how government agencies write law and make policy*. Washington D.C.: CQ Press, pp. 49-180.

Kingdon, J. W. (2003). *Agendas, alternatives, and public policies* (2nd ed.). New York City, NY: Addison-Wesley Educational Publishers Inc., pp. 90-185/

Magat, W., Krupnick, A., & Harrington, W. (1986). *Rules in the making: A statistical analysis of*

*regulatory agency behavior*. Washington, DC: Resources for the Future Press.

Mandatory Reporting of Greenhouse Gases; Final Rule 74 Fed. Reg. 5260 (2009) (to be codified at 40 CFR pt. 86, 87, 89 et al.)

Massachusetts et al. v. EPA et al. 549 U.S. 2, 5 (2007).

Mayerson, N. (2007). Two steps greener, one back. *The New York Times*.

McGarity, T. O. (1991). The internal structure of EPA rulemaking. *Law and*

*Contemporary Problems* 54, 57-111. Retrieved from [www.heinonline.org](http://www.heinonline.org).

McGrory Klyza, C., & Sousa, D. (2007). *American environmental policy, 1990-2006 beyond gridlock*. Cambridge, MA: Massachusetts Institute of Technology.

Patton M. Q. (1990). *Qualitative evaluation and research methods* (2nd ed.). London: Sage Publications, p. 176.

Regulating Greenhouse Gases under the Clean Air Act, 40 CFR 153(Advanced Notice of Proposed Rulemaking 2008).

Revkin, A. C. (2007, Jan 14). Connecting the global warming dots. *The New York Times*.

Revkin, A. C. (2009, Jan 23). Environmental issues slide in poll of public’s concerns. *The New York Times*.

Rosenthal, E. & Revkin A. C. (2007, Feb 3). Science panel says global warming is unequivocal. *The New York Times*.

Rinfret, S. R. (2011a). Behind the shadows: Interests, influence, and the U.S. Fish and Wildlife Service. *Human Dimensions of Wildlife*, *16*, 1-13.

Rinfret, S. R. (2011b). Cleaning up the air: The EPA and shuttle diplomacy. *Environmental Practice* *13*(3), (1-8).

Rinfret, S. R. (2011c). Frames of Influence: U.S. Environmental Rulemaking Case Studies.

Review of Policy Research 28 (3): (231-245).

Rinfret, S. R. & Furlong S. R. (2012). Defining environmental rulemaking. Forthcoming in Michael E. Kraft & Sheldon Kamieniecki’s *Oxford Handbook of U.S. Environmental Policy.*

Truman, D. (1951). *The Governmental Process Political Interests and Public Opinion*. New York: Alfred A. Knopf (33).

Vig, N., Kraft, M. (Eds.). (2013). Environmental policy: New directions for the twenty-first century (8th ed.). CQ Press.

West, W. (2005). Special report administrative rulemaking: An old and emerging literature. *Public Administration Review*, *65*, 655-668.

Yackee, S.W. (2012). The Politics of *Ex Parte* Lobbying: Pre-Proposal Agenda building and Blocking during Agency Rulemaking. In *Journal of Public Administration Research and Theory* 22(2) (373-393).

Yackee, J. W. & Yackee, S. W. (2006) A bias towards business? Assessing interest group influence on the U.S. bureaucracy. *The Journal of Politics*, *68*:128-139.

Yin, R. K. (2003). *Case study research: Design and methods*. Thousand Oaks, CA: Sage Publications.

1. This paper uses the interest group definition as derived from David Truman’s work defining an interest group as “any group that is based on one or more shared attitudes and makes certain claims upon other groups or organizations in the society” (Truman, 1951, p. 33). Additionally, typical interest groups may include trade associations, business, and advocacy groups (Rinfret &Furlong, 2012). [↑](#footnote-ref-1)
2. It is important to note here that Kingdon developed the framework to explain policymaking at the congressional level, but as the previous scholars have argued it can be used to explain the rulemaking process (Golden, 2003; Kamieniecki, 2006; Rinfret, 2011a). [↑](#footnote-ref-2)
3. Only a limited number of agency personnel are available for interviews for rulemakings because only a small number are involved with direct rule writing, due to budgetary and other resource constraints. [↑](#footnote-ref-3)
4. All of the names of the interviewees have been kept confidential in order to protect the privacy and identity of the respondents. [↑](#footnote-ref-4)
5. The OMB five-point scale categorizes the importance of any given rule from a one to five scale where one designates an economically significant rule; two designates a rule with some other significant impact; three designates a rule with substantial non-significant impacts; four designates a rule with a routine or frequent impact; and five designates a rule with an administrative impact. [↑](#footnote-ref-5)
6. As published in the FY 2008 Consolidated Appropriations Act. Consolidated Appropriations Act (2008) 110-161, 121 § 1844, 2128. [↑](#footnote-ref-6)
7. The workgroup is comprised of officials both inside and outside the EPA with expertise in a given policy area. The workgroup manages the development of the rulemaking and ushers it through the stages of the rulemaking process. [↑](#footnote-ref-7)
8. We determined this through an evaluation of the language of the proposed rule and the final rule, and comparing that to discussions with interviewees who had either formally commented or by other means communicated to the agency they wished to see the change implemented. [↑](#footnote-ref-8)