June 14, 2002

Docket ID No. OEI-10014
U.S. Environmental Protection Agency
Northeast Mall
Room B607
401 M Street, SW
Washington, D.C. 20460

Re: Draft Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information; Docket ID No. OEI-10014

We are writing to comment on the Environmental Protection Agency's Draft Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information. These Guidelines implement the requirements of Section 515 of the Public Law 106-554 for each agency to issue guidelines to ensure information quality.

The Office of Advocacy of the U.S. Small Business Administration was established by Congress, pursuant to Pub. L. 94-305, to represent the views of small business before Federal agencies and Congress. One of the primary functions of the office is to measure the costs and other effects of Government regulation on small businesses and make recommendations for eliminating excessive or unnecessary regulation of small businesses.

According to the "Impact of Regulatory Costs on Small Firms," (SBA-HQ-00-R-0027; October 2001) a report prepared for the Office of Advocacy, small businesses pay 60% more than their larger counterparts in regulatory expenditures. Advocacy has a direct interest in agencies making sound regulatory decisions because poorly made policy will disproportionately hurt small business. Therefore, improving decision making through the use of better quality information is very important to our office.

Governor Whitman stated in her confirmation hearing that "[s]cientific analysis should drive policy. Neither policy nor politics should drive scientific results."[1] A strong set of information quality guidelines will help ensure that science will drive policy.

[1] Statement of the Honorable Christine Whitman before the Senate Committee on Environment and Public Works, Senate Hearing 107.3 at 31 (January 17, 2001).

I. Coverage of Third Party Data Under the Guidelines

The use of third-party data by EPA is a critical issue under the guidelines. The Agency frequently relies on third party data as the basis of its risk assessments. Under the OMB guidelines,[2] if the agency "reasonably suggests that the agency agrees with the [third-party data] information, this appearance of having the information represent agency views makes agency dissemination of the information subject to the guidelines." EPA's guidelines appears to address this issue by indicating that "the guidelines may still apply to a subsequent distribution of the information in which EPA adopts, endorses or uses the information to formulate or support a regulation, guidance, or other Agency decision or position" (EPA, 17).[3]

Advocacy interprets this as including information provided by a third party. Advocacy recommends that EPA adopt the language of the Department of Transportation that more explicitly explained the coverage of third party data in the guidelines: "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 upon or disseminate this information." (DOT, 8) Further, DOT states: "Numbers submitted by a commenter as the basis for a regulatory decision which the Department would necessarily disseminate as part of a rulemaking issuance should meet data quality standards no less than in the case of information the Department itself generates." (DOT, 3)

The EPA language should be strengthened to require that the original and supporting data for influential data should be made available to the agency and the public as a general rule. We commend to EPA the June 11th OMB guidance which says that the agency should require the production of "original and supporting data according to 'commonly accepted scientific, financial or statistical standards'",[4] where agencies are unable to develop more specific standards.

II. Third Party Coverage – Facility Data Required by Regulation – Should be Subject to the Information Quality Guidelines

EPA has indicated that information that EPA is simply "passing through" to the public is not subject to these guidelines. The agency states, "[f]or example, if EPA simply makes a public filing (such as facility data required by regulation) available to the public, these guidelines would not apply to that distribution of information." [5] (EPA, 16) We have concerns with that interpretation for facility data reported to the public.

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[2] OMB issued guidance on February 22 to help agencies produce their own guidelines. This was supplemented by the June 11th guidance.
[3] EPA draft guidance, page 17.
[4] OMB June 11 Guidance, Section III.
[5] On the other hand, if the agency relies on the data to support some policy or regulatory determination, then the agency should already agree from its other discussions in the guidelines, that such data would be subject to the guidelines.

Data such as the toxic release inventory (TRI) data, is maintained by the agency, and disseminated by the Agency as part of the "right-to-know" function. EPA is not simply the conduit for this information, it is disseminating the data as part of its core function of informing communities about facilities in their neighborhoods. While EPA is not verifying the underlying methodology of the data, in the case of TRI, EPA expends at least tens of thousands of dollars annually, if not more, insuring the data quality of the information. While it cannot reasonably perform the data quality and integrity checks it can perform on its own data, there are a variety of cross-checks that the agency does today to help assure the objectivity and integrity of the data. Thus, because the requirements of "objectivity, utility and integrity" are subject to the resource constraints and information available to the agency, these requirements can be less demanding, in some respects, for third party data. For example, EPA already checks that the figures are internally consistent, and that metals are not being combusted for energy recovery, and those checks and others should continue under the guidelines. On the other hand, unlike data that it does produce, EPA would not be expected to verify the methodology used by the plant making the estimate. In sum, third party "conduit" data which is disseminated to the public, even if not "agreed to" by the agency, should be subject to the "dissemination" related standards, but such standards would not require the same level of data quality examination as EPA-generated data.

III. Third Party Proprietary Models

There should be a general prohibition on proprietary third party models, with exceptions granted only rarely. Where proprietary models are employed, the guidelines should specify that EPA should provide OMB with a written justification for the use of private models. Furthermore, Advocacy spends substantial time acquiring information from models that contain confidential business information data, where the agency had not yet spent the time to provide a "sanitized" public version of the same data for commenters. There should also be a general requirement to provide public versions of all influential data, unless special circumstances do not permit it (e.g., unusual confidentiality issue or substantial public resource issue).

Influential data is required to be "reproducible" under the OMB and EPA guidelines. This can be done through providing a public version of the data, and public version of the methodology.

IV. Correction Process

EPA's draft guidelines provide that only "affected parties" who "may benefit or may be harmed by the disseminated information" may request a correction of any information. (EPA, 22) However, EPA's guidelines do not make clear whether data users, such as government agencies, including ourselves, or business or environmental groups, can ask for data corrections. We believe that all data users should be able to ask for changes to

the data. We note that OMB's own internal guidance includes "users" in the class of persons who can request data revisions under the guidelines.

I hope these comments will contribute to a robust set of information data quality requirements, which are important to the small business community. If you have any questions or comments on these comments, Kevin Bromberg of my staff can be reached at 202-205-6964 or kevin.bromberg@sba.gov.

Sincerely,

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