



THE INFORMATION QUALITY ACT

April 2003

Passage

In late 2000, Representative Joanne Emerson (D-MO) sponsored an amendment to the Office of Management and Budget's (OMB) appropriations bill. It was passed by the U.S. Congress and enacted as Section 515 of the Treasury and General Government Appropriations Act. Pub. L. 106-554 (H.R. 5658 incorporated by reference into H.R. 4577), available at <http://thomas.loc.gov/bss/d106/d106laws.html>. Although many refer to Section 515 as the "Data Quality Act," OMB believes it is more appropriately called the "Information Quality Act" (IQA). See http://www.lawbc.com/other_pdfs/dq-transcript.pdf. While some believe the IQA could revolutionize the way federal agencies disseminate information the way that the National Environmental Policy Act changed environmental law, others are not so sure, and only the passage of time will provide an answer.

The IQA was a very abbreviated amendment, remarkable for its lack of detail, and was passed without hearings. The IQA required OMB to establish by September 2001 government-wide standards for ensuring and maximizing the "quality, objectivity, utility, and integrity" of information disseminated by federal agencies:

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.

OMB's Office of Information and Regulatory Affairs (OIRA), headed by Administrator John D. Graham, Ph.D., issued the OMB Guidelines in interim form on September 28, 2001, and in final form, on February 22, 2002. As required by Section 515, the OMB Guidelines required federal agencies to "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 [OMB] guidelines. . . ." Accordingly, all affected agencies were required to issue their own guidelines before October 2002.



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The IQA required that the OMB Guidelines set out guidance for federal agencies to comply with the following additional requirements:

- Each affected federal agency must establish administrative mechanisms allowing affected persons to seek and obtain correction of non-complying information maintained and disseminated by the agency.
- Each affected federal agency must report periodically to OMB the number and nature of complaints received regarding the accuracy of information disseminated by the agency; and how such complaints were handled by the agency.

OMB Guidelines

Because the IQA was passed without hearings, there is no legislative history. Thus, there is no documentation indicating what Congress meant when it passed the one-sentence, legislative requirement requiring agencies to establish processes to ensure and maximize the quality, objectivity, utility, and integrity of the information they disseminate. Rather, in accordance with Section 515, OMB's OIRA was tasked with providing such guidance.

As noted, the OMB Guidelines were published in final on February 22, 2002, and are available on OIRA's website at <http://www.whitehouse.gov/omb/fedreg/reproducible2.pdf>. The OMB Guidelines apply to all federal agencies subject to the Paperwork Reduction Act. The Guidelines have a broad definition of "information," as "any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms." The definition of "information" includes "information that an agency disseminates from a web page, but does not include the provision of hyperlinks to information that others disseminate," and also "does not include opinions, where the agency's presentation makes it clear that what is being offered is someone's opinion rather than fact or the agency's views." The OMB Guidelines distinguish "ordinary" information from "influential" information. Influential information is scientific, financial, or statistical information that, if disseminated, will have or does have a clear and substantial impact on important public policies or private sector decisions. Influential information is held to a higher standard of quality than ordinary information. The OMB Guidelines required federal agencies to develop guidelines with a high degree of transparency about data and methods to facilitate the reproducibility of such information by qualified third parties." The OMB Guidelines also require that, with regard to analysis of risks to human health, safety, and the environment maintained or disseminated by the agencies, agencies shall either adopt or adapt the quality principles applied



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by Congress to risk information used and disseminated pursuant to the Safe Drinking Water Act Amendments of 1996.

The OMB Guidelines define the four substantive criteria information disseminated by federal agencies must meet: quality, utility, objectivity, and integrity. OMB defines “quality” as the encompassing term, of which utility, objectivity, and integrity are the constituents. OMB states that utility “refers to the usefulness of the information to the intended users.” Objectivity “focuses on whether the disseminated information is being presented in an accurate, clear, complete, and unbiased manner, and as a matter of substance, is accurate, reliable, and unbiased.” Integrity “refers to security -- the protection of information from unauthorized access or revision, to ensure that the information is not compromised through corruption or falsification.”

Agency Implementation

Pursuant to Section 515, under the OMB Guidelines, federal agencies were directed to develop predissemination review procedures for reviewing and substantiating (by documentation or other means) the quality of information before dissemination. Agencies were also directed to establish administrative mechanisms allowing affected persons to seek and obtain correction of information disseminated by the agency that does not comply with the OMB or agency guidelines. The opportunity to file “Requests for Correction” went into effect October 1, 2002.

Federal agencies were required to provide to OMB their information quality guidelines by October 1, 2002. Many draft guidelines were published for comment prior to the deadline, and Dr. Graham provided early comments on those drafts in June 2002. *See* http://www.whitehouse.gov/omb/inforeg/igq_comments.pdf. Dr. Graham also identified in a September 2002 memorandum to the President’s Management Council certain issues that OMB requested each agency incorporate. <http://www.whitehouse.gov/omb/inforeg/pmcmemo.pdf>.

Links to the agency guidelines are compiled at <http://www.thecre.com/quality/agency-database.html> and http://www.whitehouse.gov/omb/inforeg/agency_info_quality_links.html.

Requests for Correction

Several Requests for Correction have been filed to date at the U.S. Environmental Protection Agency (EPA) on a variety of issues. Most of the Requests have been narrowly focused on discrete issues, and EPA has responded in a timely manner. While Requests may



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have been made at other agencies or departments, they are not yet posted on websites. Those filing Requests at EPA have had mixed success.

In October 2002, Chemical Products Corporation (CPC) filed a Request for Correction of the Integrated Risk Information System (IRIS) listing for barium. *See* RFC # [2293](#). EPA denied this Petition in January 2003. *See* [EPA RFC Response](#). CPC filed a request for reconsideration in March 2003, but EPA has not yet ruled on it. *See* RFR # [2293A](#).

The Center for Regulatory Effectiveness (CRE), Kansas Corn Growers Association, and the Triazine Network filed a Request for Correction of the environmental risk assessment for atrazine in November 2002. *See* RFC # [2807](#). EPA responded in January 2003, noting that EPA will respond to their Request in the atrazine interim reregistration eligibility decision (IRED). [EPA RFC Acknowledgement](#) (Jan. 30, 2003). According to CRE, “[t]he IRED, which became available on February 20, granted much of the relief sought by the Petition.” *See* <http://www.thecre.com/quality/index.html>.

In December 2002, the U.S. Chamber of Commerce filed a request for correction of certain Science Advisory Board (SAB) minutes. *See* RFC # [4301](#). EPA denied it in March 2003, and a request for reconsideration has yet to be filed. *See* [EPA RFC Response](#).

At least four other Requests are pending, including one filed in March 2003 by four Senators regarding certain information contained in a proposed rule regarding water permits for Oil and Gas Construction Activity. *See* RFC # [8600](#). BMW also filed a Request in February requesting correction of information in EPA’s Enforcement Compliance History Online database; EPA’s Sector Facility Indexing Project database; and other EPA compliance databases.

Dr. Graham issued to the President’s Management Council (PMC) in October 2002 guidance requesting that each agency provide OMB a copy of certain types of Requests for Correction, unless the agency has posted them on its website. *See* http://www.whitehouse.gov/omb/inforeg/pmc_graham_100402.pdf. Copies of certain Requests for Reconsideration also must be forwarded under that guidance.

By January 1, 2004, agencies must begin providing annual fiscal year reports to OMB. Dr. Graham’s October 2002 PMC guidance provides more information on these reports. *See* http://www.whitehouse.gov/omb/inforeg/pmc_graham_100402.pdf. The reports must include both quantitative and qualitative information, as appropriate, on the number, nature, and resolution of complaints received by the agency regarding its perceived or confirmed failure to comply with the OMB and agency guidelines. *See*



<http://www.whitehouse.gov/omb/fedreg/reproducible2.pdf>. That information, when filed, will provide a better baseline to judge whether Section 515 is achieving its intended results.

Open Issues

There are several open issues related to the IQA, and only time and experience will answer them. These open questions include the following:

- What role will the courts have in implementing the IQA? There is significant debate over whether judicial review is available under the IQA.
- In what level of oversight will OMB engage? To date, OMB has been intensely involved, as noted by its numerous letters to the PMC and its request for copies of certain types of Requests for Correction. Further, OMB has asked to be included in any meetings requested by requestors.
- Will the threat of a Request for Correction force agencies to make needed changes to their approach to information dissemination? The effect of the IQGs, now and in the future, will be felt especially significantly by EPA in light of EPA's many rulemaking initiatives that are heavily data dependent and quantitative in nature. Industry advocates are already relying upon the guidelines in ensuring EPA's rulemaking and related initiatives are consistent with the letter and spirit of the Guidelines. For this reason, industry advocates should be well aware of the Guidelines.

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We hope this information is helpful. As always, please call with any questions.