



Center for Regulatory Effectiveness

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June 14, 2002

Mr. Stan Sokul
Office of Science and Technology Policy
Eisenhower Executive Office Building
17th Street & Pennsylvania Avenue, N.W.
Washington, D.C. 20502-0001

RE: CRE Comments on Proposed Data Quality Guidelines

Dear Mr. Sokul:

I am writing on behalf of the Center for Regulatory Effectiveness (CRE) to share with you the Center's comments on OSTP's recently proposed information quality guidelines, issued pursuant to the Data Quality Act amendments to the Paperwork Reduction Act ("PRA"), 44 U.S.C. § 3516 historical and statutory notes.

In addition to the comments specific to the proposed OSTP guidelines, CRE also includes and incorporates by reference the following attachments.

CRE GENERAL COMMENTS TO ALL FEDERAL AGENCIES RELATED TO DATA QUALITY GUIDELINES

Attached as Exhibit A is a paper that outlines a number of cross-cutting issues related to Data Quality guidelines which are applicable to all agencies and which contains CRE's recommendations on how such issues should be addressed. In the paper, which is incorporated by reference into CRE's comments on OSTP's proposed guidelines, CRE identifies and evaluates a number of agency approaches to these cross-cutting issues. Such examples include positive agency proposals that might be emulated, as well as problematic agency proposals which should be avoided. CRE strongly believes that proper action on these key issues will help ensure that the guidelines issued by all agencies are workable, effective, and in keeping with the requirements of the statute.

**LEGAL MEMORANDUM ON THE DATA QUALITY ACT'S APPLICABILITY
TO ALL INFORMATION THAT AN AGENCY HAS MADE PUBLIC**

Attached as Exhibit B is a legal memorandum which summarizes an inquiry by Multinational Legal Services, Inc. into the Data Quality Act's applicability. This MLS memorandum, which is incorporated by reference into CRE's comments on OSTP's proposed guidelines, concludes:

- Based on the PRA's Information Dissemination provisions, including the Data Quality Act, and the relevant legislative history, Congress intended the Data Quality Act standards to apply to all information that federal agencies in fact make publicly available.
- 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.

OSTP-SPECIFIC COMMENTS

In addition to these two attached documents, CRE offers the following comments on OSTP's proposed Data Quality guidelines.

**OSTP AND ALL OTHER AGENCIES SHOULD ADOPT THE DEFINITIONS
OF "DISSEMINATION" AND "INFORMATION" IN OMB CIRCULAR A-130**

The MLS legal memorandum attached as Exhibit B explains that Congress intended the Data Quality guidelines to apply to all information that agencies subject to the PRA have in fact made public. OMB, OSTP and most other agencies have violated congressional intent by creating numerous exemptions from the guidelines' applicability. Most if not all of these exemptions arise from the definitions of "dissemination" and "information" in the OMB and other agency Data Quality guidelines. These definitions are much narrower than OMB's longstanding definitions of "dissemination" and "information" found in Circular A-130.

For purposes of Data Quality standard applicability, OSTP and the other federal agencies should adopt and apply the Circular A-130 definitions of "dissemination" and "information." Like the Data Quality Act, Circular A-130 implements the Information Dissemination provisions of the PRA. The Circular A-130 definitions are consistent with congressional intent regarding the PRA's Information Dissemination provisions, including the Data Quality Act amendments. OMB itself has acknowledged that Congress essentially codified Circular A-130 when it enacted most of the PRA Information Dissemination provisions in 1995. *Memorandum for Heads of Executive Departments and Agencies*, Alice Rivlin, OMB Director (M-95-22, September 29, 1995). The A-130 definitions are also similar to those OMB originally proposed to use for Data Quality guidelines. 66 FR 34489, 34492-93 (June 28, 2001).

DEADLINES FOR FILING PETITIONS

At page 6 of its proposed guidelines, OSTP proposes deadlines for filing administrative correction petitions: within 60 days of the product's initial dissemination for information first published after October 1, 2002; by December 1, 2002, for information first published prior to October 1, 2002. CRE recommends that OSTP not apply these deadlines to the administrative petition process.

First, OSTP should appreciate and act on any petition at any time that demonstrates that information being disseminated by OSTP does not meet Data Quality standards. There is and can be no basis or justification for continuing to disseminate information that does not meet these standards.

Second, neither the Data Quality Act amendments to the PRA nor OMB's interagency guidelines contain any deadlines for petitions. Such deadlines are inconsistent with congressional intent because they would arbitrarily allow information of poor quality to continue to be disseminated to the public, and would contradict congressional intent to allow petitions to correct such information. The American Bar Association's Section on Administrative Law and Regulatory Practice explained at page 2 of its comments on EPA's proposed Data Quality guidelines:

Why would a prudent federal agency not correct a false statement on its website? If the words "seek and obtain correction" in the statute mean that the affected person can obtain correction, how can the agency say it cannot be obtained, once the data is shown to be wrong or misleading?

The ABA comments are attached as Exhibit C and are incorporated by reference into CRE's comments on OSTP's proposed guidelines.

Third, as long as information not meeting Data Quality standards continues to be disseminated, there is a continuing violation of the Data Quality Act amendments to the PRA, and of OMB's interagency Data Quality guidelines. The proposed deadlines are inconsistent with these continuing violations because the violations continue past the deadlines.

Fourth, the deadlines are unreasonable. For example, not everyone reads the *Federal Register* and accesses OSTP's website on a daily basis. A 60-day deadline after initial dissemination is impracticable, especially when one considers that the poor-quality information could affect an individual's personal reputation and livelihood, and may be buried at page 200 of a 1000 page document. Moreover, when is the date of first dissemination? This question could be difficult to resolve in many contexts. Similar problems attend the December 1st deadline for information first disseminated before October 1, 2002.

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Fifth, CRE strongly urges OSTP not to apply any deadlines to the administrative petition process. If, however, OSTP still believes that some deadline is necessary, then CRE urges OSTP to adopt a discovery rule. Beginning October 1, 2002, an affected person should have ninety days from the date he knows of quality problems with the information to file a petition. At the earliest, under this discovery rule no petition would have to be filed until ninety days after October 1, 2002, and this date would only apply if the petitioner knew of the quality flaws in the information on October 1, 2002

INTERAGENCY COMMITTEES

CRE also asks OSTP to address an issue that, to the best of CRE's knowledge, has not been addressed: how do the new Data Quality standards apply to information disseminated by interagency committees?

There are many examples of committees comprised of representatives from different agencies subject to the PRA: *e.g.*, Interagency Risk Assessment Consortium; United States Global Change Research Program; and the Human Subjects Research Subcommittee. Many of these interagency subcommittees disseminate information subject to the PRA's Data Quality requirements. The question is which agency guidelines apply? CRE agrees that this is a difficult issue, but the Center suggests the following resolution of it.

Any information disseminated by a multi-agency committee should have to comply with all Data Quality guidelines for all agencies on the committee. An administrative petition should be filed with the chairperson(s) of the committee at the time the petition is filed.

GPRA PERFORMANCE GOALS

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 may be of further assistance.

Sincerely,


Jim J. Tozzi

Member, CRE Board of Advisors

Attachments