



United States  
CONSUMER PRODUCT SAFETY COMMISSION  
Washington, D.C. 20207

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MEMORANDUM

DATE: July 1 , 2002

TO : OGC  
Through: Todd A. Stevenson, ~~Acting~~ Secretary, OS  
FROM : Martha A. Kosh, OS  
SUBJECT: Proposed Data Quality Guidelines

ATTACHED ARE COMMENTS ON THE CA 02-2

<u>COMMENT</u>	<u>DATE</u>	<u>SIGNED BY</u>	<u>AFFILIATION</u>
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CA 02-2-2	5/31/02	Thomas McGarity President	Center for Progressive University of Texas
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CA 02-2-4	6/10/02	John D. Graham	OMB
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# Center for Regulatory Effectiveness

*Data Quality Comment*

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May 29, 2002

Consumer Product Safety Commission  
Office of the Secretary  
4330 East-West Highway, Fourth Floor, Room 502  
Bethesda, MD 20814

RE: CRE Comments on Proposed Data Quality Guidelines

Dear Administrator:

I am writing on behalf of the Center for Regulatory Effectiveness (CRE) to share with you the Center's comments on your agency's recently proposed information quality guidelines, issued pursuant to the Data Quality Act (44 U.S.C. § 3516, note). As you may be aware, the Center had a leading role in passage of the Act and maintains a strong ongoing interest in this important issue. I invite you to visit the CRE website ([www.TheCRE.com](http://www.TheCRE.com)) for further details.

In light of the deference the public pays to governmental information and its significant role in regulation and resource allocation in both the public and private sectors, the quality of the federal government's information is a matter of critical importance. Consequently, CRE appreciates this opportunity to provide its views and recommendations to the agency in order to achieve the intent of Congress in enacting this new "Good Government" law and of OMB in promulgating its guidelines containing government-wide Data Quality standards (67 Fed. Reg. 8452, Feb. 22, 2002).

To assist the agency in meeting its obligations under the Data Quality Act and OMB's guidelines, CRE has prepared and enclosed the following attachments:

(1) CRE General Comments to All Federal Agencies Related to Data Quality Guidelines

- This paper outlines a number of cross-cutting issues related to Data Quality guidelines which are applicable to all agencies and contains CRE's recommendations on how such issues should be addressed.

## Center for Regulatory Effectiveness

- CRE strongly believes that proper action on these key issues will help ensure that the guidelines issued by the agency are workable, effective, and in keeping with the requirements of both the statute and the government-wide standards set by OMB.
- In the paper, CRE identifies and evaluates a number of agency approaches to these cross-cutting issues. Such examples include positive agency proposals which might be emulated, as well as problematic agency proposals which should be avoided.

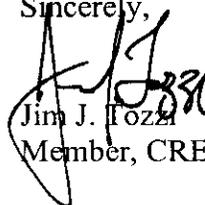
### (2) **Legal Memorandum on the Data Quality Act's Applicability to All Public Information**

- CRE has been troubled by several agencies' attempts in their proposed guidelines to exempt certain categories of public information from the Data Quality Act's standards. Consequently, CRE retained Multinational Legal Services (MLS) to examine this important issue. Attached is a legal memorandum which summarizes the MLS inquiry into the Data Quality Act's applicability to all public information. In short, MLS found:
  - Analysis of the Data Quality Act, the Public Information provisions of the Paperwork Reduction Act, and legislative history demonstrate that Congress intended Data Quality Act standards to apply to all public information.
  - Thus, neither OMB nor any other federal agency has discretion to violate this legislative intent by exempting categories of information from the standards set forth pursuant to the Data Quality Act.

Finally, CRE believes that in light of the ongoing importance of the Data Quality issue, all federal agencies should adopt Data Quality as a Performance Goal in its Performance Plan under the Government Performance and Results Act. Not only would this assist the agency in regularly monitoring and improving its information quality activities, but it would also serve to increase the transparency of the agency process for Congress and the interested public.

CRE would be happy to answer any questions you might have related to its comments and supporting materials. Please contact us at (202) 265-2383, if we might be of further assistance.

Sincerely,



Jim J. Tozzi  
Member, CRE Board of Advisors

Attachments

# PROPOSED CRE GENERIC COMMENTS TO ALL FEDERAL AGENCIES RELATED TO DATA QUALITY GUIDELINES

## Introduction

OMB's Data Quality guidelines have provided a strong foundation for improvement in the overall quality of information which the federal government disseminates to the public. However, as acknowledged by Congress in passage of the Data Quality Act, individual agencies must promulgate their own conforming Data Quality guidelines that address the unique characteristics and information products of their programs. It is imperative that these agency guidelines be drafted in such a way as to ensure that they are workable, effective, and in keeping with the government-wide standards set by OMB.

To assist in this process, the Center for Regulatory Effectiveness (CRE) has compiled a list of key issues related to the Data Quality guidelines and reviewed a large number of agency guidelines issued to date to see if and how these important topics have been addressed. CRE sees these as "cross-cutting" issues, in that they would apply to most if not all federal agencies. The balance of the paper will provide:

- Statement of the cross-cutting issue.
- Explanation of the issue, its importance, and CRE's recommended approach.
- Examples of current agency proposals on the issue which are satisfactory (if any) and the reasoning for that conclusion.
- Examples of current agency proposals on the issue which are unsatisfactory (if any) and the reasoning for that conclusion.

## **CROSS-CUTTING ISSUES RELATED TO AGENCY DATA QUALITY GUIDELINES**

### **(1) Exemptions from Applicability of the Data Quality Guidelines**

OMB's interagency Data Quality guidelines exempt some types and categories of information the Data Quality guidelines. Many other agencies have proposed additional exemptions. *As demonstrated in the accompanying Legal Memorandum, the OMB and additional agency exemptions from the Data Quality guidelines contradict clear congressional intent to the extent that they exempt any information that an agency has in fact made public. Neither OMB nor any other federal agency has authority to make such exemptions.*

OMB's interagency Data Quality guidelines exempt from their coverage certain publicly disclosed federal agency information:

**"Dissemination" means agency initiated or sponsored distribution of information to the public (see 5 CFR 1320.3(d) (definition of "Conduct or Sponsor")). Dissemination does not include distribution limited to government employees or agency contractors or grantees; intra- or interagency use or sharing of government information; and responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or other similar law. This definition also does not include distribution limited to correspondence with individuals or persons, press releases, archival records, public filings, subpoenas or adjudicative processes.**

67 FR 8452, 8460 (Feb. 22, 2002).

This definition of "dissemination" is considerably narrower than OMB's previous definitions of this term in a PRA context. For example, in OMB Circular A-130, at page 3 OMB defined "dissemination" to mean:

**... the government initiated distribution of information to the public. Not considered dissemination within the meaning of this Circular is distribution limited to government employees or agency contractors or grantees, intra-or-inter-agency use or sharing of government information, and responses to requests for agency records under the Freedom of Information Act (5 U.S.C. 552) or Privacy Act."**

Other agencies have included the OMB exemptions in their proposed Data Quality guidelines. Some agencies have proposed to expand the OMB exemptions, or to add new exemptions. For example:

**Retroactivity Exemption** (See Issue #2)

Several agencies, such as NIH at page 4 of its guidelines, make statements indicating that their guidelines, and the OMB guidelines, will apply only to information that is initially disseminated initially after October 1, 2002. This proposed exemption contradicts OMB's interagency guidelines which specify that they apply to information created or originally disseminated prior to October 1, 2002, if an agency continues to disseminate the information after that date.

**Case-by-Case Exemption** (See Issue #3)

Several agencies, including EPA at pages 22-23 of its proposed guidelines, propose application of the PRA's Data Quality guidelines on a case-by-case basis, rather than application of them to all information disseminated by the agency.

**Rulemaking Exemption** (See Issue #4)

A number of agencies, including EPA at page 22-23 and the Department of the Treasury at page 6 of their proposed guidelines, have stated that the Data Quality error correction process required by OMB's interagency Data Quality guidelines will not apply to information in proposed rulemakings, and that any alleged errors will be addressed only through the rulemaking notice and comment process. It is not clear from these proposed exemptions whether the agencies believe that any of the PRA's Data Quality standards apply to information disseminated during rulemakings.

**Adjudicative Processes Exemption**

EPA's proposed data quality guidelines, at page 17, substantially expand OMB's adjudicative processes exception by broadening it to include, *inter alia*:

*Distribution of information in documents relating to any formal or informal administrative action determining the rights and liabilities of specific parties, including documents that provide the findings, determinations or basis for such actions. Examples include the processing or adjudication or applications for a permit, license, registration, waiver, exemption, or claim; actions to determine the liability of parties under applicable statutes and regulations; and determination and implementation of remedies to address such liability.*

The OMB interagency and individual agency Data Quality guidelines are promulgated under and implement the Information Dissemination requirements of the Paperwork Reduction Act (“PRA”). 44 U.S.C. §§ 3504(d)(1), 3516 note. The Multinational Legal Services (MLS) Legal Memorandum accompanying CRE’s Generic Data Quality Comments explains that the relevant statutory text and legislative history demonstrate clear congressional intent that these Data Quality guidelines, like the PRA’s other Information Dissemination requirements, apply to any and all information that federal agencies have in fact made public. By contrast to the PRA’s separate Collection of Information requirements, there are no statutory exemptions from any of the PRA’s Information Dissemination requirements. OMB’s attempt to create exemptions by restricting the definition of “dissemination” in its interagency Data Quality guidelines contradicts Congress’ own pervasive and all encompassing use of this term. OMB’s “dissemination” exemptions in its interagency Data Quality guidelines are also inconsistent with OMB’s prior, much broader definition of “dissemination” in implementing the PRA’s Information Dissemination requirements. The additional exemptions proposed by other federal agencies also violate clear congressional intent because OMB cannot provide any exemptions from its interagency Data Quality guidelines, and the other agencies have to comply with OMB’s interagency guidelines. 44 U.S.C. §§ 3504(d)(1); 3506(a)(1)(B); 3516 note.

## **(2) Retroactive Application of the Data Quality Guidelines**

In compliance with the statute, each agency's Data Quality guidelines must become effective on October 1, 2002. The guidelines must apply to information being disseminated on or after October 1, regardless of when the information was first disseminated. This retroactivity principle is explicitly enunciated in OMB's February 22, 2002 guidelines, at III.4. All agency guidelines are required to comply with the requirements set forth by OMB in their interagency February 22<sup>nd</sup> Final Guidelines. 44 U.S.C. §§ 3504(d)(1); 3506(a)(1)(B); 3516 note.

### **Example(s) of Satisfactory Agency Proposals**

#### Department of Justice

DOJ's draft guidelines state at page 2, "These guidelines will cover information disseminated on or after October 1, 2002, regardless of when the information was first disseminated...."

These guidelines are in full compliance with the retroactivity provision in OMB's February 22<sup>nd</sup> guidelines.

### **Example(s) of Unsatisfactory Agency Proposals**

#### National Institutes of Health

The NIH guidelines state at p.4, "The OMB guidelines apply to official information (with the NIH imprimatur) that is released on or after October 1, 2002."

NIH's statement about OMB's guidelines directly contradicts the text of OMB's guidelines which clearly state that they "shall apply to information that the agency disseminates on or after October 1, 2002, regardless of when the agency first disseminated the information." [Emphasis added]

**(3) Individual Agency Guidelines Must Comply with OMB's Interagency Guidelines; and There Are No Case-By-Case Exemptions From Applicability Of The Guidelines**

OMB's interagency Data Quality guidelines implement section 3504(d)(1) of the PRA. 44 U.S.C. § 3516 note. Section 3504 (d)(1) requires that "with respect to information dissemination, the [OMB] director shall develop and oversee the implementation of policies, principles, standards, and guidelines to apply to Federal agency dissemination of public information, regardless of the form or format in which such information is disseminated...." 44 U.S.C. § 3504(d)(1). All federal agencies subject to the PRA must comply with OMB's interagency Data Quality guidelines when they issue their own Data Quality guidelines. 44 U.S.C. §§ 3504(d)(1); 3506(a)(1)(B); 3516 note. The MLS Legal Memorandum accompanying CRE's Generic Data Quality Guidelines explains that Congress clearly intended OMB's Data Quality guidelines to apply to all information agencies subject to the PRA in fact make public

**Example(s) of Satisfactory Agency Proposals**

None

All agency guidelines reviewed appear to try to reduce significantly the binding nature indicated in the OMB guidelines.

**Example(s) of Unsatisfactory Agency Proposals**

Multiple Agencies

None of the agency proposals reviewed make any reference to the directives of the PRA; they refer only to section 515 of the FY 2001 Consolidated Appropriations Act, the Data Quality Act itself, and ignore the fact that the Data Quality Act expressly states that the Data Quality guidelines are promulgated under and implement the PRA.

EPA's proposal states that its guidelines do not impose any "legally binding requirements or obligations.... The guidelines may not apply to a particular situation based on the circumstances, and EPA retains discretion to adopt approaches on a case-by-case basis that differ from the guidelines, where appropriate." Sec. 1.1. "Factors such as imminent threats to public health or homeland security, statutory or court-ordered deadlines, or other time constraints, may limit or preclude applicability of these guidelines." Sec. 1.2. Information that generally would not be covered by the guidelines includes "information in press releases and similar announcements: These guidelines do not apply to press releases, fact sheets, press conferences or similar communications in any medium that announce, support the announcement or give public notice of information EPA has disseminated elsewhere." Sec. 1.3, Ins. 482-85.

The CDC/ATSDR proposal has lists of information products to which the guidelines do and do not apply. It also includes press releases and interviews, but does not include “similar announcements,” as does EPA. The umbrella HHS guidelines state that the quality standards do not apply to press releases. Sec. D.3.

The NIH proposal also lists with considerable specificity types of information covered and not covered. Press releases are listed as not covered. There is no qualification as to whether a press release simply announces, supports an announcement, or gives public notice of information the agency has disseminated elsewhere, as in EPA’s proposal. Sec. II, 2. The NIH proposal states that its information dissemination products must conform to the OMB guidelines. Sec. V, 1.

DOT’s proposal states that it contains only “suggestions, recommendations, and policy views of DOT. They are not intended to be, and should not be construed as, legally binding requirements or mandates. These guidelines are intended only to improve the internal management of DOT . . . .” Sec. III, b. The DOT proposal is very specific in excluding certain types of information. Information presented to Congress is excluded if it is “not simultaneously disseminated to the public”. III, j. Also excluded are “[p]ress releases and other information of an ephemeral nature, advising the public of an event or activity of a finite duration - regardless of medium”. III, k.

The DOL proposal begins with a Preface which states that the document provides an “overview” of the agency’s “efforts” to ensure and maximize information quality. DOL states that the guidelines are only intended to improve the internal management of the government and “are not intended to impose any binding requirements or obligations on the Department . . . . A Departmental agency may vary the application of information quality guidelines in particular situations where it believes that other approaches will more appropriately carry out the purpose of these guidelines or will help an agency to meet its statutory or program obligations.” DOL also specifies certain types of information to which the guidelines do not apply, including press releases, adjudicative processes, policy guidance, and statements of legal policy or interpretation. Sec. on “Scope and Applicability”.

The CPSC proposal states that information is not subject to the guidelines if it states explicitly that it was not subjected to them. P.5.

Finally, all of the above agency proposals exempt material relating or adjudicatory proceedings or processes, including briefs and other information submitted to courts. *See e.g.*, DOT at IV, g.

**(4) Inclusion of Rulemaking Information in the Data Quality Act Petition Process**

Information present in rulemaking records, both completed and ongoing, comprises much of the information disseminated by federal agencies. Neither the Data Quality Act itself nor OMB's February 22<sup>nd</sup> agency-wide guidelines exclude rulemaking records from coverage.

**Example(s) of Satisfactory Agency Proposals**

None

**Example(s) of Unsatisfactory Agency Proposals**

EPA; Treasury

EPA's proposed guidelines, at pages 22-23, appear to exclude most rulemaking records from the Data Quality Act petition and correction process:

... where a mechanism by which to submit comments to the Agency is already provided. For example, EPA rulemakings include a comprehensive public comment process and impose a legal obligation on EPA to respond to comments on all aspects of the action. These procedural safeguards assure a thorough response to comments on quality of information. EPA believes that the thorough consideration required by this process meets the needs for the correction of information process. A separate process for information that is already subject to such a public comment process would be duplicative, burdensome, and disruptive to the orderly conduct of the action.

If EPA cannot respond to a complaint in the response to comments for the action (for example, because the complaint is submitted too late to be considered along with other comments or because the complaint is not germane to the action), EPA will consider whether a separate response to the complaint is appropriate. EPA may consider frivolous any complaint which could have been submitted as a timely comment in the rulemaking or other action but was submitted after the comment period.

The Treasury Department's proposed guidelines (page 5) also have a rulemaking exclusion.

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These proposed exclusions could, as a practical matter, remove all EPA and Treasure rulemaking records from coverage under the Data Quality Act. This exclusion is contrary to the letter and intent of the Act, as explained in the MLS Legal memorandum accompanying CRE's Generic Data Quality Guideline comments.

Moreover, many rulemakings are very lengthy proceedings. Information in a rulemaking public docket may be publicly available for years before the agency takes any action on comments on the information in its promulgation of final rules. Not allowing a Data Quality guidelines petition to correct this information before promulgation of final rules would violate OMB's interagency Data Quality guidelines, which require a timely correction process for correcting errors in all agency information made publicly available, including "preliminary information" used in agency rulemakings:

... agencies shall establish administrative mechanisms allowing affected persons to seek and obtain, where appropriate, *timely correction of information* maintained and disseminated by the agency that does not comply with OMB or agency guidelines. These administrative mechanisms shall be flexible, *appropriate to the nature and timeliness of the disseminated information*, and incorporated into agency information resources management and administrative practices.

i. *Agencies shall specify appropriate time periods* for agency decisions on whether and how to correct the information, and agencies shall notify the affected persons of the corrections made.

ii. If the person who requested the correction does not agree with the agency's decision (including the corrective action, if any), the person may file for reconsideration within the agency. The agency shall establish an administrative appeal process to review the agency's initial decision, *and specify appropriate time limits* in which to resolve such requests for reconsideration.

67 FR 8452, 8459 (Feb. 22, 2002)(emphasis added).

OMB does not believe that an exclusion for preliminary information is necessary and appropriate. It is still important that *the quality of preliminary information be ensured and that preliminary information be subject to the administrative complaint-and-correction process.*

66 FR 49718, 49720 (Sept. 28, 2001).

## **(5) Third-Party Submissions of Data to An Agency**

Much of the information disseminated by federal agencies is originally submitted by states or private entities. In addition, federal agencies often disseminate research from outside parties, some of which is funded by the agency.

The MLS Legal Memorandum accompanying CRE's Generic Data Quality Comments explains that Congress clearly intended the Data Quality guidelines to apply to all information that agencies in fact make public. Consequently, all third-party information that an agency makes public is subject to the Data Quality guidelines.

Where an agency does not use, rely on, or endorse third-party information, but instead just makes it public, then the agency itself should have not have the initial burden of ensuring that the information meets the quality, objectivity, utility and integrity standards required by the Data Quality guidelines. The information should, however, be subject to the Data Quality correction process through administrative petitions by third parties.

When, however, an agency uses, relies on, or endorses third-party information, then the agency itself should have the burden of ensuring that the information meets the quality, objectivity, utility, and integrity standards required by the Data Quality guidelines.

### **Example(s) of Satisfactory Agency Proposals**

#### Department of Transportation

While not entirely consistent with the PRA's Data Quality requirements, the Department of Transportation at page 8 of its proposal guidelines comes close to meeting these requirements:

The standards of these guidelines apply not only to information that DOT generates, but also to information that other parties provide to DOT, if the other parties seek to have the Department rely on or disseminate this information or the Department decides to do so.

### **Example(s) of Unsatisfactory Agency Proposals**

#### CPSC; EPA

The Consumer Product Safety Commission on page 3 of its proposed guidelines stated that "the standards and policies applied to the information generated by CPSC cannot be applied to external information sources

EPA at pages 14-17 of its proposed guidelines exempts from the Data Quality guidelines most third-party information submitted to the agency.

## (6) Definition of “Affected Persons”/Definition of a “Person”

The definition of an “affected person” is fundamental to the operation of the Data Quality Act because it determines who is eligible to file an administrative petition for correction of agency-disseminated information.

OMB’s interagency Data Quality guidelines concluded that “affected persons are people who may benefit or be harmed by the disseminated information. This includes persons who are seeking to address information about themselves as well as persons who use information.” 66 FR 49718, 49721 (Sept 28, 2001). Individual agencies should use OMB’s broad definition, which is consistent with the intent of these guidelines: to provide the public with a right to agency disseminated information that meets high Data Quality standards; and with a right to correct any publicly disseminated information that does not meet these standards.

### Example(s) of Satisfactory Agency Proposals

#### OMB

OMB’s definition of “affected persons” encompasses anyone who benefits or is harmed by the information including, “both:(a) persons seeking to address information about themselves or about other persons to which they are related are associated; and (b) persons who use the information.” OMB’s definition is further detailed by their comprehensive definition of “person” which includes individuals, organized groups, corporations, international organization, and governments and government agencies.

### Example(s) of Unsatisfactory Agency Proposals

#### Department of Commerce

Commerce, at 67 FR 22398, 22401, (May 3, 2002), proposes to define “affected person” in an extremely narrow manner:

(1) *Affected person* means a person who meets each of the following three criteria:

(i) The person must have suffered an injury “harm to an identifiable legally-protected interest [sic];

(ii) There must be a causal connection between the injury and the disseminated information-the injury has to be fairly traceable to the disseminated information or decision based on such information, and not the result of independent or unrelated action; and

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(iii) It must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

### Department of Labor

The Department of Labor provides no definition of “affected persons.”

## **(7) Deadline for Deciding a Petition**

Setting an appropriate, specific timeframe for agency decisions on information correction petitions is necessary to fulfil one of the key purposes of the Data Quality Act amendments of the PRA – enabling parties to obtain correction of information. It is also required by OMB’s guidelines.

### **Example(s) of Satisfactory Agency Proposals**

#### Multiple Agencies

Agencies including HHS, the Social Security Administration, and the Nuclear Regulatory Commission have proposed a 45-working-day time limit for the responsible agency to respond to the petition with either: (1) a decision; or (2) an explanation of why more time is needed, along with an estimated decision date.

The HHS and similar proposals are cognizant of: (1) agency responsibility to respond in a timely and informative manner to all petitioners; and (2) that some petitions may require a longer timeframe for a response. These proposals provide agencies with flexibility without allowing open-ended delays in deciding a petition. It should be noted that these proposed guidelines do not include provisions allowing additional response extensions.

### **Example(s) of Unsatisfactory Agency Proposals**

#### Department of Labor

DOL’s proposed guidelines state that the agency should “try to respond to complaints and appeals within ninety (90) days of their receipt, unless they deem a response within this time period to be impracticable, in light of the nature of the complaint and the agency priorities.”

DOL’s proposal does not require any communication to the petitioner and allows for open-ended delays in responding to requests for correction of information.

## **(8) Who Decides the Initial Petition?**

The selection of the party responsible for acting on information correction petitions is important because this person will have a substantial responsibility for ensuring that one of the primary intents of the PRA is realized – allowing affected persons to obtain necessary correction of federally disseminated information.

### **Example(s) of Satisfactory Agency Proposals**

#### The Federal Housing Finance Board

The FHFB's proposed guidelines state that the Board's "Chief Information Officer and other personnel responsible for the information will review the underlying data and analytical process used to develop the disputed information to determine whether the information complies with OMB and agency Guidelines and whether and how to correct the information, if appropriate." P. 6.

The FHFB's short correction process statement has several important strong points including: (1) designation of an official with primary responsibility for the correction who did not originate the information; (2) examination of the data in question and the process used to produce it; and (3) determination of whether the information complies with the Data Quality requirements of both the agency and OMB.

### **Example(s) of Unsatisfactory Agency Proposals**

#### National Science Foundation

NSF does not provide any indication as to the official or organization within the agency responsible for acting on information correction petitions. Other agencies, including the Department of Labor and CFTC provide little or no information on who is responsible for evaluating information correction petitions.

Without knowing who has responsibility for the information correction process, it is difficult to evaluate that process. Furthermore, by failing to indicate the official/organization responsible evaluating information correction petitions, the agencies raise questions as to the extent to which they have thought through their process.

**(9) Who Decides Appeals?**

The appeal is the last administrative process open to an affected person seeking correction of information. Thus, to fulfill congressional and OMB intent with regard to ensuring the quality of disseminated information, it is important that agencies have a meaningful appeals process that is able to catch any errors which may have made it through both the initial dissemination quality review and the initial information correction process.

**Example(s) of Satisfactory Agency Proposals**

**Securities and Exchange Commission**

The SEC's proposed appeals process (referred to as a "request for staff reconsideration") routes the appeal to an official (usually in the Office of General Counsel) who was not involved in either producing the original data in question or in making the decision on the original request. The SEC's proposal also allow the appeal official to seek the advice of other officials.

The SEC's proposal ensures that the decision on any appeal is made by an objective official.

**Example(s) of Unsatisfactory Agency Proposals**

**Department of Treasury**

The Department of Treasury has proposed that any administrative appeal of an information correction petition be conducted "... within the Bureau (or Departmental Office), which disseminated the information." P.6.

By failing to provide for independent review of administrative appeals, Treasury's proposal: (1) reduces the likelihood of any errors being recognized on appeal because the appeal would be performed by the same organization which handled both the initial dissemination and the original complaint; and (2) creates a potential conflict of interest.

### **(10) Must the Agency Correct Information When It Agrees with a Petition?**

The Data Quality Act amendments to the PRA explicitly gives the public the right to seek and obtain correction of federally disseminated information. Thus, to comply with the law, agencies should be required to correct information disseminations covered by the guidelines.

#### **Example(s) of Satisfactory Agency Proposals**

##### Department of Defense

DOD's proposed guidelines state, "If the PAA [Public Affairs Activity of the relevant DOD Component] agrees with any portion or all of a complainant's request, he will notify the disseminator of the information that the correction must be made, and shall explain the substance of the requested correction. The PAA shall inform the requester, in writing, of the decision and the action taken." Sec. 3.3.5.1.

DOD's proposed guidelines recognize that when a request for an information correction is valid, the information "must" be correct. The DOD procedures would also ensure that the petitioner is informed of the action.

#### **Example(s) of Unsatisfactory Agency Proposals**

##### Department of Labor

DOL's proposed guidelines indicate that, when there is a valid request for information correction, the Department's response will be based on a number of loosely-defined factors including "the agency's more pressing priorities and obligations." P.7.

DOL's proposed guidelines would not implement the Act's legal requirement that affected parties be able to obtain correction of erroneous information. Although under OMB's guidelines agencies "are required to undertake only the degree of correction that they conclude is appropriate for the nature and timeliness of the information involved....," the OMB guidelines do not create exemptions from the correction requirements due to "more pressing issues." 67 F.R. 8452, 8458.

**(11) What is the Standard for Rebutting the Presumption of Objectivity Resulting from Peer Review?**

The OMB guidelines state that information will generally be presumed to be objective if data and analytic results have been subjected to formal, independent peer review; however, this presumption is rebuttable “based on a persuasive showing by a petitioner in a particular instance.” 67 F.R. 8452, 8454. The OMB guidelines also specify certain standards for agency-sponsored peer reviews. The issue is what will be considered a “persuasive showing” that will overcome the presumption of objectivity under the proposed agency guidelines. For example, if the agency does not comply with majority peer review criticism, views, or recommendations, does a presumption objectivity apply?

**Example(s) of Satisfactory Agency Proposals**

None

The closest satisfactory example, perhaps, is the DOL proposal, which simply adopts the exact language of the OMB guidelines: “rebuttals based on a persuasive showing by the petitioner in a particular instance”. App. II sec. 3, b, i.

**Example(s) of Unsatisfactory Agency Proposals**

Multiple Agencies

EPA’s proposed does not address this issue.

The HHS proposal, the CDC/ATSDR proposal, and the NIH proposal do not address this issue.

The DOT proposal does not address this issue.

The CPSC proposal does not even mention peer review.

## **(12) How is “Influential Information” Defined?**

The OMB guidelines define the term “influential;” however, they also provide agencies with some flexibility in adopting their own definition. The OMB guidelines state that “influential” “means that the agency can reasonably determine that dissemination of the information will have or does have a clear and substantial impact on important public policies or important private sector decisions.” 67 F.R. 8452, 8455. The guidelines then state that “[e]ach agency is authorized to define “influential” in ways appropriate for it given the nature and multiplicity of issues for which the agency is responsible.” *Id.* The issue is whether, and how, agencies have deviated from the OMB definition in proposing their own definition of “influential scientific, financial, or statistical information.

### **Example(s) of Satisfactory Agency Proposals**

#### EPA

The closest to a satisfactory approach might be considered to be EPA’s although it could be considered overly restrictive.

EPA adopts the OMB language, and then specifies several types of information that will generally be considered “influential,” such as those that appear to meet the definition of a significant regulatory action, including an economically significant action, under E.O. 12866, and major scientific and technical work products undergoing peer review.

### **Example(s) of Unsatisfactory Agency Proposals**

#### Multiple Agencies

The HHS proposal simply defines “influential” in the same way as OMB, adding, like OMB, that each of its subsidiary agencies is free to define “influential” in way appropriate for it given the nature and multiplicity of issues for which the agency is responsible. Secs 2), I and 4), d.

The CDC/ATSDR proposal does not contain an definition of “influential.”

The NIH proposal defines “influential” in close conformity with the OMB interim final and final guidelines. Sec. VII.

The DOT proposal contains a very extensive discussion of the meaning of “influential,” extending for almost two pages. In general, the discussion appears to be intended to restrict the situations in which the “influential” requirements will be applied. For example, broad impact is

## Center for Regulatory Effectiveness

required, so that substantial impact on individual companies would not be included, and the economic impact benchmark is the \$100 million per year from the “economically significant” regulatory action portion of E.O. 12866. Other aspects of the definition of “significant regulatory action” from E.O. 12866 are also incorporated. Sec. XI, a.

DOL has an interesting qualification to “influential”: “Whether information is influential is to be determined on an item-by-item basis rather than by aggregating multiple studies, documents, or other informational items that may influence a single policy or decision.” DOL then defines “influential” using the OMB language, but also provides examples of what meets the definition and what does not. Among the examples of non-influential information products are “fact sheets”, “technical information issuances”, “accident prevention bulletins”, and “studies”. Sec. titled “Information Categories”.

The CPSC guidelines do not define “influential.” They simply refer to the OMB guidelines.

**(13) What is “Objective” and “Unbiased” Information on Risks to Human Health, Safety and the Environment?**

The Data Quality Act requires agencies to issue guidelines ensuring and maximizing the “objectivity” of all information they disseminate. The OMB guidelines implementing the legislation define “objectivity,” and that definition includes a requirement that information be “unbiased” in presentation and substance. “Objectivity,” along with “unbiased,” is correctly considered to be, under the OMB guidelines, an “overall” standard of quality. 67 Fed. Reg. 8452, 8458. However, the OMB guidelines do not provide any explanation of how to eliminate bias from risk assessment.

For many years, risk assessments conducted by EPA and other federal environmental agencies have been criticized for being biased by the use of “conservative,” policy-driven, “default assumptions”, inferences, and “uncertainty factors” in order to general numerical estimates of risk when the scientific data do not support such quantitation as accurate. When such numerical assumptions are presented in any agency risk characterization, it is likely that members of the public who are unfamiliar with how the agency arrived at such numbers believe that the numbers are based on “sound science.” In actuality, the risk numbers are a result of co-mingling science with policy bias in a manner such that they cannot be disentangled. The question is whether the proposed agency guidelines have attempted to address this issue and how.

**Example(s) of Satisfactory Agency Proposals**

None

None of the agencies have attempted to address this issue directly. The least objectionable proposal guidelines are those of agencies such as DOT and CPSC, which simply state that the information they disseminate must be “objective” and “unbiased,” in accordance with the OMB guidelines.

**Example(s) of Unsatisfactory Agency Proposals**

A number of agencies appear to have attempted to effectively avoid this issue in order to continue the practice of employing default assumptions, inferences, and uncertainty factors to generate speculative risk numbers which they believe are necessary to ensure protection of public health. It appears they believe it is necessary to exaggerate risks in order to protect the public, rather than accomplishing that goal through the risk management decisionmaking process by making explicit policy decisions that are clearly separated from the presentation of scientific data and analysis.

Three agencies' proposed guidelines are examples: EPA, DOL/OSHA, and HHS/CDC/ATSDR. The three proposals bear a strong resemblance to each other. First, in discussing the requirements for risk assessments, they do not refer to the requirement for "objectivity" and "unbiased" data and presentation. Instead, they imply that OMB's requirement to adopt or adapt the quality standards from the Safe Drinking Water Act Amendments substitutes for that requirement. Accordingly, all three agencies state that presentations of risk information must be "comprehensive, informative, and understandable," rather than "objective" and "unbiased."

EPA goes a little further, referring to the use of "assumptions" and incorporating by reference its Science Policy Council Handbook on Risk Characterization. This Handbook was published in December 2000 but is based on its 1995 internal guidance.<sup>1</sup> This EPA risk characterization guidance makes clear that the agency will use policy-driven default assumptions, inferences, and uncertainty factors to generate risk characterizations (e.g., pp. 15, 18, 21, 41, and C-24 of the Handbook and pp. 2 and 3 of the Administrator's Mar. 21, 1995 Memorandum), while at the same time stating that risk characterizations should be "separate from any risk management considerations" (Mar. 1995 Policy Memorandum, p.2) and that numerical risk estimates should be "objective and balanced" (*id.* at p. 4). One passage from the EPA risk characterization Handbook, incorporated into its proposed Data Quality guidelines, is particularly illuminating:

### **3.2.9 How Do I Address Bias and Perspective?**

There is an understood, inherent, EPA bias that in the light of uncertainty and default choices the Agency will decide in the direction of more public health protection than [sic] in the direction of less protection. However, it is not always clear where such bias enters into EPA risk assessments. To the extent it may make a difference in the outcome of your assessment, highlight the relevant areas so that impact will not be overlooked or misinterpreted by the risk manager.

Handbook, p. 41. Nothing is said about such agency "bias" being overlooked or misinterpreted by the public. In addition, the statement confuses risk management ("protection") with risk "assessment," contrary to other statements of agency policy as indicated above. Inclusion of such readily acknowledged "bias" in agency risk assessments and characterizations disseminated to the public is directly contrary to both the Data Quality legislation and the OMB guidelines. The SDWA amendment quality standards do not take the place of the legislative requirements, interpreted and implemented by OMB, that risk assessments, along with all other agency information disseminated to the public, must be "objective" and "unbiased" as an "overall" quality standard.

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<sup>1</sup> This risk characterization guidance was never subjected to public notice and comment, and the EPA proposed Data Quality guidelines do not inform the public regarding how to obtain it online. The document can be found at [www.epa.gov/osp/spc/2riskchr.htm](http://www.epa.gov/osp/spc/2riskchr.htm) along with two related policy memoranda from 1995.

**(14) Application of the SDWA Health Risk Assessment Standards**

OMB's February 22<sup>nd</sup> agency-wide guidelines stated that the science quality and risk assessment standards contained in the 1996 amendments to the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300g-1(b)(3)(B), should be adopted or adapted by federal agencies. Agencies should adopt both the SDWA science quality and risk assessment standards unless they conflict with the other federal statutory requirements. If such conflicts do arise, agencies should make every efforts to reconcile the SDWA standards with the conflicting statutory requirements.

There are only two valid reasons why a federal agency should not adopt these standards:

- The agency does not conduct health risk assessment; or
- The SDWA risk assessment standards conflict with the specific risk assessment standards of another federal statute governing the agency.

In the latter case, the agency should identify the conflicting specific risk assessment standards; make every effort to reconcile the conflicting standards with the SDWA standards; and request public comment on both the conflict and the attempt at reconciliation.

**Example(s) of Satisfactory Agency Proposals**

None

**Example(s) of Unsatisfactory Agency Proposals**

EPA

EPA's proposed guidelines at page 9 adopt the SDWA science quality standards but state that EPA will only adapt the SDWA risk assessment standards, without explaining how or why.

## **(15) Robustness Checks for CBI**

OMB's February 22<sup>nd</sup> interagency Data Quality guidelines require robustness checks for data, models, or other information that the agency cannot disclose, but which are material to information that the agency does disclose. These robustness checks are critical for ensuring compliance with the Data Quality Act because the public will not be afforded any other mechanism for determining the objectivity, utility, and reproducibility of this non-disclosed information, which underlies disclosed information. OMB explained in its February 22<sup>nd</sup> agency-wide guidelines that the "general standard" for these robustness checks is "that the information is capable of being substantially reproduced, subject to an acceptable degree of imprecision." 67 FR 8452, 8457. Moreover, agencies must disclose "the specific data sources that have been used and the specific quantitative methods and assumptions that have been employed." *Id.*

Moreover, agency robustness checks for confidential business information (CBI) or proprietary models should be subject to the Data Quality Act petition process.

Consequently, agency guidelines should state:

- Agencies will perform robustness checks meeting OMB's general standard set forth above.
- Agencies will provide sufficient information to the general public to determine whether that standard has been met.
- The agency's compliance with these requirements is enforceable through the Data Quality Act petition process.

### **Example(s) of Satisfactory Agency Proposals**

None

### **Example(s) of Unsatisfactory Agency Proposals**

Multiple Agencies

Most agencies' proposed guidelines are very vague on the robustness check issue, and none specifically state that the agency's robustness checks, or lack thereof, are subject to the Data Quality Act petition process.

## **(16) Use of Third-Party Proprietary Models**

Federal agencies often use various models developed by third parties (often government contractors) to formulate policies based upon influential scientific information. The third-party models are sometimes asserted to be confidential and proprietary.

This issue does not involve the concerns that arise when regulated entities are required to submit confidential or proprietary data to an agency pursuant to a regulatory program. Instead, this issue is limited to situations where any agency and a contractor agree to use a model on a proprietary basis to develop influential scientific information.

OMB's interagency Data Quality guidelines require that influential scientific information be reproducible. This reproducibility standard generally requires that the models used to develop such information be publicly available. The OMB guidelines further explain that when public access to models is impossible for "privacy, trade secrets, intellectual property, and other confidentiality protections, an agency "shall apply especially rigorous robustness checks to analytic results and documents what checks were undertaken." 67 F.R. 8452, 8457.

### **RECOMMENDED SOLUTION**

#### **General Policy**

- Federal agencies should adopt a general prohibition against use of third-party proprietary models in their Data Quality Act guidelines.
- *Use of third-party proprietary models conflicts with the goals and intent of the Data Quality Act.*
- Public disclosure of third-party models should be required in all but the most unusual circumstances.
- If federal agencies believe they must use third-party proprietary models in order to carry out their regulatory duties and functions, then they should have the burden of demonstrating to OMB, before entering into a contract to use the model, that no other option is available.
- Federal agencies' Data Quality guidelines should explain in detail what "especially rigorous robustness checks" will be applied to third-party proprietary models that the agencies and OMB agree must be used and explain how the public will be informed of these "robustness check." The public should be allowed to review and comment on these robustness checks.

## **Implementation of the General Policy**

### *Prospective Implementation:*

Federal agencies should propose and promulgate Data Quality guidelines declaring the general policy on this issue as described above. These guidelines should further state that, before the agencies agree to use a third-party, non-public, proprietary model, they will provide OMB a written justification as to why the agencies have no other option, and await OMB's views before entering into a contract that utilizes an allegedly proprietary model. The written justification to OMB should describe why the agencies cannot:

- Use an existing public model;
- Enter into a contract to develop a new public model;
- Reimburse a contractor so as to convert a proprietary model into a public model.

Agencies should provide public notice of and an opportunity to comment on the above justification.

### *Retroactive Implementation:*

If a federal agencies has already agreed to use a third-party proprietary model before it proposes Data Quality guidelines, then the agency should undertake the following actions within 45 days of the date it sends its proposed Data Quality guidelines to OMB for review.

- Provide OMB with a written identification of what third-party proprietary models are being sued by the agency;
- Provide OMB with a written explanation of why the agency cannot reimburse the contractors so as to convert third-party proprietary models into public models, or enter into a contract to develop a public model.

Agencies should provide public notice of and an opportunity to comment on the above justification.

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MEMORANDUM

**To:** The Center for Regulatory Effectiveness

**From:** Scott Slaughter, Esq.  
Multinational Legal Services

**Date:** May 29, 2002

**Subject:** Federal Agency Authority to Create Exemptions from the Data Quality Guidelines that are Required by the Paperwork Reduction Act's Information Dissemination Provisions

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**I. QUESTION PRESENTED**

Can the Office of Management and Budget ("OMB") or any other federal agency exempt any publicly disclosed information from data quality guidelines promulgated under the Information Dissemination provisions of the Paperwork Reduction Act ("PRA"), 44 U.S.C. §§ 3504(d)(1), 3516 note?

**II. ANSWER**

No. As explained below, the relevant statutory text and legislative history demonstrate clear congressional intent that these data quality guidelines, like the PRA's other Information Dissemination requirements, apply to any and all information that federal agencies have in fact made public. By contrast to the PRA's separate Collection of Information requirements, there are no statutory exemptions from any of the PRA's Information Dissemination requirements. OMB's attempt to create exemptions by restricting the definition of "dissemination" in its interagency data quality guidelines contradicts Congress' own pervasive and all encompassing use of this term. OMB's "dissemination" exemptions in its interagency data quality guidelines are also inconsistent with OMB's prior, much broader definition of "dissemination" in implementing the PRA's Information Dissemination requirements. The additional exemptions proposed by other federal agencies also violate clear Congressional intent because OMB cannot provide any exemptions from its interagency data quality guidelines, and the other agencies have to comply with OMB's interagency guidelines.

**III. BACKGROUND**

The PRA's Information Dissemination requirements are separate from the PRA's Collection of Information requirements. *E.g.*, 44 U.S.C. §§ 3502(3), (12); 3504(c),(d); 3506(c),(d). One express purpose of the PRA's Information Dissemination requirements is to:

... improve the quality and use of Federal information to strengthen decisionmaking, accountability, and openness in Government and society.

44 U.S.C. § 3501(4).

The legislative history accompanying the 1995 PRA amendments that added most of the Information Dissemination requirements, H.R. 830, 104<sup>th</sup> Cong. (1995), explains that these amendments “promote[] the theme of improving the quality and use of information to strengthen agency decisionmaking and accountability and to maximize the benefit and utility of information created, collected, maintained, used, shared, disseminated, and retained by or for the Federal Government.”

H. Rep. No. 104-37, at 35 (Feb. 15, 1995) (“House Report”).

The recently enacted Data Quality Act, 44 U.S.C. § 3516 note, does not affect the PRA's Collection of Information requirements. Instead, it amends the PRA's Information Dissemination requirements in several respects. *Id.*

First, the Data Quality Act establishes statutory deadlines for OMB's promulgation of interagency data quality guidelines under section 3504(d)(1), 44 U.S.C. § 3504(d)(1), of the PRA's Information Dissemination requirements, and under OMB's PRA rulemaking authority provided by section 3516. 44 U.S.C. § 3516 note.

Second, the Data Quality Act requires that OMB's interagency data quality guidelines “provide policy and procedural guidance to federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies....” *Id.*

Third, the Data Quality Act requires that OMB's interagency data quality guidelines “shall...apply to the sharing by Federal agencies of, and access to, information disseminated by Federal agencies....” *Id.*

Fourth, the Data Quality Act requires that all federal agencies subject to the PRA promulgate their own data quality guidelines by a statutory deadline. *Id.* These individual agency data quality guidelines must comply with OMB's interagency section 3504(d)(1) guidelines. 44 U.S.C. §§ 3504(d)(1); 3506 (a)(1)(B); 3516 note.

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Fifth, the Data Quality Act requires that OMB's interagency data quality guidelines require all federal agencies subject to the PRA to establish administrative processes allowing "affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with" OMB's interagency guidelines. 44 U.S.C. § 3516 note.

OMB has now promulgated PRA section 3504(d)(1) interagency data quality guidelines. 67 FR 8452 (Feb. 22, 2002)(final OMB guidelines); 66 FR 49718 (September 28, 2001)(Interim Final OMB data quality guidelines explain that they are issued "'under sections 3504(d)(1) and 3516'" of the PRA). The other federal agencies subject to the PRA are now proposing their own PRA data quality guidelines. *E.g.*, 67 FR 21234 (April 30, 2002)(EPA's proposed data quality guidelines).

OMB's interagency data quality guidelines exempt from their coverage certain publicly disclosed federal agency information:

"Dissemination" means agency initiated or sponsored distribution of information to the public (see 5 CFR 1320.3(d) (definition of "Conduct or Sponsor")). Dissemination does not include distribution limited to government employees or agency contractors or grantees; intra- or interagency use or sharing of government information; and responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or other similar law. This definition also does not include distribution limited to correspondence with individuals or persons, press releases, archival records, public filings, subpoenas or adjudicative processes.

67 FR 8452, 8460. The regulation referenced by OMB, "5 CFR 1320.3(d)," only applies to the PRA's Collection of Information requirements.

This definition of "dissemination" is considerably narrower than OMB's previous definitions of this term in a PRA Information Dissemination context. For example, in OMB Circular A-130, at page 3, OMB defined "dissemination" to mean:

the government initiated distribution of information to the public. Not considered dissemination within the meaning of this Circular is distribution limited to government employees or agency contractors or grantees, intra-or inter-agency use or sharing of government information, and responses to requests for agency records under the Freedom of Information Act (5 U.S.C. 552) or Privacy Act.

Other agencies have included the OMB exemptions in their proposed data quality guidelines. Some agencies have proposed to expand the OMB exemptions, or to add new exemptions. For example:

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**Retroactivity Exemption.** Several agencies, such as NIH at page 4, make statements indicating that their guidelines, and the OMB guidelines, will apply only to information that is disseminated initially after October 1, 2002. This proposed exemption contradicts OMB's interagency guidelines which specify that they apply to information created or originally disseminated prior to October 1, 2002 if an agency continues to disseminate the information after that date.

**Case-By-Case Exemption.** Several agencies, including EPA at pages 22-23 of its proposed guidelines, propose application of the PRA's data quality guidelines on a case-by-case basis, rather than application of them to all information disseminated by the agency.

**Rulemaking Exemption** A number of agencies, including EPA at pages 22-23 and the Treasury Department at page 6 of their proposed guidelines, have stated that the data quality error correction process required by OMB's interagency data quality guidelines will not apply to information in proposed rulemakings, and that any alleged errors will be addressed only through the rulemaking notice and comment process. It is not clear from these proposed exemptions whether the agencies believe that any of the PRA's data quality standards apply to information disseminated during rulemakings.

**Adjudicative Processes Exemption.** EPA's proposed data quality guidelines, at page 17, substantially expand the adjudicative processes exception by broadening it to include, *inter alia*:

Distribution of information in documents relating to any formal or informal administrative action determining the rights and liabilities of specific parties, including documents that provide the findings, determinations or basis for such actions. Examples include the processing or adjudication or applications for a permit, license, registration, waiver, exemption, or claim; actions to determine the liability of parties under applicable statutes and regulations; and determination and implementation of remedies to address such liability.

#### **IV. THE PRA'S DATA QUALITY GUIDELINES APPLY TO ALL INFORMATION THAT FEDERAL AGENCIES HAVE IN FACT MADE PUBLIC; NEITHER OMB NOR ANY OTHER AGENCY HAS DISCRETION TO CREATE ANY EXEMPTIONS**

OMB's interagency data quality guidelines implement section 3504(d)(1) of the PRA. 44 U.S.C. § 3516 note. Section 3504(d)(1) requires that "with respect to information dissemination, the [OMB] director shall develop and oversee the implementation of policies, principles, standards, and guidelines to apply to Federal agency dissemination of public information, regardless of the form or format in which such information is disseminated..." 44 U.S.C. § 3504(d)(1). All federal agencies subject to the PRA must comply with OMB's interagency data quality guidelines. 44 U.S.C. §§ 3504(d)(1); 3506 (a)(1)(B); 3516 note.

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The legislative history of the PRA's Information Dissemination requirements states congressional intent that "the legislation's policies and required practices apply to the dissemination of all Government information regardless of form or format...." House Report, at 27. This statement of congressional intent occurs in a section of the House Report subtitled "Information Dissemination." House Report, at 26.

The relevant statutory text and legislative history demonstrate clear congressional intent that there is only one restriction on the terms "disseminated" or "dissemination": they only apply to information that an agency in fact makes public.

The PRA defines "Public Information," as used in the PRA's Information Dissemination provisions, to mean "any information, regardless of form or format, that the agency discloses, disseminates, or makes available to the public." 44 U.S.C. § 3502(12)(emphasis added). The dictionary defines "any" to mean "every; all." *The Random House Dictionary of the English Language*, Second Edition, Unabridged (1983). The legislative history of the 1995 Act that added most of the PRA's Information Dissemination provisions explains that:

The term "public information" is added. It means any information, regardless of form or format, that an agency discloses, disseminates, or makes available to the public. Its application in the act, as amended by this legislation, is primarily in the context of "dissemination" of information by an agency.

House Report, at 38.

The House Report contains a section entitled, "Additional Views on Information Dissemination Provision of H.R. 830." This section restates the legislative history of H.R. 3695, which passed the House at the end of the 101<sup>st</sup> Congress, but on which the senate took no action. H.R. 3695 contained most of the Information Dissemination provisions enacted by H.R. 830, "and much of the policy remains identical." House report, at 105. This section reiterates and reemphasizes the all-encompassing scope of the PRA's Information Dissemination requirements:

H.R. 830 focuses on dissemination of information by agencies. "Dissemination" refers to the distribution of government information to the public through printed documents or through electronic and other media."

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H.R. 830 amends § 3502 of title 44 by adding paragraph (12) defining the term "public information" as "any information, regardless of format, that an agency discloses, disseminates, or makes available to the public."

The concept of "public information" is fundamental to the information dissemination provisions of H.R. 830. The objective of the definition is to minimize disputes over what government information is subject to dissemination. The definition turns

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on an easily made factual determination rather than a complex legal one.  
“Public information” is information that an agency has in fact made public.

House Report, at 107, 109.

The only restriction on the PRA’s Information Dissemination requirements is that they only apply to information that agencies have in fact disseminated to the public:

Dissemination obligations are limited to those classes of information already publicly disclosable because of a law, agency rule or regulation, or existing agency policy or practice. Thus, no dissemination obligation arises with respect to information classified in the interest of national defense or foreign policy, information subject to restrictions under the Privacy Act of 1974, sensitive law enforcement investigatory data, or other information withheld from disclosure to protect other recognized public or privacy interests.

\*\*\*

[A]n agency with an obligation to collect securities or tariff filings and to make those documents publicly available is clearly dealing with public information under the definition. Even if a portion of the filings is not public, the dissemination obligation attaches to the remainder if the class of public information can be identified and is routinely released.

House Report, at 109-10.

Congress’ clear intent to include within the PRA’s Information Dissemination requirements all information that an agency has made public is consistent with Congress’ use of the term “dissemination” in other statutes. *See Telecommunications Research and Action Center v. FCC*, 836 F. 2d 1349, 1351(D.C. Cir. 1988)(under the Federal Communications Act, “dissemination” of radio communications becomes broadcasting subject to FCC licensing requirement when it is intended to be received by the public); *U.S. Satellite Broadcasting Co., Inc. v. FCC*, 740 F. 2d 1177, 1186 (D.C. Cir. 1984)(same).

Congressional intent that the PRA’s data quality guidelines and other Information Dissemination requirements apply to all information that an agency has made public is further demonstrated by the fact that there are no statutory exemptions from the PRA’s Information Dissemination requirements. 44 U.S.C. §§ 3502(12); 3504(d)(1); 3516 note. By contrast, there are several statutory exemptions from the PRA’s separate Collection of Information requirements. 44 U.S.C. §§ 3502(3)(B); 3518(c)(1). If Congress had intended to create any exemptions from the PRA’s data quality standards and other Information Dissemination requirements, it would have done so expressly as it did for the PRA’s separate Collection of Information requirements. *See Russello v. United States*, 464 U.S. 16, 23 (1983)(if Congress intended to restrict applicability of a particular statutory requirement, it would have done so expressly as it did with another requirement of the statute).

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In sum, there is no basis for concluding that Congress intended any exemptions from the terms “dissemination” and “disseminated” when it used those terms in statutory “Information Dissemination” requirements from which there clearly are no exemptions. Given the statutory text and legislative history, neither OMB nor any other federal agency has discretion to create any exemptions from the data quality guidelines required by the PRA. *See* U.S. Department of Defense v. Federal Labor Rel. Auth., 510 U.S. 487, 494 (1994)(FOIA represents a general congressional intent of full disclosure of government information and any exemption must be stated in clearly delineated statutory language); *Dole v. United Steelworkers of America*, 429 U.S. 26 (1990)(OMB has no discretion to interpret the PRA in a manner that conflicts with clear congressional intent).

*Data Quality  
Comment 2*

# Center for Progressive Regulation

May 31, 2002

Office of the Secretary  
Consumer Product Safety Commission  
Washington, D.C. 20207

## **DELIVERED BY ELECTRONIC MAIL**

**Re: Draft 2002 Data Quality Guidelines**

Dear Office of the Secretary:

These comments are submitted by the Center for Progressive Regulation (CPR), a newly created organization of academics specializing in the legal, economic, and scientific issues that surround health, safety, and environmental regulation. CPR's mission is to advance the public's understanding of the issues addressed by the country's health, safety and environmental laws and to make the nation's response to health, safety, and environmental threats as effective as possible.

The Center is committed to developing and sharing knowledge and information, with the ultimate aim of preserving the fundamental value of the life and health of human beings and the natural environment. One component of the Center's mission is to circulate academic papers, studies, and other analyses that promote public policy based on the multiple social values that motivated the enactment of our nation's health, safety and environmental laws. The Center seeks to inform the public about scholarship that envisions government as an arena where members of society choose and preserve their collective values. We reject the idea that government's only function is to increase the economic efficiency of private markets.

The Center also seeks to provoke debate on how the government's authority and resources may best be used to preserve collective values and to hold accountable those who ignore or trivialize them. The Center seeks to inform the public about ideas to expand and strengthen public decision-making by facilitating the participation of groups representing the public interest that must struggle with limited information and access to technical expertise.

### *Summary*

Unlike the Office of Management and Budget (OMB), which has no statutory responsibility (or authority) to implement the nation's laws regarding health, safety, the

environment and many other objects of public concern, regulatory agencies, including the CPSC, must balance their statutory obligations under the Data Quality Act (DQA) with their statutory obligations to implement their substantive mandates. Nothing in the language, structure, or history of the DQA evidences any considered congressional judgment to alter any agency's substantive mandates.

The Center supports the efforts of this agency and of OMB to ensure that data disseminated to the public are of high quality. This objective, however, must take into account the impact of data quality activities on the agency's substantive mission and the role of disseminated data in the implementation of that mission. The potential benefits of administrative procedures, including accuracy and objectivity, must be balanced against the efficient disposition of agency business.

A balanced approach to implementation of OMB Data Quality Guidelines would include the following elements:

- Where an agency has existing procedures that address the quality of data it disseminates, the agency should use that process for purposes of the OMB guidelines. An agency should not establish new procedures for information that is used in agency rulemaking. It is doubtful that use or disclosure of information through notice-and-comment procedures constitutes the type of dissemination contemplated by the DQA, and the rulemaking process itself provides the opportunity to challenge the quality of the information being relied upon by the agency.
- If, despite the fact that the DQA's substantive requirements are limited to the "dissemination" of information, an agency nevertheless chooses (wrongly, in our view) to follow these requirements in promulgating agency rules through informal rulemaking, the agency should reserve the most rigorous data quality review for information disseminated in support of agency actions that are "major" regulations under Executive Order 12866, provide a "significant" opportunity to advance the agency's mandate by other means, or involve precedent-setting or reasonably controverted issues.
- An agency should restrict the use of peer review to disseminated data that is "influential," and it should use peer review in that context only if it is necessary to establish the objectivity of scientific, financial or statistical information. Agencies should charter peer review committees under the Federal Advisory Committee Act (FACA).
- An agency should have procedures to notify the public about pending requests to modify data and to dismiss data correction requests that are

frivolous, duplicative of other requests, refer to issues that have been the subject of prior complaints that have been resolved, or that occur after reasonable time deadlines set for the submission of such claims.

- An agency is not legally obligated to use the risk assessment procedures prescribed by the Safe Water Drinking Amendments, and if an agency does use those procedures, it should adapt them to suit the particular data quality activities in which it engages.
- Agencies should seek, and OMB should support, additional funding to carry out responsibilities under the OMB Guidelines.

### *Background*

CPR supports the use of the best available data and analysis by the federal government, including when the government is disseminating information to the public. It must be noted that a considerable source of the absence of quality data has been the unwillingness of business firms, which are in the best position to produce reliable data, to do so. Despite years of chemical regulation, for instance, we still lack basic toxicological testing information on a majority of even high production volume chemicals. Ensuring the quality of data disseminated by the government is no substitute for vigorous efforts to produce quality data in the first place.

The disclosure of information to the public has a vital role in the government's efforts to implement the nation's health, safety and environmental laws and to make these laws as effective as possible in reducing harm to public health and the environment. The dissemination of information has the potential to fulfill regulatory goals in two general ways. First, armed with additional information, individuals may be able to alter their behavior in a manner that reduces their risk or risk to the environment. Second, an agency may be able to prompt firms to reduce risks to individuals or to the environment by releasing information about business behavior.

The disclosure of health and safety risks serves an additional goal. Information disclosure about potential health and safety risks satisfies the public's right to know about potential hazards. Thus, information disclosure respects and serves the principle of individual autonomy, an important political value in our country.

The use of information for these purposes can be an effective, low-cost way of supplementing traditional regulatory activities. This possibility has been enhanced by the advent of the Internet and the ubiquity of computers. Although information disclosure may not be an adequate substitute for regulation in many contexts, the scholarly literature indicates that it can be effective in promoting public health and safety and environmental protection in other contexts.

Information disclosure can have several advantages over traditional regulation as means of promoting regulatory goals. First, until now, it has been a solution to the much-maligned "ossification" of administrative processes. While a rulemaking may take most of a decade from initiation to conclusion of judicial review, agencies have been able to assemble and disseminate a database or other information product in considerably less time. Information dissemination activities have generally been less expensive than rulemaking, especially if an agency already possesses the information or can gather it cheaply. Rulemaking, by contrast, requires substantial contractor support and the creation of numerous ancillary documents for compliance with executive orders and statutes. As discussed in the next section, however, implementation of OMB's Data Quality Guidelines is likely to increase the time and cost of such activities.

Information disclosure can also have benefits from the perspective of regulated entities because it creates no enforceable obligations to take preventative action. Thus, to the extent it has the practical effect of stimulating action, it does not require any particular action, and hence is flexible and performance-based. For example, industrial interests have praised EPA's Toxic Release Inventory (TRI) program precisely because it only requires facilities to report; what further steps they take, and when they take them, are up to the facilities.

There are also advantages from the public's point of view. A fully informed consumer is one of the necessary preconditions to a properly functioning market. Information disclosure obviously has broad public appeal from a right-to-know perspective, and the efficiencies discussed above should cumulate into societal savings. In addition, information disclosure by federal agencies can provide valuable support for state and local governments in their efforts to administer their regulatory authorities

While information disclosure by government has undeniable virtues, it can also harm regulated entities, the public, and an agency. From the perspective of individuals, information that is inaccurate or misleading can lead to inappropriate economic and political actions on their part. From the perspective of business, such information can damage a corporation's reputation. Ultimately, inaccurate or misleading information is also damaging to the issuing agency's reputation.

#### *Death by Data Quality*

The Center believes that information disseminated to the public should be of high quality. This objective, however, must take into account the impact of data quality activities on the agency's substantive mission and the role of disseminated data in the implementation of that mission. As Roger Cramton reminded us years ago, the potential benefits of administrative procedure – fairness and accuracy – must be balanced against the

“efficient disposition of agency business.” Roger C. Cramton, *A Comment on Trial-Type Hearings in Nuclear Power Plant Siting*, 58 VA. L. REV. 585, 591 (1972).

Striking the appropriate balance between fairness, accuracy and the efficient implementation of an agency’s statutory mission in the context of data quality is a complex matter. Refusing to act until data quality improves can result in substantial harm to vital public purposes. The danger is that data quality will become a goal in and of itself, rather than a way of ensuring the most effective regulation possible under existing circumstances. This danger is real. It is widely recognized that the rulemaking process has become ossified because of the various procedural obligations of agencies to analyze the potential impacts of a rule before it is issued. *See, e.g.*, Celia Campbell-Mohn & John S. Applegate, *Learning from NEPA: Guidelines for Responsible Risk Regulation*, 28 HARV. ENVTL. L. REV. 93, 121-23 (1999); John Applegate, *A Beginning and Not An End in Itself: The Role of Risk Assessment in Environmental Decisionmaking*, 63 U. CIN. L. REV. 1643, 1648-51 (1995); Sidney A. Shapiro, *Political Oversight and the Deterioration of Regulatory Policy*, 46 AD. L. REV. 1 (1994); Thomas O. McGarity, *Some Thoughts on “Deossifying” The Rulemaking Process*, 41 DUKE L. REV. 1385 (1992). Overly strict OMB supervision of these requirements has contributed to these delays. While reasonable efforts to anticipate regulatory consequences is a good idea, “paralysis by analysis” defeats agencies efforts to protect health, safety and the environment. OMB’s data quality initiative, if not properly administered, will create “death by data quality.”

The potential for “death by data quality” arises from several sources. The burden of complying with data quality procedures is an unfunded mandate for an agency. Agency efforts to disseminate data will undoubtedly be slowed by procedural requirements to ensure the quality of data. The more elaborate the procedures the greater the likely delay. Similarly, to the extent that procedures invite industry or other interest groups to use them in a strategic manner to slow, or even stop, data dissemination, the more likely it is that less information will be available to the public.

A second problem is that the OMB Guidelines attempt to model data quality in the context of agency government based on the development of scientific and other information in the academic community. OMB’s insistence on peer review and reproducibility reflect highly important process norms in the development of knowledge by scientists and other researchers. The goal of governing, however, is different than the goal of science. Howard Latin, *Good Science, Bad Regulation, and Toxic Risk Assessment*, 5 YALE J. REG. 89 (1988). Scientific researchers can demand greater assurances of accuracy in their work because the goal is to perfect our knowledge. By comparison, agencies have been charged by Congress to act in a preventative manner to protect the public and the environment from the risk of harm. Since the failure of government to act can have life-threatening consequences, an agency should not routinely await additional information before it acts, as the federal courts have repeatedly

recognized. *See, e.g., Industrial Union Dept., AFL-CIO v. Hodgson*, 499 F.2d 467, 474-75 (D.C. Cir. 1974); *Ethyl Corp. v. EPA*, 541 F.2d 1, 19-20 (D.C. Cir.) (en banc), *cert. denied* 426 U.S. 941 (1976); *Environmental Defense Fund v. EPA*, 598 F.2d 62, 79 (D.C. Cir. 1978) (recognizing the “familiar choice” facing EPA between regulating with incomplete evidence and waiting while a hazard goes unabated). Thus, the degree to which agencies insist on higher quality data needs to be a function of the potential consequences of delaying action that might otherwise be taken, including actions that warn the public of possible health, safety and environmental concerns.

Accordingly, if agencies are to perform their missions, regulators will not be able to wait for the perfection of information before they act. Although scientists may continue to study potential risks to the humans or the environment, the issue for an agency is whether information is of sufficient quality that it can be reasonably used to further the agency’s mission. As FDA has noted:

Many of our actions are based on scientific experts’ judgments using available data . . . . Such assessments provide useful answers in most instances that are sufficient for regulatory purposes, and much more elaborate quantitative estimates extrapolating beyond the data are unnecessary.

Food and Drug Administration, Draft Guidance on Ensuring the Quality of Information Disseminated to the Public (May 5, 2002), at 19. The Data Quality Act must not impose an obstacle to responsible government action by creating standards that ignore the public health, safety and welfare concerns agencies are charged with addressing. Indeed, as discussed below, Congress has usually defined the level of acceptable evidence for agencies to act in their substantive mandates, and OMB lacks any substantive authority to overrule these statutory mandates.

A third problem is that there is an important distinction between the disclosure of factual information, such as enforcement and inspection statistics, and the dissemination of risk information, which may contain factual information, but which also involves the characterization of risks. The characterization of risk is a difficult and controversial process in part because it involves difficult subjective judgments. The need for such judgments arises because scientific information regarding risks is often incomplete and inconsistent. *See* Thomas O. McGarity, *A Cost-Benefit State*, 50 AD. L. REV. 7, 24 (1998) (“Unfortunately, for most of the risks that regulatory agencies must address, data are sparse and consensus about assumptions is rare.”) It is often difficult to say that a risk characterization is clearly “wrong,” given the degree to which assumptions, policy choices, and judgments are embedded into every step of the risk assessment process. Industry and interest groups that disagree with these choices can employ data quality procedures to challenge these assumptions and offer their own interpretations. While such a debate is legitimate, there is a real risk that agency efforts to disseminate

information will become hopelessly bogged down in procedural challenges, even though there is no realistic way to verify the objectivity of such information.

Death by data quality not only threatens to slow rulemaking, it will discourage agency initiatives to use disseminated data as a supplement, or replacement, for rulemaking. If OMB's data quality initiative has this impact, it will reduce the substantive benefits of information discussed previously.

### *Data Quality Act*

Congress enacted the DQA as a two-paragraph provision buried in an Appropriations Bill. Section 515 of the FY 2001 Appropriations Act, P.L. 106-554. The Act was passed as a rider to an appropriations bill, sponsored by Representative Jo Ann Emerson (R-8<sup>th</sup> MO), apparently at the behest of Jim Tozzi, a former OMB-official who runs the corporate sponsored Center for Regulatory Effectiveness. It was not the subject of any legislative hearings or committee review or debate.

The Act, amending the Paperwork Reduction Act, provides in full:

- (a) In General.--The Director of the Office of Management and Budget shall, by not later than September 30, 2001, and with public and Federal agency involvement, issue guidelines under sections 3504(d)(1) and 3516 of title 44, United States Code, that provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies in fulfillment of the purposes and provisions of chapter 35 of title 44, United States Code, commonly referred to as the Paperwork Reduction Act.
- (b) Content of Guidelines.--The guidelines under subsection (a) shall—
  - (1) apply to the sharing by Federal agencies of, and access to, information disseminated by Federal agencies; and
  - (2) require that each Federal agency to which the guidelines apply—
    - (A) issue guidelines ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by the agency, by not later than 1 year after the date of issuance of the guidelines under subsection (a);

- (B) establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the guidelines issued under subsection (a); and
- (C) report periodically to the Director--(i) the number and nature of complaints received by the agency regarding the accuracy of information disseminated by the agency and; (ii) how such complaints were handled by the agency.

The terse and simple statutory language and absence of history reveal several points important to the interpretation and implementation of the Data Quality Act. First, there is no indication that Congress intended to amend legislation protecting individuals and the environment. Congress clearly intended that OMB and agencies should implement the Act in a manner that improves the quality of disseminated data without significantly deflecting an agency from its statutory responsibilities to implement the country's health, safety and environmental laws.

Second, the DQA makes no provision for judicial review of agency compliance with its provisions. Instead, it establishes in OMB the responsibility to ensure agency compliance with these requirements. Agencies are to “report periodically to the Director--(i) the number and nature of complaints received by the agency regarding the accuracy of information disseminated by the agency and; (ii) how such complaints were handled by the agency.” DQA, § 515(b)(2)(C).

Third, the guidelines required by the Data Quality Act pertain only to “information *disseminated* by Federal agencies.” DQA, §§ 515(a), 515(b) (emphasis added). In contrast, the Paperwork Reduction Act, which the DQA amends, painstakingly *distinguishes between “dissemination” of information and other activities agencies might undertake with respect to information.* In delineating the purposes of the Paperwork Reduction Act, for example, Congress referred to information that is “created, collected, maintained, used, shared and disseminated by or for the Federal Government. 42 USCA 3501(2); see also *id.* at 3501(5) (referring, in addition, to information “disposed of” by agencies); 3501(6) (referring to information “retained” by agencies). Thus, information that is “used” by an agency – such as information relied upon in the course of informal rulemaking – is not subject to the separate requirements of the DQA. Likewise, the Paperwork Reduction Act clearly distinguishes between the “dissemination” of information and “public access to” information. See, e.g., 44 USCA § 3504 (a)(1)(B)(ii); § 3506(d)(1), which indicates that “dissemination” and “public access” are two different things. Because the DQA covers “dissemination,” not “public access,” the DQA does not apply to agency activities that merely notify the public how to “access” government

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\* Even section 515(b)(2)(B), which also refers to information “maintained” by federal agencies, applies only when information is both “disseminated and maintained.” DQA, § 515(b)(2)(B). No requirement in the DQA applies in the absence of “dissemination” of information by the relevant agency.

information, as compared to agency activities that actually provide – i.e., “disseminate” – the information. For example, the DQA would not apply to information that an agency used to formulate a proposed regulation as long as the agency only notified the public of the existence of such information in its Notice of Proposed Rulemaking (NPR). Since the NPR only notifies the public that it can have access to such information, the NPR itself in no way “disseminates” the information. Treating this activity as dissemination would entirely collapse the distinction between dissemination, use, and public access, contrary to the plain wording of the Paperwork Reduction Act.

Fourth, the Paperwork Act, among other goals, is intended to “coordinate, integrate, and to the extent practicable and appropriate, make uniform Federal information resources management policies and practices as a means to improve the productivity, efficiency, and effectiveness of Government programs,” and to “minimize the cost to the Federal Government of the creation, collection, maintenance, use, dissemination, and disposition of information.” 44 U.S.C. §§ 3501(3), (5). These provisions support the earlier conclusion that Congress clearly intended that OMB and agencies should implement the DQA in a manner that improves the quality of disseminated data without significantly deflecting an agency from its statutory responsibilities to implement the country's health, safety and environmental laws.

#### *OMB Guidelines*

On January 3, 2002, OMB published its final data quality guidelines. The guidelines do not acknowledge the tradeoffs, identified earlier, between data quality and the implementation of substantive regulation, except to recognize that some information is more “influential” than other information in the policy process, and may require greater efforts to ensure data quality. In fact, OMB imposed its guidelines without any explicit explanation or analysis of the costs, although it regularly insists that other agencies carefully balance the benefits and costs of proposed actions. That is, OMB did not attempt to compare the benefits of improved data quality with the cost to the public in terms of lives lost, new injuries, etc. attributable to delayed access to information and delayed implementation of rules.

An agency, however, does not have this luxury. Unlike OMB, which has no statutory responsibility (or authority) to implement the nation's laws regarding health, safety, the environment and many other objects of public concern, an agency must balance its statutory obligations under the Data Quality Act (DQA) with its statutory obligations to implement its substantive mandate or mandates. Moreover, as noted in the previous section, achieving this balance reflects Congress' intent when it passed the Data Quality Act.

#### *Definition of Influential*

The OMB Guidelines require that agencies include a “high degree of transparency” for “influential” scientific, financial or statistical information, *Guidelines*, § V3bii. Information is “influential” if it “will have or does have a clear and substantial impact on important public policy decisions or important private sector decisions.” *Id.* § 9. OMB authorizes an agency to define “influential” in a manner that is appropriate given the nature and multiplicity of issues for which it is responsible. *Id.*

As explained above, the DQA applies only to information that is “disseminated” by federal agencies. Not all “influential” information is “disseminated” within the meaning of the Paperwork Reduction Act and DQA; as noted, for example, the Paperwork Reduction Act distinguishes information that is “used” or “collected” from information that is “disseminated.”

Within the relatively narrow sphere of “disseminated” information, an agency should reserve the designation of “influential” for information disseminated in support of agency actions that are “major” regulations under Executive Order 12866, provide a “significant” opportunity to advance the agency’s mandate by other means, or involve precedent-setting or reasonably controverted issues. This designation recognizes that procedures to promote the quality of information have significant costs, and that the most significant (and therefore most costly) of such procedures should be reserved for information that is the most important in terms of the agency’s mission.

The use of Executive Order 12866 as a benchmark for defining “influential” information is appropriate because it represents the balance that has been struck between the advantages and disadvantages of ensuring the quality of agency regulatory analysis in the context of OMB review of proposed and final regulations. OMB has relied on this definition since the beginning of the Reagan administration, indicating that it has proven to be a useful way to balance the competing demands of quality analysis and the cost of conducting such analyses.

#### *Health and Safety Testing Data Maintained by Agencies*

As we have explained, the DQA applies only to information “disseminated” by federal agencies. Even section 515(b)(2)(B), which refers to administrative mechanisms for correcting information “maintained *and* disseminated” by agencies, requires dissemination as one of its triggers. If, contrary to this clear language, the agency elects to interpret the DQA to apply to information that is only “maintained” but *not* “disseminated,” then the agency should be aware of the fact that affected persons may also seek and obtain correction of data submitted by private entities (either voluntarily or pursuant to regulatory requirements). For example, many agencies maintain in their files health and safety testing data that companies have submitted pursuant to legal requirements or in order to obtain licenses permitting the sale, distribution and use of regulated products. History has demonstrated that many of the health and safety testing

studies contained in agency files do not measure up to the quality demanded by the OMB Guidelines, and none of those studies have been subjected to external peer review. See generally Thomas O. McGarity and Sidney A. Shapiro, *The Trade Secret Status of Health and Safety Testing Information: Reforming Agency Disclosure Policies*, 93 *Harvard Law Review* 837 (1980). If other information maintained in agency files is subject to requests to correct under the Data Quality Act, then information like health and safety testing data and Securities and Exchange Commission disclosure filings should likewise be subject to such requests.

### *Administrative Mechanism*

The OMB Guidelines require an agency to establish an administrative mechanism that allows “affected persons to seek and obtain, where appropriate, timely correction of information maintained and disseminated by the agency that does not comply with OMB or agency guidelines.” *Guidelines*, § III3. OMB provides that such “mechanisms shall be flexible, appropriate to the nature and timeliness of the disseminated information, and incorporated into agency information resources management and administrative practices.” *Id.*

An agency should not establish new procedures for information that is used in agency rulemaking. The DQA by its own terms does not apply to data that are used in agency rulemaking but not otherwise disseminated. As discussed earlier, the DQA amends the Paperwork Reduction Act, which carefully distinguishes between “agency dissemination of” and “public access to” information. As a result, the DQA does not apply to agency activities that merely notify the public how to “access” government information, as compared to agency activities that actually provide – i.e., “disseminate” – the information. Thus, the DQA does not apply to information that an agency used to formulate a proposed regulation as long as the agency only notifies the public of the existence of such information in its Notice of Proposed Rulemaking (NPR).

Moreover, the rulemaking process itself provides an adequate opportunity to challenge the quality of the data on which an agency is relying. The APA obligates an agency to invite public comments during rulemaking and it is legally obligated to respond to comments on all aspects of its rule. 5 U.S.C. § 553. Such a process meets the needs of any person who seeks the correction of data that an agency disseminates in a Notice of Proposed Rulemaking (NPR) or an Advanced Notice of Proposed Rulemaking (ANPR).

More generally, whenever the agency has an existing process for vetting data that is disseminated outside of the rulemaking process, the agency should employ that process to meet the requirements of the Data Quality Act. If the process is insufficient to meet this objective, an agency should reform the existing process rather than create duplicative processes. In assessing the adequacy of a process, however, an agency should recognize that the DQA does not require formal procedures, or even any particular type of

procedures. According to the DQA, an agency is to “establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated.” DQA, § 515(b). Thus, an agency’s obligation is to establish procedures that are adequate to review the nature of the complaints it is reviewing.

Reliance on an existing process is important for four reasons. First, a separate process for information that is already subject to a public comment process would be duplicative and burdensome with no additional advantage to the agency. Second, the creation of a second process would be disruptive to the orderly conduct of business at the agency because it would invite interested persons to raise data quality concerns in an action that is collateral to the normal process of an agency in resolving such disputes.

Third, designating rulemaking as the process to vet issues of data quality acknowledges what is clear from the language of the DQA itself: there is no independent judicial review of claims regarding data quality. As discussed earlier, the Act make no provision for such review, and indeed, its language clearly contemplates that OMB - not the courts - will be the entity responsible for reviewing agencies’ handling of complaints based on data quality. Moreover, under the Administrative Procedure Act, the dissemination of a scientific report in a Notice of Proposed Rulemaking (NPR) is not a final agency action subject to review because the publication of the study has no mandatory impact on anyone.\* If corporations or other interested parties could challenges scientific or other studies disseminated as part of the rulemaking process outside of that process, agencies would become embroiled in collateral litigation over the data quality of the studies on which the agency is relying in the rulemaking. The need to defend such collateral attacks would siphon agency resources from rulemaking and could indefinitely delay any ongoing rulemaking proceeding.

Finally, designating rulemaking as the process to vet issues of data quality will make it more likely that courts will consider complaints about data quality in the context of all of the information that an agency uses to defend a regulation. An agency at times will take

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\* Since the late 1940s, the D.C. Circuit has taken the view that since governments reports are not rules, sanctions, or any of the other terms that the APA defines as agency “action,” they are not subject to review. *See Hearst Radio v. FCC*, 167 F.2d 225 (D.C. Cir. 1948). As recently as 1988, that court refused to review a guide on respirators published by EPA and the National Institute of Occupational Safety & Health, notwithstanding the claim of respirator manufacturers that the report had effectively “decertified” most of the respirators on the market. *See Industrial Safety Equipment Ass’n v. EPA*, 837 F.2d 1115 (D.C. Cir. 1988). The court declined to act in part because the guide did not impose mandatory requirements. *Id.* at 1121. Different results may obtain where dissemination is specifically required by a statutory provision. *See Flue-Cured Tobacco Cooperative Stabilization Corp. v. U.S. EPA*, 857 F. Supp. 1137 (M.D.N.C. 1994), *appeal docketed*, No. 98-2407 (4<sup>th</sup> Cir. Sept. 15, 1998) (reviewing an EPA report on environmental tobacco smoke); *Synthetic Organic Chemical Manufacturers Ass’n (SCOMA) v. Dep’t of Health & Human Services*, 720 F. Supp. 1244 (W.D. La. 1989) (reviewing EPA’s Reports on Carcinogens). These cases, however, should not apply in the context of a rulemaking because the agency is not required to disseminate any report or study as part of its NPR.

protective action based on the “weight of the evidence”; that is, it will compile a complete picture out of a collective series of individual studies. If industry or other interested parties can challenge individual studies, without regard to their collective meaning, in separate agency and judicial review proceedings, an agency will be stymied in its efforts to adopt rules that reduce safety and health risks and protect the environment.

### *Peer Review*

According to the OMB Guidelines, information is “objective” when it is “accurate, reliable, and unbiased,” which requires the use of “sound statistical and research methods regarding scientific, financial, or statistical information. OMB will presume that information is of acceptable objectivity if data and analytic results have been subjected to formal, independent, external peer review. If agency-sponsored peer review is employed to help satisfy the objectivity standard, OMB requires that the process meet the general criteria for competent and credible peer review recommended by OMB-OIRA to the President's Management Council (9/20/01).

Although OMB's Guidelines require that all disseminated data be “objective,” agencies should resist OMB's invitation to use peer review routinely to establish the objectivity of such data. This expensive and time-consuming process should be reserved for data that are “influential” as defined early in this comment, if it is used at all. Agencies have the legal authority to restrict peer review to this more limited context. The Data Quality Act does not specifically call for peer review, and Congress has never imposed such a universal peer review requirement on agencies. The reason is simple: if an agency had to engage in peer review as a routine matter, data dissemination would come to a halt. Furthermore, peer review is unnecessary as a general instrument to establish objectivity. If reliance on scientific, financial or statistical information sets a new precedent or is reasonably controverted, the agency should consider such information to be “influential” and subject to enhanced data quality requirements. If it is not, then peer review is unnecessary and wasteful. Finally, peer review is not always a useful exercise. For example, peer reviewers can only review the information provided to them by the agency. In some cases, however, the basis of data submitted by a regulated industry is not available to the agency because of trade secrets or other conditions. And the idea of “peer review” for much of the information routinely disseminated by agencies - such as the peer review of information on agency enforcement actions, violations of statutes, and so forth - is nonsensical. In addition, some influential information utilized by an agency has already been fully vetted by peer review in other contexts. Although there may be disagreements about the reliability of such data, additional peer review is unlikely to shed any further light on this issue.

When an agency engages in peer review, it should recognize that the procedures recommended in the OMB-OIRA Memorandum omit crucial safeguards.\* Scientists participating in peer review panels should disclose to the public – and not just to government officials -- all sources of potential conflicts of interest and bias, including financial benefits, specific grants and other forms of institutional support, as well as prior opinions and other pre-dispositions that could potentially affect their objectivity. Scientists are expected to have opinions. However, if scientists with a financial stake in the outcome of a scientific inquiry participate, the objectivity of the review is immediately suspect. Candidates with a conflict of interest should not serve on a panel except under the most unusual circumstances; *i.e.*, they are the only ones who have essential expertise on the subject being reviewed. If persons with such conflicts serve, the existence and nature of the conflict must be publicly acknowledged in the peer review document.

Second, as discussed earlier, an agency should engage peer review only in the circumstance that peer reviewers have access to all data underlying the studies that are subject to peer review. A crucial purpose of peer review is to ensure that research is conducted in an intellectually honest and scientifically appropriate manner and that the results claimed by the researchers are supportable by the data they generate. To permit others to make these judgments, scientists must stand ready to disclose their underlying data, even if the results of a study were not what they – or the sponsors of their studies – had hoped or anticipated. Of course, reasonable accommodations should be made to safeguard patient confidentiality. Trade secrecy and the potential use of information by competitors, however, are not appropriate reasons for nondisclosure of healthy and safety data. See Federal Insecticide, Fungicide, and Rodenticide Act Section 10(b), 7 U.S.C. 136h(b).

Agencies should charter peer review committees under the Federal Advisory Committee Act (FACA). 5 U.S.C. Appendix 2. Since Congress created FACA, in part, to address issues of public disclosure and conflicts-of-interest, such as those identified in the prior paragraphs, agencies should address such problems through the procedures created by FACA. In particular, as required by FACA, an agency should assure that the composition of peer review committees reflect a fair balance and that the committee accomplishes its task with reasonable expedition.

#### *Limitations on Data Review*

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\* The Memorandum recommends “that (a) peer reviewers be selected primarily on the basis of necessary technical expertise, (b) peer reviewers be expected to disclose to agencies prior technical/policy positions they may have taken on the issues at hand, (c) peer reviewers be expected to disclose to agencies their sources of personal and institutional funding (private or public sector), and (d) peer reviews be conducted in an open and rigorous manner.”

The OMB Guidelines require agencies to establish “administrative mechanisms allowing affected persons to seek and obtain, where appropriate, timely correction of information maintained and disseminated by the agency that does not comply with OMB or agency guidelines.” *Guidelines*, § III.3. Further, OMB provides that “administrative mechanisms shall be flexible, appropriate to the nature and timeliness of the disseminated information, and incorporated into agency information resources management and administrative practices.” *Id.*

Agencies should respond to OMB’s call for “flexible” mechanisms “appropriate to the nature and timeliness of disseminated information” by adopting procedures that notify about pending requests to modify data and that permit quick resolution of data quality issues without merit. Specifically, agencies should establish procedural mechanisms to dismiss data correction requests that are frivolous, duplicative of other requests, refer to issues that have been the subject of prior complaints that have been resolved, or that occur after reasonable time deadlines set for the submission of such claims.

Agencies should establish a mechanism to notify the public about pending requests to modify data disseminated by the agency. This step will help establish the legitimacy of such proceedings by permitting the public to track the agency’s response. This step is unnecessary when requests to modify data are likely to come to the public’s attention, such as when they are part of comments filed during a rulemaking.

Any rational system of procedures requires methods to eliminate claims that are not meritorious. Agencies should not devote scarce resources to issues that do not deserve attention.

An agency should also employ reasonable time deadlines to field complaints about ongoing or proposed data disseminations. For example, instead of fielding such complaints, one at a time, over many months, an agency should invite the public to petition the agency once a year for revisions in data that the agency is currently disseminating. Similarly, if the agency is proposing a new information activity that is not subject to rulemaking under the APA, the agency should invite public comments during a fixed period of time. The agency should refuse to hear complaints from persons who failed to comment during the prescribed period and could have reasonably have done so.

Finally, where the challenged information has been published in an electronic medium, such as the World Wide Web, and so access to the information is under the control of the agency, information under challenge should not be removed from the web (or moved to a different site) pending resolution of the challenge. At most, the agency should indicate that the information has been challenged and provide a link to an electronic version of the challenge, so that the reader can evaluate both the original information and the challenge to it.

## *SDWA Risk Assessment Guidelines*

According to the OMB Guidelines, information is “objective” when it is “accurate, reliable, and unbiased,” which requires the use of “sound statistical and research methods regarding scientific, financial, or statistical information. *Guidelines*, § V3b. OMB defines “sound statistical and research methods” regarding the analysis of risks to human health, safety and the environment as the use of the quality principles applied by Congress to risk information used and disseminated pursuant to the Safe Drinking Water Act Amendments of 1996 (SDWA) (42 U.S.C. 300g-1(b)(3)(A) & (B)). Agencies shall “either adopt or adapt” these principles. *Guidelines*, § V3biiC.

The SWDA Guidelines are of two types.\* One provision establishes the minimum quality of the data on which EPA can rely and the other provision indicates how EPA is to describe that data to the public. An agency is not obligated to follow either provision.

An agency is not obligated to follow the first provision – defining the minimum quality of evidence on which EPA can rely -- because the SWDA only applies to EPA’s implementation of the Safe Drinking Water Act. There is absolutely no indication that Congress “adopted a basic standard of quality for the use of science in agency decisionmaking” when it enacted the SDWA, as OMB claims. *See* 67 Fed. Reg. 8457 (OMB’s claim of universal applicability). To the contrary, Congress has usually indicated the nature of the evidence on which an agency can rely in its own substantive mandate, and these mandates are different, and less prescriptive, than the one Congress

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\* The SWDA provides:

(A) Use of science in decisionmaking

*In carrying out this section*, and, to the degree that an Agency action is based on science, the Administrator shall use-- (i) the best available, peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices; and (ii) data collected by accepted methods or best available methods (if the reliability of the method and the nature of the decision justifies use of the data).

(B) Public information

*In carrying out this section*, the Administrator shall ensure that the presentation of information on public health effects is comprehensive, informative, and understandable. The Administrator shall, in a document made available to the public in support of a regulation promulgated under this section, specify, to the extent practicable-- (i) each population addressed by any estimate of public health effects; (ii) the expected risk or central estimate of risk for the specific populations; (iii) each appropriate upper-bound or lower-bound estimate of risk; (iv) each significant uncertainty identified in the process of the assessment of public health effects and studies that would assist in resolving the uncertainty; and (v) peer-reviewed studies known to the Administrator that support, are directly relevant to, or fail to support any estimate of public health effects and the methodology used to reconcile inconsistencies in the scientific data.

42 U.S.C. § 300g-1(b)(3)(A)-(B) (emphasis added).

used under the SDWA.” Even where no such provision exists, an agency is not bound by a congressional prescription for the quality of scientific data employed in establishing regulations under the SDWA in determining the quality of information disseminated to the public in entirely different contexts. Furthermore, the SDWA covers “studies” that EPA relies upon when an “action is based on science.” 42 U.S.C. 300g-1(b)(3)(A). By comparison, section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 is addressed to “information (including statistical information) disseminated by Federal agencies.” The term “information” encompasses far more than “scientific data.” The practices and methods that govern the accuracy and reliability of scientific information may or may not be equivalent to the practices and methods that ensure accurate and reliable information that is not strictly scientific in nature.

If an agency considers the data quality requirements of the SDWA at all, it should take care that compliance with these principles does not steer it away from the protective policies of the statutes that the agency is administering. Thus, an agency must weigh the resources needed to gather additional information in terms of its potential to improve the quality of the substance of risk assessments.

When an agency describes the risk data on which it is relying, it should be wary of the difficulties of developing a “central estimate of the human risk for the specific populations affected.” 42 U.S.C. § 300g-1(b)(3)(B)(ii). In most cases, the uncertainties that befuddle risk assessment are simply too large to support a “central estimate.” Nor is it possible to simply average the predictions of competing risk models in order to derive such an estimate. As one risk assessor notes, calculating a central estimate of risk is like “average[ing] the winning percentage of all Los Angeles sports teams – basketball, football, hockey, and baseball – to derive a ‘central estimate’ of the likely success for an

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” The Occupational Safety and Health Act, for example, only requires the Occupational Safety and Health Administration (OSHA) to use the “best available” scientific evidence in promulgating workplace standards for toxic materials or harmful physical agents. 29 U.S.C. § 655(b)(5). Similarly, the Clean Air Act does not stipulate any specific scientific methodology for estimating risks, but instead simply requires EPA to use the “latest scientific knowledge,” as reflected in air quality criteria documents, in setting the National Ambient Air Quality Standards. 42 U.S.C. § 7408(a)(2). In fact, in *Whitman v. American Trucking Assns.*, 121 S.Ct. 901 (2001), industry parties asked the Supreme Court to announce that the Clean Air Act requires a quantitative risk assessment from the Environmental Protection Agency (EPA) when EPA sets National Ambient Air Quality Standards under the Act. The Court declined to impose this requirement under the Clean Air Act. Likewise, science-based decisions under the Clean Water Act, *see, e.g.*, 26 U.S.C. § 1314(a)(1) (requiring EPA recommendations on science-based water quality criteria to be based on “latest scientific knowledge”), and the Toxic Substances Control Act, *See* 15 U.S.C. § 2626(a) (providing general authority to develop testing protocols for evaluating risks from toxic substances), do not embody the highly prescriptive risk assessment principles announced in the *Safe Drinking Water Act* Amendments. Moreover, in many cases the requirements for science-based decision-making will track substantive statutory standards; where, for example, a statute requires an agency to set a “margin of safety” in order to protect the public health, it would not be unreasonable for the agency to focus its attention on upper-bound estimates of risk as a policy judgment. *Cf.* Cass R. Sunstein, *The Arithmetic of Arsenic*, at p. 38, Working Paper 01-10, AEI-Brookings Joint Center for Regulatory Studies (August 2001) (available at [www.aei-brookings.org](http://www.aei-brookings.org)) (suggesting congruence of risk assessment protocols and substantive standards).

athlete playing in that city.” Thomas O. McGarity, *A Cost-Benefit State*, 50 AD. L. REV. 7, 28 (1998) (quoting Ellen Silbergeld). If different risk assessment models yield different predictions, the predictions should be revealed and the differences explained in a comprehensible fashion.

#### *Additional Funding*

Finally, agencies should seek, and OMB should support, additional funding to carry out responsibilities under the OMB Guidelines. As noted earlier, since the Guidelines are an unfunded mandate from the agency’s perspective, compliance with the Guidelines will siphon off agency resources from other activities, including the promotion of regulatory and information activities that protect the public and the environment. In order that data quality not become a zero-sum game, agencies should request from the administration, if they are subject to OMB budget oversight, or from Congress, if they are not, additional funding to meet these new responsibilities.

Sincerely,

Thomas McGarity, President  
Center for Progressive Regulation,  
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cc: Members and Staff Directors, House Committee on Government Reform  
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*Info Quality Comments* 3



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May 31, 2002

Office of Secretary  
Consumer Product Safety Commission  
Washington DC 20207

Re: Information Quality Guidelines, 67 FR 21222

Dear Mr. Stevenson:

The Section of Administrative Law and Regulatory Practice of the American Bar Association is pleased to submit comments on the proposed guidance for data quality that your agency has proposed under Section 515 of Public Law 106-554. The views expressed herein are presented on behalf of the Section of Administrative Law and Regulatory Practice. They have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the position of the Association.

These comments are focused on the mechanisms proposed for implementation of section 515's "correction of information that does not comply with (OMB guidance)". In commenting on the mechanisms we hope to improve them; these comments do not suggest that any of the substantive objectives of the agency discussed in your published proposal would or would not have our Section's support. Because many of the nation's experts in the administrative process and information policy are members of our Section, we hope to speak to the process and procedural aspects of the proposed guidelines.

1. We found it confusing that CPSC exempts from these Guidelines information disseminated that states that it "was not subjected to CPSC's information quality guidelines." This sounds circular; OMB listed what information can be exempted, 67 F.R. 8460 col. 2 item 5, but this seems to assert that CPSC will avoid the guidelines whenever CPSC says it is avoiding the guidelines. If criteria exist under which data is not subject to an otherwise generally applicable norm, sound administrative practice would be to describe those criteria. The current language is not sufficiently coordinated with the OMB norms.

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2. Clarity in the mechanisms to be used for review of complaints would be very beneficial. The Draft says each request is to go to the Secretary; presumably the Secretary will select the program office to which to transmit the request, and if the staff office determines that an error was made, "it will determine the appropriate level of concern." (Draft Guidelines at 7). This is quite vague. The OMB final Guidelines, which Section 515 sets as the benchmark for agency rules, describes the function that the complaint process is to perform; this includes a timely response and notice of what steps the Commission has taken for correction. (67 FR 8459, col. 1 item III(3)(i)) It would be best to follow the mechanism in the OMB document.
3. The appeal process described in the Draft does not suggest where final authority for denial of corrections would rest, and as an independent statutory agency, it would appear that final agency action requires either a vote of the three Commissioners or a delegation by them of final authority. An appeal to the office of Executive Director may be fully appropriate, but it would be optimal if the final guidance would state the title(s) of the official(s) where final agency action will occur. If the CPSC regards finality as essential for any judicial review, the CPSC should state how finality can be achieved.
4. The final sentence of the "Information Not Subject" paragraph at page 6 states "...CPSC did not apply the specifics set forth in these Guidelines to information initially disseminated...prior to October 1, 2002." Use of the past tense "did not" is very appropriate, but the paragraph should also go further to state that those disseminations which are still extant, e.g. on the website or in pamphlets distributed to the public, are subject to the OMB standards "regardless of when the agency first disseminated the information", 67 F.R. 8459 col. 1 item III(4).
5. At page 6 line 3 the Draft states that "CPSC places great emphasis on its review process to ensure the quality of information disseminated." We recommend clarifying that the review process is specific to the acquisition of reports and data and that the review occurs as a routine matter, separate from the review that the staff would do in the event of a complaint. In its past judicial review experiences the CPSC has had some issues with data reproducibility on swimming pool standards and on other matters. To the extent the CPSC has an internal data quality review on its own motion, before a complaint is received, the dimensions of this existing internal quality review should be described in this portion of the guidance document.
6. "Influential" information deserves special care, and page 5 "Transparency" paragraph 2 line 3 suggests that any technical report within the broad categories listed will be treated with the highest level of protection accorded to "influential" matters. We note that other agencies do not similarly treat all of these types of reports as influential, but of course the CPSC may choose to do so.
7. Because CPS Act section 6(b)(7) is one of the few federal statutes that expressly provides for a retraction of data disseminated by the agency that was "inaccurate or misleading", and it requires the identical means of dissemination to be used, e.g. corrective press releases, CPSC should modify its guidelines at p. 4 in the last paragraph to expressly cross-reference the statutory duty of correction upon

8. retraction. This omission needs to be rectified so that the person adversely affected can use both the data quality and the 6(b)(7) remedies.
9. A recurring issue for other agencies is their duty to apply the section 515 data quality norms to reports submitted to the agency by outside entities. OMB covers that issue in 67 F.R. 8454 col. 1, saying the outside party submitted data is subject to data quality if the recipient agency then disseminated that data "in a manner that reasonably suggests that the agency agrees with the information". Yet at p. 3 para. 3 CPSC says the data quality norms "cannot be applied" to such external data. This seems inconsistent with the OMB Guidelines, and should be changed to conform.

Of the agency data quality notices reviewed to date, the CPSC guidelines appear to be the least conforming to the OMB Guidelines, and it may be appropriate to consider a second round of public comments as the present draft is reconsidered.

Thank you for considering these comments. If you wish clarification of any portions, please contact Professor James O'Reilly, Chair of the Committee on Government Information & Privacy, at (513) 556-0062.

Sincerely,



C. Boyden Gray  
Section Chair

Draft  
Draft  
Quality H

June 10, 2002

MEMORANDUM FOR PRESIDENT'S MANAGEMENT COUNCIL

FROM: John D. Graham  
SUBJECT: Agency Draft Information Quality Guidelines

The quality of information disseminated to the public by the Federal Government needs to be improved.

Reflecting this need, Congress recently directed OMB to issue government-wide guidelines that provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies. The Administration is committed to vigorous implementation of this information quality law.

OMB issued government-wide information quality guidelines on September 28 last year. Each Federal agency is now required to issue its own guidelines that will ensure the quality of information that it disseminates. These guidelines must include mechanisms to allow the public to seek correction of disseminated information that does not comply with the information quality standards in the OMB or agency guidelines. To permit public participation and comment, and to facilitate interagency coordination, agencies are expected to make their draft guidelines available for public comment.

My staff and I have completed a preliminary review of the draft agency guidelines currently available for public comment. We want to thank you for the substantial effort and careful deliberation reflected in the agency drafts. Agencies, with highly diverse program responsibilities, disseminate a wide variety of kinds of information to serve many different purposes. The agency drafts properly reflect this variety.

Some agencies have developed particularly noteworthy provisions that I would suggest for consideration by other agencies in reviewing and revising their own draft guidance. I would also like to point out some provisions in agency drafts that do not appear consistent with the text and intent of the OMB guidelines or are otherwise contrary to Administration policy.

Based on our review, I have attached a discussion of important issues, identified noteworthy approaches for consideration, and provided guidance on those provisions that need to be adopted uniformly in all agency guidance. I request that you send this attachment to the appropriate officials who are responsible for developing your agency's information quality guidelines.

We have asked agencies to submit draft final guidelines to us for review by August 1 (which we have extended from an original July 1 deadline). We encourage you to use this extra time to extend your public comment period. In light of the recent decision to allow additional time for agencies to extend the period for public comment on agency guidelines (and thus compress the time available for final OMB review), it is my intention to have these OIRA comments considered in conjunction with public comments as agencies shape their final guidelines.

As a related matter, I should note that Mark Forman of OMB is leading work on a content model for presenting information on the web. It will include guidelines on how to present web content, how agencies should identify web-based material, and general guidelines for what should go on the public internet.

Attachment