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OF THE  
UNITED STATES OF AMERICA

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June 24, 2002

U.S. Department of the Interior  
Office of the Secretary  
1849 C Street, NW  
Washington, DC 20240

**Re: Draft Information Quality Guidelines Pursuant to Section 515 of the  
Treasury and General Government Appropriations Act for Fiscal Year 2001**

Dear Department of the Interior:

These comments are filed on behalf of the U.S. Chamber of Commerce (“U.S. Chamber”), the world’s largest business federation, representing more than three million businesses of every size, sector, and region. The U.S. Chamber is pleased to have this opportunity to provide comments on the U.S. Department of the Interior’s draft Information Quality Guidelines Pursuant to Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (“Draft Guidelines”).

The U.S. Chamber has long supported the common sense use of high-quality data by federal agencies in their development of policies and regulations. It is inherently true that better data leads to better policy. Therefore, the U.S. Chamber strongly supported the Data Quality Act (“the Act”)<sup>1</sup> when it was passed as Section 515(a) of the Fiscal Year 2001 Treasury and General Government Appropriations Act. The U.S. Chamber was also an active participant as the Office of Management and Budget developed the government-wide guidelines mandated by the Act (“OMB Guidelines”).<sup>2</sup>

The U.S. Chamber believes that the final version of the OMB Guidelines accurately and comprehensively implements the intent of the Data Quality Act. The U.S. Chamber further applauds OMB for recognizing that individual agencies have particular needs and concerns relating to data quality, and that further agency guidelines are therefore warranted. The Department of the Interior’s (“DOI” or “the Department”) Draft Guidelines directly adopt considerable portions of the OMB Guidelines. However, the U.S. Chamber has

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<sup>1</sup> Pub. L. No. 106-554

<sup>2</sup> Office of Management and Budget, “Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies.” 67 FR 8452 (February 22, 2002).

concerns, as explained below, regarding certain aspects of the unique portions of the DOI Draft Guidelines and certain provisions that have been omitted from the Department's Draft Guidelines.

I. DOI Bureau and Office Guidelines

The U.S. Chamber applauds DOI's requirement that Department bureaus and offices publish their own information quality guidelines and subject such guidelines to public comment.<sup>3</sup> By requiring such further guidelines, DOI delegates to its bureaus and offices much of the responsibility for providing the details necessary to fully implement the data quality law (e.g., each bureau and office is charged with identifying the information it disseminates that will be subject to the guidelines). For this reason, the U.S. Chamber believes that all DOI bureau or office guidelines should, in addition to being subjected to public comment, be submitted to OMB for approval before becoming effective. OMB has required that all agencies submit their draft guidelines to OMB to ensure consistency with both the OMB Guidelines and the Data Quality Act. Under the present circumstances, this standard should apply equally to DOI bureau and office guidelines.

II. Pre-Dissemination Review

The U.S. Chamber supports that provision of the Draft Guidelines mandating that basic quality standards be met "at each stage of information development."<sup>4</sup> However, we believe this provision, like several others in the Draft Guidelines, provides too little actual direction to those charged with implementing the guidelines. At least one other agency has provided a good model, which the U.S. Chamber recommends be followed or closely adapted by DOI. The Department of Transportation sets forth seven minimum procedural steps designed to ensure adequate pre-dissemination review:

- 1) Allow adequate time for reviews, and consult with stakeholders;
- 2) Verify compliance with the information quality guidelines;
- 3) Indicate whether information is "influential";
- 4) Ensure that information fulfills the stated intentions and that conclusions are consistent with the evidence;
- 5) Indicate the origin of data;
- 6) For information products subject to the quality guidelines, include a notice so stating at the time of dissemination;

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<sup>3</sup> DOI Draft Guidelines, Introduction and Section I.

<sup>4</sup> DOI Draft Guidelines, Section II.

- 7) Ensure that each program office can provide additional data on the subject matter of any covered information it disseminates.<sup>5</sup>

Regardless of whether DOI adopts these specific steps or establishes its own criteria, the U.S. Chamber strongly believes that the Department should establish specific procedures to be followed by DOI bureaus and offices to ensure proper quality review at every stage of the development of information.

### III. Transparency

In language adopted without change by DOI, the OMB Guidelines require that agencies achieve reproducibility of influential scientific, statistical or financial information by providing “transparency” about data and methods underlying such information. In the DOI-specific portion of the Draft Guidelines, the Department briefly discusses the issue of “transparency” by reference to how such transparency is to be achieved.<sup>6</sup> But the Draft Guidelines do not elaborate as to when transparency is required. The U.S. Chamber presumes that DOI’s discussion of transparency in this regard is intended to refer to those circumstances where influential scientific, statistical or financial information is being disseminated. However, we recommend that DOI’s final guidelines more clearly explain when these requirements apply.

With regard to DOI’s proposal as to how transparency is to be achieved, the Draft Guidelines provide that information will be made transparent “to the maximum extent practicable, through accurate documentation, use of appropriate internal and external review procedures, consultation with experts and users, and verification of the quality of the information disseminated to the public.” The U.S. Chamber supports this list as far as it goes, but believes it is missing one critical element. The final guidelines should also explicitly state that transparency requires full public disclosure of information. True transparency cannot occur without complete public access.

Further, DOI should explain what it means when using the term “to the maximum extent practicable.” The OMB Guidelines require transparency in specified circumstances. DOI should not leave discretion to its bureaus and offices to narrow such circumstances merely because they believe transparency would not be “practicable” in a given situation. If DOI believes certain circumstances would make transparency impracticable, the Department should more definitively set forth such circumstances with specificity in its final guidelines.

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<sup>5</sup> U.S. Department of Transportation Draft Report Implementing OMB’s Information Dissemination Quality Guidelines, Section VII.

<sup>6</sup> DOI Draft Guidelines, Section II.

#### IV. Notice of Corrections and Revisions

DOI's Draft Guidelines provide that DOI will "keep users informed about corrections and revisions."<sup>7</sup> This provision is highly important, and should be further developed in the final guidelines.

When an affected person makes a correction request, the Department (or the bureau or office) is formally placed on notice that an error may exist in information that has been disseminated. The U.S. Chamber therefore recommends that DOI's final guidelines mandate that bureaus and offices take steps to notify the public when information has been challenged. Given that information is disseminated in a variety of ways, DOI should be flexible in establishing a system of notification. The U.S. Chamber suggests a two-pronged approach.

First, any information that is posted on the Department's website or otherwise available on an ongoing basis should be "tagged" in some manner, with a clear indication that the quality of the information has been challenged and that the challenge is under review. Second, DOI should create a unique web page on which all data under challenge can be identified. These steps will best assure that the public has notice of the potential that information is not of sufficient quality. The public in turn can continue to use the information at its own discretion.

Further, when a correction to information is made pursuant to a challenge, the U.S. Chamber believes that the correction itself should be disseminated in the same manner and to the same degree as was the original information. Merely removing the information from a website or other public access is insufficient. We therefore recommend that the Department's final guidelines require comprehensive dissemination of the fact that data has been corrected.

#### V. Third-Party Data

The Draft Guidelines make only one oblique reference to third-party-generated information: a statement that information released by DOI, its bureaus or its offices "will be developed only from reliable data sources based on accepted practices and policies, utilizing accepted methods for information collection and verification."<sup>8</sup> The U.S. Chamber strongly believes that DOI should, in its final guidelines, enhance its discussion of the use and dissemination of third-party data.

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<sup>7</sup> DOI Draft Guidelines, Section II.

<sup>8</sup> DOI Draft Guidelines, Section II.

It is beyond dispute that agencies must apply the same high quality standards to all information they disseminate, regardless of whether that information originated with a third party or the agency itself. Neither the data quality law nor the OMB Guidelines suggest that a lower standard should or can be applied to third-party data. Data provided by contractors, however, may often present an additional concern.

Contractors frequently have a unique right to claim a proprietary privilege for models or data used in developing an information product to be provided to an agency. The OMB Guidelines and the DOI Draft Guidelines both include a requirement of “reproducibility” for influential scientific, financial and statistical information disseminated by an agency. Such reproducibility is typically achieved through “transparency” of data, research design, and methods. However, information subject to ethical, feasibility, or confidentiality constraints (such as a claim that information is proprietary) is generally excused from this transparency requirement, and is instead subject only to agency robustness checks.<sup>9</sup>

The U.S. Chamber has significant concerns regarding the scope of this exclusion, particularly with regard to proprietary third-party data. Without limitations, the exclusion would permit third party data providers to unilaterally place large amounts of information off-limits to the public, merely by asserting that such information is proprietary in nature. Worse yet, third parties making proprietary claims may even cause large amounts of information to be off-limits to DOI itself. Compliance with the data quality standards simply cannot be assured without full agency and public access to underlying models, data, methods, etc. As such, an agency’s use of proprietary information conflicts with the goals and intent of the data quality law.

For this reason, the U.S. Chamber proposes that DOI include a provision in its information quality guidelines stating that information subject to third-party proprietary claims be used only in extraordinary circumstances. Generally, DOI should require that all models, methods, designs and data created or used by contractors in connection with the provision of an information product be publicly disclosed. Proprietary protections should be allowed only when an information product is not otherwise available or attainable. This approach will ensure that, whenever possible, the public will have the greatest opportunity to test and ensure reproducibility of influential information.

In the rare circumstance where proprietary third party information must be used, the U.S. Chamber encourages DOI to utilize particularly vigorous robustness checks. The U.S. Chamber recommends that DOI specifically set forth several types of robustness checks that are required to be used to sufficiently confirm the quality of DOI-disseminated information originally provided or generated by third party contractors.

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<sup>9</sup> OMB Guidelines, Section V.3.b.ii.B.ii.

VI. Reproducibility

The OMB Guidelines require that influential scientific, financial and statistical information disseminated by agencies be capable of being reproduced. DOI's Draft Guidelines, on the other hand, suggest that information "will be reproducible to the extent possible."<sup>10</sup> This statement is too vague and too open to discretion.

The basic reproducibility requirement is clear. In fact, DOI adopts the OMB reproducibility requirement in its entirety in the definitions portion of the Draft Guidelines.<sup>11</sup> Thus, the suggestion contained elsewhere in the Draft Guidelines that the requirement be followed only "to the extent possible" creates an unnecessary and misguided inconsistency. The Department should eliminate any confusion by removing this reference or, at a minimum, setting forth any specific circumstances where the reproducibility requirement will not apply.

VII. Correction Request Process

With one highly important exception, the U.S. Chamber supports the correction request process established by DOI in the Draft Guidelines.<sup>12</sup> Specifically, we believe the Department has established reasonable deadlines and has properly balanced the need for objectivity and expertise on the part of those responsible for considering correction requests. Moreover, the U.S. Chamber is pleased that DOI will require a "new and separate" review for correction requests that follow a decision on a previous correction request addressing the same information. However, we strongly oppose DOI's decision to place correction requests made in the context of rulemakings and National Environmental Policy Act analyses outside of the new correction request process. DOI's Draft Guidelines provide that such requests "will be treated as a comment on the draft document and the response will be included in the final document." The U.S. Chamber believes this provision is largely without merit.

Neither the OMB guidelines nor the Data Quality Act itself support any exclusion from an agency's data quality guidelines of information used in the rulemaking process. While the OMB Guidelines and the Act do not specifically address rulemaking, neither do they permit any exclusion from the complaint process for rulemaking proceedings. In the U.S. Chamber's view, ensuring the quality of data is rarely, if ever, more important than when data is used in a proposed or final regulation. Excluding the rulemaking process in any fashion from such a vital part of the data quality law – an affected party's right to seek correction – undercuts the very purpose of the law.

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<sup>10</sup> DOI Draft Guidelines, Section II.

<sup>11</sup> DOI Draft Guidelines, Section IV.

<sup>12</sup> DOI Draft Guidelines, Section III.

DOI's approach to this issue attempts to equate an affected party's rights under the data quality law with those available under Administrative Procedure Act (APA) rulemakings. But the complaint mechanism set forth in the data quality law and the OMB Guidelines includes several important elements and protections that are not present in the rulemaking process. For instance, the OMB Guidelines require agencies to establish timelines for decisions on correction requests – timelines that do not generally exist under APA rulemakings. In fact, as DOI is well aware, regulations often take years to progress to the final rule stage. Conversely, requests for correction should almost always be resolved in a matter of weeks. There is no justifiable reason for DOI to grant itself this extension to correct errors contained in proposed rules, particularly given the important role data plays in proposed DOI regulations.

A separate protection afforded by the data quality law and the OMB Guidelines, but missing from the rulemaking process, is the right to an administrative appeal. DOI's Draft Report does not indicate whether the right to an administrative appeal exists in the rulemaking context. Given the importance of data relied upon by an agency in a proposed rule, it would benefit both the Department and the regulated community to allow for an administrative review – and a final DOI determination – of the quality of such information at the earliest possible time.

Finally, DOI's approach effectively eliminates any right for a party to seek review of incorrect information in a rulemaking. The data quality law, unlike an APA rulemaking, allows a correction request relating to a specific data item on the basis that the data does not meet the quality standards set by the DOI and/or OMB Guidelines. DOI seeks to protect its guidelines from being judicially enforced, stating that nothing in the guidelines “is intended to create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its offices, or any other person.”<sup>13</sup> Thus, DOI takes the position that affected parties have no legal rights to enforce the guidelines in court while, at the same time, excluding rulemaking proceedings from the data quality correction process. DOI cannot have it both ways. The Data Quality Act and the OMB Guidelines mandate the right to seek correction without limitation as to how the data has been used. DOI must recognize this fact and remove the rulemaking exclusion from the correction request process.

#### VIII. Risk Analysis

For analyses of risks to human health, safety, and the environment, the OMB Guidelines require all agencies to adopt or adapt the quality principles applied by Congress to risk information used and disseminated pursuant to the Safe Drinking Water Act (SDWA)

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<sup>13</sup> DOI Draft Guidelines, Section V.

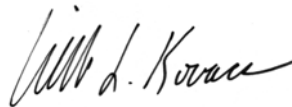
Amendments of 1996.<sup>14</sup> While DOI has adopted OMB's definition of "objectivity" that includes this requirement, the Department has failed to state whether it has chosen to adopt or adapt the SDWA principles.

Any agency seeking to adapt, rather than adopt, the SDWA standards, should be capable of articulating, and in fact must articulate, the reason. Accordingly, the U.S. Chamber believes that DOI should adopt the SDWA amendments without change until such time as, and only if, further study and analyses suggest that an adaptation would be appropriate and consistent with the principles contained in the data quality law. Regardless of how DOI intends to approach this issue, however, any decision by the Department to adopt or adapt the SDWA principles should be subject to separate notice and comment procedures, given that such provisions were omitted from the Draft Guidelines.

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The U.S. Chamber appreciates the opportunity to submit these comments and thanks the Agency for considering the views of the U.S. business community on this most important subject.

Sincerely,



William L. Kovacs

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<sup>14</sup> OMB Guidelines, Section V.3.b.ii.C.