



Center for Regulatory Effectiveness

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The Honorable Jeffrey W. Runge, M.D., Administrator
National Highway Traffic Safety Administration
Room 5220
400 Seventh Street, S.W.
Washington, D.C. 20590

RE: NHTSA Must Issue Guidelines to Implement the Data Quality Act

Dear Administrator Runge:

The Center for Regulatory Effectiveness ("CRE")¹ has a continuing interest in assuring that Federal agencies comply with "Good Government" laws such as the Data Quality Act, the Administrative Procedure Act, and the Freedom of Information Act.

CRE has been actively involved in the Data Quality issue (see the Data Quality section of CRE's website, < www.TheCRE.com >, for details on the Center's involvement). CRE is committed to helping federal agencies achieve implementation of the Data Quality Act² by meeting the objectives of Congress, as interpreted by OMB.

¹ The CRE was established in 1996, after the passage of the Congressional Review Act, to provide Congress with independent analyses of Federal agency regulations. From this initial organizing concept, CRE has grown into a nationally recognized clearinghouse to improve the Federal regulatory process. One such improvement in the Federal regulatory process is to assure that Federal agencies make decisions based on sound science. CRE has no members, but it receives, from time to time, financial support, services in kind, and work product from trade associations and private firms. The CRE Advisory Board consists of former career officials from OMB's Office of Information and Regulatory Affairs.

² Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001, Public Law 106-554.

I. OMB's Guidance Implementing the Data Quality Act

On January 3, 2002, the Office of Management and Budget published final guidance implementing the Data Quality Act.³ The Data Quality Act 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 Data Quality Act also requires each Federal agency to issue agency-specific guidelines based on the OMB guidelines.

Notably, the OMB guidance requires that influential scientific, financial, or statistical information disseminated by an agency be reproducible. The preamble to the OMB guidance says:

The purpose of the reproducibility standard is to cultivate a consistent agency commitment to transparency about how analytic results are generated: the specific data used, the various assumptions employed, the specific analytical methods applied, and the statistical procedures employed. [67 *Federal Register* 373, 3rd column; January 3, 2002.]

On December 17, 2001, John D. Graham, Administrator of the OMB Office of Information and Regulatory Affairs, spoke to the Weidenbaum Center Forum at the National Press Club, on the topic of "Presidential Management of the Regulatory State". Dr. Graham emphasized the importance of the OMB Data Quality Act guidelines to promote better quality in the information and technical data that agencies collect, use and disseminate to the public, particularly on important public policy issues:

When agency information forms the basis of important public policies, we go beyond the standard of journal peer review and require that such data be reproducible, or at least highly transparent about research design, data sources, and analytic methods. When people are harmed by poor quality

³ 67 *Federal Register* 369 *et seq.*; January 3, 2002.

information, the OMB guidelines provide new avenues for [. . .] agency corrections [. . .] to resolve disputes. [This] process [. . .] has tremendous potential to enhance the competence and accountability of the regulatory state.

II. CRE's Recommendations for NHTSA's Data Quality Guidelines

CRE is pleased to offer the following recommendations to NHTSA, which we intend to supplement after NHTSA issues its proposed guidelines in the *Federal Register* and requests further public comments.

First, as agency policy, NHTSA should make clear that the Data Quality Program, as encompassed in its Data Quality guidelines, is an evolutionary process which will involve ongoing review and improvement by the Agency. NHTSA's development of Data Quality guidelines provides a good opportunity to foster strong data and information management at the Agency.

OMB Data Quality Act Guidelines Strongly Promote Reproducibility and Transparency and Require Public Review of Data and Analytical Methods Used in NHTSA Rulemakings

- ▶ It is clear that NHTSA's rulemaking activities frequently address important public policies, most notably motor vehicle safety but also fuel economy and energy conservation.
 - NHTSA's statutory authorities require analysis of complex factors including technological feasibility and economic practicability.
- ▶ Accordingly, under the Data Quality guidelines, NHTSA's analytical process must be both transparent and reproducible.
- ▶ NHTSA's Data Quality guidelines should make clear that NHTSA will make the data inputs, assumptions, and any analytical models employed by NHTSA available for public review and debate.

Standard of Care for Agency Information Prior to Issuance

- ▶ NHTSA should specify the process the Agency intends to establish to ensure quality of the Agency's information and compliance with the Data Quality Act prior to the issuance and dissemination of such information.

- This process should identify which official will be conducting such review and the steps that will be taken in considering compliance with the Act, OMB's guidelines, and NHTSA's own guidelines.

Applicability of the Data Quality Guidelines to Third-Party Information Submitted to NHTSA

- ▶ Because the Data Quality Act applies to essentially all information which NHTSA disseminates to the public, the same standards will apply to information developed by third-parties and submitted to NHTSA for Agency publication or reliance in a regulatory action. NHTSA should make a clear statement that information submitted to the Agency must comply with the Data Quality guidelines, if:
 - A third party petitions for correction or withdrawal of the information; or
 - NHTSA itself decides to disseminate this information or to adopt its substance and take regulatory or administrative enforcement action.

Deadlines for Agency Action on Data Quality Petitions for Correction

- ▶ In accordance with the OMB guidelines, NHTSA should set a deadline by which the Agency will act upon any Data Quality petitions for correction.
- ▶ However, as part of the procedural process for Data Quality petitions, the responsible Agency official should be responsible for reviewing each petition filed to determine those that are relatively simple or uncontroversial and, therefore, can be decided in an expedient fashion prior to the deadline for action.
- ▶ In addition, NHTSA's Data Quality petition procedures should establish a process for accelerated review of petitions and describe the circumstances when accelerated review is appropriate.

Publication for Rules of Procedure for Data Quality Petitions

- ▶ In addition to accelerated review procedures, CRE believes that NHTSA and stakeholders would benefit from NHTSA's development of a set of overall written procedures for the Data Quality petition process.

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- ▶ These procedures should be published in the *Federal Register* in proposed form for public notice and comment.

Availability of Administrative Appeals

- ▶ CRE believes that appeals under the Data Quality petition process should only be available to the Petitioner. NHTSA should not be allowed to challenge positive action on the petition at a lower level within the Agency.

Decisionmaking in the Petition Process

- ▶ NHTSA must ensure that each decisionmaker in the administrative petition process -- at both the initial consideration stage and the administrative appeals level -- is competent to handle the substance of the petition and sufficiently independent to make a decision on the petition.
- ▶ CRE believes that the petition should initially be reviewed and decided within the relevant Program Office.
- ▶ CRE believes that if a petition is denied, the appeal should be reviewed and decided by an NHTSA official outside the Program Office in question. Consideration might even be given to establishing an independent office within the Agency for the purpose of deciding Data Quality Act appeals.

Treatment of Inaccurate Data During the Course of Administrative Proceedings

- ▶ If the designated NHTSA decisionmaker becomes aware of an inaccuracy in data during the course of a petition review, that official should have the authority to suspend or withdraw dissemination of the inaccurate information until such time as it can be amended or clarified.

Higher Level of Quality for "Influential" Information

- ▶ The OMB Data Quality guidelines mandate a higher level of quality for "influential scientific, financial, or statistical information." Consequently, NHTSA should clearly and explicitly address all relevant aspects of what will constitute a higher level of quality for such influential information.

Applicability of the Data Quality Guidelines to NHTSA Enforcement Actions

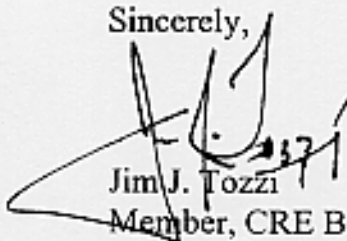
- ▶ CRE recommends that NHTSA clearly set forth how it will apply Data Quality requirements to evidence and analyses in the course of enforcement actions such as “recalls”, more formally, proceedings concerning defects and noncompliance with applicable motor vehicle safety standards.
- ▶ NHTSA’s Data Quality guidelines should address their applicability to both administrative enforcement actions for defects and noncompliance (49 U.S.C. § 30118) and judicial civil enforcement actions (49 U.S.C. § 30121).

In closing, CRE urges NHTSA to promptly publish its proposed guidelines to implement the new OMB Data Quality guidelines, to apply to Agency information-dissemination activities including:

1. NHTSA rulemakings (with respect to both any proposals for changes in regulatory standards and any accompanying analyses, such as the regulatory impact analysis required by Executive Order 12866); and
2. Administrative and civil enforcement actions.

Should you have any questions regarding CRE’s comments, please feel free to contact me at (202) 265-2383.

Sincerely,



Jim J. Tozzi

Member, CRE Board of Advisors