

# Center for Regulatory Effectiveness

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May 30, 2002

Secretary  
Federal Trade Commission  
Room H-159  
600 Pennsylvania Ave., N.W.  
Washington, D.C. 20580.

RE: Comments -- Draft 515 Guidelines

Dear Federal Trade Commission:

The Center for Regulatory Effectiveness (CRE) is pleased to provide you with our Comments on the Federal Trade Commission's proposed information quality guidelines, issued pursuant to the Data Quality Act (44 U.S.C. § 3516, note). The Center had a leading role in passage of the Act and maintains a strong ongoing interest in this important issue. Please see our website, [www.theCRE.com](http://www.theCRE.com) for more information about CRE.

Given the deference the public pays to governmental information and the significant role such information plays in regulation and public and private resource allocation decisions, the quality of the federal government's information is a matter of crucial importance to everyone who uses that information. Consequently, CRE appreciates this opportunity to provide its views and recommendations to the FTC in order to help achieve congressional intent 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, which is part of our comments to the FTC on the Commission's proposed Data Quality guidelines, 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.

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- 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 attempts by a number of agencies, including the FTC, 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. The MLS memorandum is part of CRE's comments to the FTC. 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.

### (3) **CRE Comments on Specific Provisions of the FTC's Proposed Data Quality Guidelines**

- (A) *Petitions & Other Third-Party Information Submissions.* FTC's proposed Data Quality Guidelines would exclude petitions, supporting materials, and similar information submitted to the agency from the Data Quality Guidelines by declaring that they are not an agency-initiated or sponsored dissemination of information.

Much of the information disseminated by the FTC and other agencies originally is submitted by third parties including states and private entities. OMB has already stated that where such third party information becomes the basis for agency action or such information is otherwise to be adopted by the agency, that information must meet the standards set forth under the Data Quality Act.

#### **CRE Recommendation**

The FTC should adopt the Department of Transportation's proposed language which explicitly covers third party data submissions.

*"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."*

- (B) **Rulemakings.** The FTC's proposed guidelines seek to limit applicability of the guidelines to information in rulemakings by requiring that data quality concerns in these matters be raised only through the public comment process.

Information 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 under the Data Quality Act.

The process proposed by the FTC does not meet the requirements set by OMB's guidelines. OMB's guidelines instructs agencies to, where possible, incorporate Data Quality standards and procedures into their existing processes. However, OMB's request means that existing procedures need to be modified so that they include the standards and requirements of the Data Quality Guidelines. By simply directing that any Data Quality concerns about the information in a rulemaking be addressed through the rulemaking process without modifying those procedures for Data Quality needs, the FTC would not be adhering to OMB's requirements. Specifically:

- OMB's guidelines require a "timely correction of information maintained and disseminated by the agency that does not comply with OMB or agency guidelines." Since some dockets remain open for years without final resolution, erroneous information could remain uncorrected for extended periods unless the FTC revises its rulemaking procedures to require a timely response to Data Quality concerns regarding information, though not policy issues, in the rulemaking.

The FTC's draft approach to correcting information in rulemakings is that "corrections may be made before the information or data become the basis for final agency action or dissemination." The FTC's proposal overlooks the fact that information in a rulemaking record in and of itself constitutes a dissemination of information and requires, if it is not in compliance with the requirements of the Data Quality guidelines, timely correction.

### **CRE Recommendation**

The FTC should revise the Commission's draft Data Quality guidelines to ensure that information in currently open and in future rulemakings is not excluded from the requirements of the Data Quality Act. In covering information in rulemakings, the guidelines should include the requirement for a timely response to requests for correction of disseminated information. Since any potentially valid information correction requests during a rulemaking would deal only with information quality

issues, not policy, the requests need to be dealt with according to the Data Quality requirements set by Congress and OMB. It should be noted that OMB's guidelines specifically discuss information underlying proposed rules as constituting a dissemination of information.

- (C) ***Adjudicatory Processes.*** FTC's proposed guidelines would exclude "evidence submitted, analyses prepared, findings and determinations made..." and well as the results of adjudicatory processes from the Data Quality guidelines. Thus, the FTC draft guidelines would exclude virtually every aspect of petition processes from the standards and requirements of the Data Quality Law and implementing guidelines.

Nothing in the Data Quality Act or in the Paperwork Reduction Act, of which the Data Quality law is a part, permits exemptions from information dissemination standards for material related to adjudicatory processes. For a detailed legal analysis discussing the Data Quality Act's applicability to all public information, including information related to adjudicatory processes, please see the attached MLS memorandum.

#### **CRE Recommendation**

The FTC should revise the draft FTC Data Quality guidelines to ensure that they apply, as required by law, to information related to adjudicatory processes and all other public information.

- (D) ***Labeling.*** FTC's proposed Data Quality Guidelines would exempt "disclosure language developed and used by regulated entities in order to satisfy legal standards established under FTC regulations..."

Labeling language developed to satisfy legal standards or other requirements is a dissemination of information. Indeed, the very reason for labeling requirements is to ensure dissemination of important information to the public. Thus, FTC approval of such labeling language, or denial of proposed language, constitutes an information dissemination as defined by the Data Quality Act and public information provisions of the Paperwork Reduction Act and, therefore, would not be exempt from the Commission's Data Quality guidelines.

#### **CRE Recommendation**

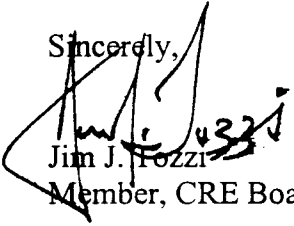
The FTC should revise its draft Data Quality guidelines to make clear that FTC-mandated and/or approved labels are subject to the requirements of the FTC and OMB Data Quality guidelines.

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. 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.

## Center for Regulatory Effectiveness

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,

A handwritten signature in black ink, appearing to read "Jim J. Pozzi". The signature is stylized and overlaps with the printed name below it.

Jim J. Pozzi  
Member, CRE Board of Advisors

Attachments