

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

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December 17, 2002

Information Quality Guidelines Staff
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: Request for Correction of Information Pursuant to Office of Management and Budget and Environmental Protection Agency Information Quality Guidelines

Dear Information Quality Guidelines Staff:

The U.S. Chamber of Commerce, the world's largest business federation, representing more than three million businesses of all sizes, sectors and regions, respectfully submits the following petition for correction of information pursuant to Section 515 of the Fiscal Year 2001 Treasury and General Government Appropriations Act ("the Data Quality Act")¹ and information quality guidelines developed by the Office of Management and Budget ("OMB")² and the Environmental Protection Agency ("EPA").³

Specifically, the U.S. Chamber hereby requests that the minutes of the October 1, 2002, EPA Science Advisory Board (SAB) Executive Committee meeting be corrected to include a statement made during the meeting by the Committee Chair, Dr. William Glaze, regarding EPA's failure to validate a sizeable number of models used by the agency. Dr. Glaze's statement, which was central to an Executive Committee discussion recorded in the meeting minutes, is neither quoted nor otherwise referenced in those minutes.⁴ EPA's dissemination of meeting minutes that omit Dr. Glaze's statement constitutes a failure to comply with the Data Quality Act and a correction should therefore be made pursuant to this petition.

¹ P.L. 106-554; see, 44 U.S.C. §3516 (notes).

² 67 FR 8452 (formally entitled *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies*).

³ <http://www.epa.gov/oci/qualityguidelines/EPA-OEI-IQG-FINAL-10.2.pdf> (formally entitled *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency*)

⁴ The minutes are posted on EPA's website at <http://www.epa.gov/sab/03minute.htm>.

EPA's Information Quality Guidelines require a petition for correction to contain three substantive components: (1) a description of the disputed information, (2) an explanation of how the information does not comply with the OMB or EPA information quality guidelines, and (3) an explanation of how the petitioning party is affected by the error or would be benefited by a correction. Each of these components is discussed below.

I. THE INFORMATION FOR WHICH CORRECTION IS SOUGHT

As stated, the present petition seeks correction of the minutes of the October 1, 2002, Science Advisory Board Executive Committee. The context of the omitted statement was an Executive Committee (EC) consultation on data quality and reproducibility, which was conducted in relation to EPA's mandatory development of its agency guidelines to implement the Data Quality Act.

As the existing minutes of the October 1 meeting correctly reflect, Dr. Glaze led an extensive discussion regarding EPA's use of models and, in particular, of analytical results derived from proprietary models.⁵ The minutes set forth the Executive Committee's general concern regarding "the Agency's use of proprietary or analytical methods that could not be made available to the public," including an Executive Committee member's recommendation that EPA "prospectively ... identify where it uses unvalidated models and proprietary analysis and explain why other kinds of information and analyses were not used." The minutes also contain Dr. Glaze's reference to the Science Advisory Board's "general interest in strengthening the use of models at EPA."

It was during these portions of the agenda that Dr. Glaze made a statement to the effect that he had recently been informed by an unnamed high-ranking EPA official that a high fraction, if not most, of the models used by the agency have never been validated. While the U.S. Chamber is unable to set forth Dr. Glaze's statement verbatim, multiple witnesses (including U.S. Chamber employees) have confirmed the specific character of the comment. Despite the import of Dr. Glaze's observation, his statement is neither quoted nor referenced in the minutes that EPA has posted on the Science Advisory Board portion of the agency's website.

II. WHY THE MINUTES DO NOT COMPLY WITH THE GUIDELINES DEVELOPED UNDER THE DATA QUALITY ACT

The OMB Information Quality Guidelines require agencies, in their own information quality guidelines, to establish administrative mechanisms that allow affected persons to seek and obtain correction of disseminated information that does not comply with *either* the OMB or agency guidelines.⁶ In the present matter, the Science Advisory Board Executive Committee minutes violate both the OMB and EPA information quality guidelines.

⁵ October 1, 2002, EPA SAB EC Meeting Minutes, pp. 13-14.

⁶ 67 FR 8452, 8459 (OMB Guidelines, §III.3).

Both OMB's and EPA's guidelines apply to "information" that EPA "disseminates" to the public. These terms are broadly defined. Specifically, the EPA guidelines define "information" to include "any communication or representation of knowledge such as facts or data, in any medium or form."⁷ Dissemination occurs whenever EPA "initiates or sponsors the distribution of information to the public." Given the liberal definitions of these terms, it cannot seriously be disputed that the minutes of the EC, once posted on the web, constituted "information" that had been "disseminated." Having established these thresholds, the remaining question is whether the minutes meet the substantive standards of the Data Quality Act and its implementing guidelines. They do not.

The Data Quality Act requires that agencies "ensur[e] and maximiz[e] the quality, objectivity, utility, and integrity of" information.⁸ The EC meeting minutes, by omitting Dr. Glaze's remark, do not meet the "objectivity" portion of this requirement. As explained in the government-wide OMB guidelines, objectivity involves two distinct elements, presentation and substance.⁹ With regard to the former, objectivity requires that information be presented in an "accurate, clear, complete, and unbiased manner." To achieve this mandate, the information must be "presented within a proper context." The OMB guidelines specifically provide that "[s]ometimes, in disseminating certain types of information to the public, other information must also be disseminated to ensure an accurate, clear, complete, and unbiased presentation." Such is the case here.

Dr. Glaze's statement was an integral part of the formal discussion that was taking place and is quite significant in that context. The Executive Committee's reference to strengthening the use of models at EPA and its suggestion that the agency identify circumstances where unvalidated models have been used, both of which appear in the minutes, gain proper context only when Dr. Glaze's remark is also included. The omission of Dr. Glaze's observation leaves a reader of the minutes without knowledge of a fact that was central to the discussion – that a sizeable number, possibly a majority, of EPA models have never been validated.

There is no valid reason, given the detailed nature of the October 1 EC meeting minutes, that Dr. Glaze's remark should not have been quoted or referenced. The minutes are not "objective" in the absence of such a reference and are accordingly in clear violation of the Data Quality Act, the OMB guidelines, and the EPA guidelines.

⁷ EPA Guidelines, § 5.3.

⁸ See EPA Guidelines, §5.1.

⁹ 67 FR 8452, 8459 (See also, EPA guidelines, Section 5.1).

Finally, we would like to note that the U.S. Chamber made considerable efforts to avoid filing this formal petition. EPA's data quality guidelines "encourage" affected persons "to consult informally with the contact person listed in the information product before submitting a request for correction of information." The U.S. Chamber therefore made several attempts to resolve the issue directly with the Science Advisory Board, including a November 27, 2002, letter to A. Robert Flaak, the Designated Federal Officer for the Science Advisory Board Executive Committee. We did not receive any reply whatsoever to this letter or any of our other communications attempts.¹⁰ We would strongly prefer an informal resolution of this and other data disputes, and hope that EPA's failure to so much as acknowledge our prior requests regarding this matter turns out to be an anomaly.

III. HOW THE U.S. CHAMBER IS AFFECTED

EPA's models – the mathematical tools used to predict future results – form the critical underpinning to many of the agency's regulatory efforts. The business community, as the major component of EPA's regulated community, is directly and significantly affected by EPA's regulations. Dr. Glaze confirmed that many, if not most, of EPA's models have never been validated. This frequent use of unvalidated models by the agency strongly suggests that EPA is using at least some *invalid* models to support agency rules – rules that collectively cost businesses hundreds of billions of dollars each year in compliance expenditures. As a leading representative of the business community, the U.S. Chamber has a considerable stake in ensuring that the models used by EPA to develop and support regulations are valid. EPA's recognition of its failings in this area – by including Dr. Glaze's statement in the meeting minutes – is an important step in this process.

IV. CONCLUSION

The U.S. Chamber respectfully requests, pursuant to the Data Quality Act, the OMB Information Quality Guidelines, and the EPA Information Quality Guidelines, that the minutes of the October 1, 2002, meeting of the Science Advisory Board Executive Committee be corrected to include the statement of Chair Dr. William Glaze, as described above, concerning the lack of validation of models used by EPA.

¹⁰ These "other communications" include earlier e-mails to Mr. Flaak and others at the SAB.

The U.S. Chamber considers this matter to be of fundamental importance and would therefore be pleased to provide any supplemental information that would assist the agency in its consideration of this petition. The undersigned serves as the U.S. Chamber's contact point for this and all other aspects of this petition. We thank you for your attention to this matter and look forward to your reply within the 90-day response period established in the EPA guidelines.

Sincerely,

A handwritten signature in black ink, appearing to read "William L. Kovacs". The signature is written in a cursive style with a prominent initial "W".

William L. Kovacs