



Center for Regulatory Effectiveness

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September 5, 2002

U.S. Fish & Wildlife Service
Division of Information Technology Management
4401 N. Fairfax Drive, Room 340
Arlington, Virginia 22203

RE: CRE COMMENTS ON PROPOSED DATA QUALITY ACT GUIDELINES

Dear Sir or Madam:

I am writing on behalf of the Center for Regulatory Effectiveness (CRE) to share with you the Center's comments on the U.S. Fish & Wildlife Service's (FWS) recently proposed Data Quality Act Guidelines, issued pursuant to the Data Quality Act amendments to the Paperwork Reduction Act (APRA, 44 U.S.C. ' 3516 historical and statutory notes.

In addition to the following FWS-specific comments, CRE's comments on FWS= proposed guidelines include and incorporate by reference the following attachments.

CRE GENERAL COMMENTS TO ALL FEDERAL AGENCIES RELATED TO DATA QUALITY ACT 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.
- B 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.
- \$ In the paper, 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.

LEGAL MEMORANDUM ON THE DATA QUALITY ACT'S APPLICABILITY TO ALL PUBLIC INFORMATION

§ 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 concludes:

B 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 and the administrative petition process to apply to all information that federal agencies in fact make publicly available.

B Thus, neither FWS 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 and from the Act's required administrative petition process.

In addition to these two attached documents, CRE offers the following comments on FWS's proposed data quality guidelines.

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

Most exemptions from the Data Quality Act Guidelines stem from the definitions of information and dissemination proposed by FWS, OMB and other agencies. 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. FWS, OMB 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.

For purposes of data quality standard applicability, FWS, OMB and the other federal agencies should adopt and apply OMB's longstanding definitions of information and dissemination in OMB Circular A-130. These OMB 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 Act Guidelines. 66 FR 34489, 34492-93 (June 28, 2001).

THE ADMINISTRATIVE PETITION PROCESS

In Part IV of its proposed guidelines, FWS proposes many restrictions on the administrative petition process required by the Data Quality Act. These restrictions include dismissal of a petition without any decision if it is deemed inconsequential or trivial, and for which a response would be duplicative of existing processes, unnecessary, or unduly burdensome for the Agency.

FWS does not have authority to dismiss administrative petitions on these grounds. As explained in the MLS Legal Memorandum attached as Exhibit B, the Data Quality Act standards and the administrative petition process apply to all information that FWS has in fact made public. Moreover, FWS should appreciate any administrative petition that at any time demonstrates that information disseminated by FWS does not meet the standards statutorily required by the Data Quality Act.

ADOPTION OR ADAPTATION OF SDWA STANDARDS

OMB's government-wide Data quality guidelines require [w]ith regard to analysis of risks to human health and the environment maintained or disseminated by the agencies, agencies shall either adopt or adapt the quality principles applied by Congress to risk information used and disseminated pursuant to the Safe Drinking Water Act Amendments of 1996 (42 U.S.C. 300g-1(b)(3)(A) & (B)).
67 FR 8452,8460 (Feb. 22, 2002). OMB reemphasized this government-wide requirement in subsequent guidance to the agencies. Memorandum for President's Management Council, John Graham, Attachment at Section III (June 10, 2002).

FWS has not proposed to adopt or adapt the SDWA risk assessment standards. This omission violates OMB's government-wide Data Quality guidelines, with which FWS must comply.

INTER-AGENCY COMMITTEES

CRE also asks FWS to address an issue that, to the best of CRE's knowledge, has not been addressed: how do the new Data Quality Act Guidelines 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 inter-agency 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 suggests the following resolution of it.

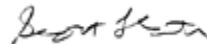
Any information disseminated by a multi-agency committee should have to comply with all Data Quality Act Guidelines for all agencies on the committee. An administrative petition should be filed with the Chairperson(s) and Vice Chairpersons (if any) of the committee at the time the petition is filed, with copies to all agencies on the committee.

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 might be of further assistance.

Sincerely,



Scott Slaughter
Center for Regulatory Effectiveness
Member, CRE Board of Advisors

Attachments