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# IMPROVING INFORMATION QUALITY IN THE FEDERAL GOVERNMENT

## HEARING

BEFORE THE

SUBCOMMITTEE ON REGULATORY AFFAIRS

OF THE

COMMITTEE ON
GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

JULY 20, 2005

**Serial No. 109–125**

Printed for the use of the Committee on Government Reform

Available via the World Wide Web: http://www.gpoaccess.gov/congress/index.html
http://www.house.gov/reform

U.S. GOVERNMENT PRINTING OFFICE

27–722 PDF WASHINGTON : 2006

For sale by the Superintendent of Documents, U.S. Government Printing Office
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# CONTENTS


| | Page |
|---|---|
| Hearing held on July 20, 2005 | 1 |
| Statement of: | |
| Greenwood, Mark, partner, Ropes and Gray; Jeff Ruch, executive director, Public Employees for Environmental Responsibility; William Kovacs, vice president for Environment, Technology, and Regulation, U.S. Chamber of Commerce; and Sidney A. Shapiro, university distinguished chair in law, Wake Forest University | 38 |
| Greenwood, Mark | 38 |
| Kovacs, William | 69 |
| Ruch, Jeff | 53 |
| Shapiro, Sidney A. | 80 |
| Nelson, Kimberly T., Assistant Administrator and Chief Information Officer, U.S. Environmental Protection Agency; Tom Melius, Assistant Director for External Affairs, U.S. Fish and Wildlife Service, Department of Interior; and Jim Scanlon, Acting Deputy Assistant Secretary for Science and Data Policy, Department of Health and Human Services | 5 |
| Melius, Tom | 13 |
| Nelson, Kimberly T. | 5 |
| Scanlon, Jim | 20 |
| Letters, statements, etc., submitted for the record by: | |
| Greenwood, Mark, partner, Ropes and Gray, prepared statement of | 41 |
| Kovacs, William, vice president for Environment, Technology, and Regulation, U.S. Chamber of Commerce, prepared statement of | 72 |
| Melius, Tom, Assistant Director for External Affairs, U.S. Fish and Wildlife Service, Department of Interior, prepared statement of | 16 |
| Miller, Hon. Candice S., a Representative in Congress from the State of Michigan, prepared statement of | 3 |
| Nelson, Kimberly T., Assistant Administrator and Chief Information Officer, U.S. Environmental Protection Agency, prepared statement of | 7 |
| Ruch, Jeff, executive director, Public Employees for Environmental Responsibility, prepared statement of | 55 |
| Scanlon, Jim, Acting Deputy Assistant Secretary for Science and Data Policy, Department of Health and Human Services, prepared statement of | 23 |
| Shapiro, Sidney A., university distinguished chair in law, Wake Forest University, prepared statement of | 82 |

# IMPROVING INFORMATION QUALITY IN THE FEDERAL GOVERNMENT

**WEDNESDAY, JULY 20, 2005**

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON REGULATORY AFFAIRS,
COMMITTEE ON GOVERNMENT REFORM,
*Washington, DC.*

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 2154, Rayburn House Office Building, Hon. Candice S. Miller (chairman of the subcommittee) presiding.

Present: Representatives Miller, Clay, and Lynch.

Staff present: Edward Schrock, staff director; Rosario Palmieri, deputy staff director; Alex Cooper, clerk; Krista Boyd, minority counsel; and Jean Gosa, minority assistant clerk.

Mrs. MILLER. Good morning, everyone. I am going to call the hearing to order. We want to thank you all for joining us this morning.

Our government has become increasingly reliant on scientific and statistical information to make critical decisions about our health and our safety, our economy, as well as our national defense. Part of my job as a Member of Congress is to try to ensure that our government is relying on the very highest quality of information when making decisions that affect millions of our citizens and thousands of our businesses.

The Information Quality Act, sometimes referred to as the Data Quality Act, was passed in the year 2001. The act required the Office of Information and Regulatory Affairs in the Office of Management and Budget to develop guidelines for ensuring and maximizing the quality, the objectivity, the utility, and the integrity of information that is disseminated to the public and to establish administrative mechanisms allowing affected persons to seek and obtain a correction of information. OMB issued its guidelines in February 2002, directing agencies to prepare their own guidance by April 2002. Agencies have published their own guidelines, and they have had 2 years of experience now in handling requests for correction of information.

Today we are here to review implementation by three agencies: the Environmental Protection Agency, the U.S. Fish and Wildlife Service of the Department of the Interior, and the Department of Health and Human Services. Quality information is an absolute necessity for each of them to fulfill their missions. And whether it is designating critical habitat for species protection, developing standards for water quality, analyzing and designating human carcinogens, or disseminating valuable public health information, the ac-

curacy and the quality of information must be, of course, of the very highest caliber.

Today, we also live in an increasingly competitive global marketplace. Decisions by Federal agencies can impose millions of dollars in compliance costs on companies or require them to re-engineer their production processes to meet the requirements of regulations. I fully support their attempts certainly to protect us from critical health, safety and environmental threats. But the information that we use to make those determinations certainly must be accurate and objective.

The Information Quality Act is a "sunshine" in governmental law, which is meant to provide greater transparency for the process that produces research and regulation. Since its inception, less than 100 requests for correction have been filed. Requests for correction of information have come from extremely varied groups.

Traditional business groups like the U.S. Chamber of Commerce and the Kansas Corn Growers Association have been joined by environmental groups like the Public Employees for Environmental Responsibility and also issue advocacy groups like the Americans for Safe Access to challenge the quality of government-disseminated information. Agencies that have granted relief under the correction process have removed information from their Web sites, they may have updated or added information to Web sites or documents, or linked further review to ongoing studies within the agency.

This, we think, is a very far cry from the danger that was supposed to occur as a result of the passage of this act. Some insisted that there would be "death by data quality," that agencies would be overwhelmed with requests and that necessary regulation would be stopped. The facts do not prove that case.

One way to make regulation and the actions of government agencies less controversial is to make sure that we are relying on the very best available science, sound science, and the highest quality of information.

Government information will only become more critical in the future as health, safety, and environmental regulation are increasingly tied to scientific research. When jobs and lives are on the line, it certainly is our duty to make sure that the best information is being used. And the Information Quality Act has provided us with excellent mechanisms to accomplish that goal.

[The prepared statement of Hon. Candice S. Miller follows:]

Statement of Candice Miller
Chairman
Subcommittee on Regulatory Affairs
Committee on Government Reform
United States House of Representatives
Washington, DC
July 20, 2005

Good morning and thank you for being with us today.

Our government has become increasingly reliant on scientific and statistical information to make critical decisions about our health and safety, our economy, and our national defense. Part of my job as a Member of Congress is to ensure that our government is relying on the highest quality of information when making decisions that affect millions of our citizens and thousands of our businesses.

The Information Quality Act (sometimes referred to as the Data Quality Act) was passed in 2001. The act required the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) to develop guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of information that is disseminated to the public and to establish administrative mechanisms allowing affected persons to seek and obtain a correction of information. OMB issued its IQA guidelines in February of 2002 directing agencies to prepare their own guidance by April of 2002. Agencies have published their own guidelines and have had two years of experience with handling requests for correction of information.

We are here today to review implementation by three agencies: the Environmental Protection Agency, the US Fish & Wildlife Service of the Department of the Interior, and the Department of Health & Human Services. Quality information is an absolute necessity for each of them to fulfill their missions. Whether it is designating critical habitat for species protection, developing standards for water quality, analyzing and designating human carcinogens, or disseminating valuable public health information – the accuracy and quality of information must be of the highest caliber.

Today, we also live in an increasingly competitive global marketplace. Decisions by federal agencies can impose millions of dollars in compliance costs on companies or require them to reengineer their production processes to meet the requirements of regulations. And I fully support their attempts to protect us from critical health, safety and environmental threats. But the information used to make those determinations must be accurate and objective.

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information have come from extremely varied groups. Traditional business groups like the US Chamber of Commerce and the Kansas Corn Growers Association have been joined by environmental groups like Public Employees for Environmental Responsibility and issue advocacy groups like Americans for Safe Access to challenge the quality of government disseminated information. Agencies that have granted relief under the correction process have removed information from websites, updated or added information to websites or documents, or linked further review to ongoing studies within the agency.

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One way to make regulation and the actions of government agencies less controversial is to make sure that we are relying on the best available science and the highest quality of information.

Government information will only become more critical in the future as health, safety, and environmental regulation are increasingly tied to scientific research. When jobs and lives are on the line, it is our duty to make sure that the best information is being used. And the Information Quality Act has provided us with an excellent mechanism to accomplish that goal.

I want to thank the witnesses for being here today and I'll recognize Rep. Lynch for his opening statement.

Mrs. MILLER. We are waiting for our ranking member, Mr. Lynch. I think he is on his way. But we will continue with the hearing, and when he gets here we will certainly yield to him for his opening statement.

Our first panel is prepared to testify, and it is the process in the Government Reform Committee that we swear in all of our panelists, so, if you will, raise your right hands.

[Witnesses sworn.]

Mrs. MILLER. Thank you very much.

You all have the little boxes in front of you to give you the signal. We try to keep the testimony to approximately 5 minutes. If it is necessary for you to run over a bit, we do have time, certainly. But when you see that yellow light, you know you are about a minute away from that, so, if you could watch that a bit.

Our first witness has been before our group here before. This is Kimberly T. Nelson. On November 30, 2001, Kimberly Nelson was sworn into the position of Assistant Administrator for Environmental Information and the Chief Information Officer for the U.S. Environmental Protection Agency. Prior to her joining the EPA, Ms. Nelson served the Commonwealth of Pennsylvania for 22 years. Ms. Nelson graduated from Shippensburg University in 1978 with a bachelor in secondary education, political science, and from the University of Pennsylvania in 1987 with a master in public administration.

We certainly thank you for your willingness to appear again before our committee, and the floor is yours, Ms. Nelson.

## STATEMENTS OF KIMBERLY T. NELSON, ASSISTANT ADMINISTRATOR AND CHIEF INFORMATION OFFICER, U.S. ENVIRONMENTAL PROTECTION AGENCY; TOM MELIUS, ASSISTANT DIRECTOR FOR EXTERNAL AFFAIRS, U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF INTERIOR; AND JIM SCANLON, ACTING DEPUTY ASSISTANT SECRETARY FOR SCIENCE AND DATA POLICY, DEPARTMENT OF HEALTH AND HUMAN SERVICES

### STATEMENT OF KIMBERLY T. NELSON

Ms. NELSON. Thank you, Madam Chairman. I really do appreciate the opportunity to be here today, as we talk about the implementation across the Federal Government of the Information Quality Act and particularly regarding our own implementation at EPA.

EPA's mission is to protect human health and the environment, and it is highly dependent upon the collection, use and dissemination of information of very high quality. As EPA's Assistant Administrator for the Office of Environmental Information and our CIO, I work with colleagues throughout the agency to ensure that EPA collects, manages, uses, and provides high quality environmental information.

The Office of Environmental Information, which I lead, is responsible for a number of activities under the Information Quality Act. A few of those are providing leadership to improve the quality and utility of the information we use at EPA; fulfilling the information needs for the agency while reducing the burden of collecting that information; ensuring that the best practical and most cost-effec-

tive technology is applied to meet EPA's information needs; providing leadership in the integration, analysis and interpretation of environmental data; and ensuring that EPA works with all of its data partners, both within the agency as well as outside.

As such, EPA takes implementation of the Information Quality Act very seriously and views the act as an important component of our overall approach to ensuring the use and dissemination of high quality information. In October 2002, EPA published its information quality guidelines for ensuring and maximizing the quality of information it disseminates and creating an administrative mechanism to enable the public to seek and obtain corrections of information they believe does not comply with EPA's or OMB's guidelines.

To date we have received at EPA 30 requests for correction and 10 requests for reconsideration. These requests have originated from a diverse set of requesters and have focused on a wide range of information types, including information that has been disseminated as part of a rulemaking, and distributed internal policies, which are found in some of our data bases and contained in our hazard and risk assessments and made available to the public on our own Web site.

Our goal has been to respond within 90 days to a request for correction. My office manages that correction process and, as a first step, identifies the EPA information owner to evaluate the request. A cross-agency team then develops the response and submits it to the EPA senior management for review. OMB, in its oversight role, reviews the final draft to ensure consistent implementation across the Federal Government. EPA posts all of its communications regarding requests on an IQG Web page that we have created.

If the requester is not satisfied with the response, they may file a request for reconsideration within 90 days. The EPA information owner presents the request to a three-member executive panel, which I usually chair, unless I have to recuse myself when the request itself involves a program under my jurisdiction. This panel assesses the request and issues a final decision. In response to a request for correction and reconsideration, EPA has taken actions to improve the quality and the transparency of the challenged information.

As you know, I have submitted a more detailed description of our implementation of the Information Quality Act in my more formal written statement, and I thank you today for the opportunity to talk about that implementation. I am happy to answer any questions when the time suits.

[The prepared statement of Ms. Nelson follows:]

**Testimony of Kimberly T. Nelson**
**Assistant Administrator for the Office of Environmental Information**
**U.S. Environmental Protection Agency**
**before the**
**Subcommittee on Regulatory Affairs**
**United States House of Representatives**

**July 20, 2005**

Good morning, Madame Chairman and Members of this Subcommittee. I am Kimberly T. Nelson, Assistant Administrator for the Office of Environmental Information (OEI), and Chief Information Officer at the Environmental Protection Agency (EPA). Thank you for the opportunity to testify about EPA's implementation of the Information Quality Act (IQA).

The collection, use, and dissemination of information of known and appropriate quality are integral to ensuring that EPA achieves its mission. Information about human health and the environment -- environmental characteristics; physical, chemical, and biological processes; and chemical and other pollutants -- underlies all environmental management and health protection decisions. The availability of, and access to, information and the analytical tools to understand it are essential for assessing environmental and human health risks, designing appropriate and cost-effective policies and response strategies, and measuring environmental improvements.

For these reasons, EPA takes implementation of the Information Quality Act very seriously as an important component of the Agency's overall approach to ensuring the use and dissemination of high quality information.

**EPA Implementation of the Information Quality Act**

In 2001, the IQA[1] directed the White House Office of Management and Budget (OMB) to issue government-wide guidelines for all federal agencies (by October 1, 2001) 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. OMB issued its final guidelines in February 2002. The IQA and OMB's guidelines directed EPA and other agencies to do three things:

(1) Issue our own information quality guidelines ensuring and maximizing the quality, objectivity, utility, and integrity of information, including statistical information, disseminated by the agency by October 1, 2002;

(2) Establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the EPA or OMB guidelines; and

(3) Report to the Director of OMB the number and nature of complaints received by the agency regarding agency compliance with the OMB guidelines concerning the quality, objectivity, utility, and integrity of information and how such complaints were resolved.

In October 2002, EPA published the *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency* (Information Quality Guidelines or IQGs). The

[1] Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554; H.R. 5658)

Information Quality Guidelines contain EPA's policy and procedural guidance for ensuring and maximizing the quality of information we disseminate. The IQGs also provide a summary of EPA's existing policies and procedures that ensure and maximize information quality and create an administrative mechanism to enable affected persons to seek and obtain corrections from EPA regarding disseminated information that they believe does not comply with EPA or OMB guidelines.

EPA views the IQGs as an opportunity to reaffirm our commitment to the use and dissemination of high quality information as well as a mechanism for strengthening the quality and sound science frameworks already in place at EPA into a cohesive Agency-wide information quality program.

**Experience to Date in Implementation of the Corrections Process**

To date, EPA has received 30 Requests for Correction (RFC) and 10 Requests for Reconsideration (RFR) from a diverse set of requestors as part of the new administrative mechanism outlined in the IQGs. EPA has received requests from private citizens, industry, non-profit organizations, government environmental agencies, and members of Congress. The requests have challenged the quality of information disseminated as part of a rulemaking, distributed in our internal policies, found in several EPA databases, contained in hazard and risk assessments, and made available on the EPA Web site.

Our goal is to respond within 90 calendar days when we receive a new request for correction. My office manages the corrections process and, as a first step, identifies the responsible information owner at EPA for the information that is the subject of the request. The information owner may be a program office, a region, or a combination of

more than one organization. My office then works with the information owner to evaluate the merits of the request and this evaluation forms the basis for the Agency's response.

Responses are developed by a cross-Agency team and are reviewed thoroughly by senior management at EPA. A final draft is reviewed by OMB in its IQA oversight role to ensure consistent implementation across the federal government. EPA posts all communications – the original request, the response, interim responses, and pertinent related correspondence – on the Agency's Information Quality Guidelines Web site at http://epa.gov/quality/informationguidelines/iqg-list.html.

If the requestor is not satisfied with our response, he or she may submit an appeal known as a Request for Reconsideration within 90 days in accordance with the administrative mechanism described in our Guidelines. The executive panel is comprised of the Science Advisor/Assistant Administrator (AA) for the Office of Research and Development (ORD), Chief Information Officer/AA for OEI, and the Economics Advisor/Associate Administrator for the Office of Policy, Economics and Innovation (OPEI.). The 3-member executive panel is chaired by the Chief Information Officer/AA for OEI. If the subject of the RFR originated from a panel member's office, that panel member would be replaced by an alternate AA or Regional Administrator. This panel assesses the RFR and issues a decision.

EPA's process for responding to Requests for Correction allows for a robust, careful and thorough consideration of each Request for Correction or Reconsideration. In response to requests for correction and reconsideration, EPA has taken actions to improve

the quality and transparency of the challenged information. Examples of corrective actions EPA has committed to undertake include the following:

- *Challenge to the oral reference dose for Barium derived in the Barium and Compounds Substance File in the EPA Integrated Risk Information System (IRIS):* In response to a Request for Correction, Request for Reconsideration, and related correspondence from a requestor, the Toxicological Review and IRIS Summary for Barium and Compounds was revised to include a more explicit and transparent analysis of data from animal studies. As part of the response, EPA commissioned an independent external peer review to evaluate matters raised by the requestor and Agency scientists. This revision led to a change of the reference dose that EPA relies upon and disseminates on our IRIS web page.
- *Challenge regarding the transparency of information in an EPA stormwater runoff fact sheet:* In response to concerns raised by the requestor, EPA revised statements made in the fact sheet and also added improved end-notes referencing the sources of information supporting the information disseminated.
- *Challenge regarding the "2002 Latest Findings on National Air Quality" on the EPA Web page*: The requestor wanted information corrected in the 2002 Air Trends Web page due to concerns that the language lacked adequate specificity and was overly general. EPA determined the information was of appropriate detail for its intended use and noted in the response to requestor that the document was designed for the general public so that they may read about and understand air quality trends across the U.S. EPA did however provide some clarifying changes to the EPA Air Trends Web page and agreed to consider the

requestor's comments in the development of future issues of the Air Trends booklet.

These are just some of the examples of the types of requests we have received and ensuing actions taken by the Agency. I think these examples demonstrate our diligence in reviewing our requests and our ability to take important actions when deemed necessary and appropriate.

EPA seeks to foster the continuous improvement of existing information quality activities and programs while ensuring full and appropriate implementation of the IQA. In doing so, we are learning from the requests for correction received and taking proactive steps to ensure that information disseminated to the public is consistent with the provisions of the OMB and EPA Guidelines for information objectivity, utility and integrity.

Thank you for the opportunity to testify. I would be happy to answer any other questions you may have.

Mrs. MILLER. Thank you very much.

Our next panelist is Thomas Melius. I hope I am pronouncing that correctly. Mr. Melius has been the Assistant Director for External Affairs of the Fish and Wildlife since March 2003. And, in addition to overseeing the national programs for public affairs, congressional and legislative affairs, and acting as a Native American liaison, he also provides oversight for the Service's National Conservation Training Center in West Virginia. Mr. Melius has had a 20-year background in environmental and conservation issues.

We are certainly pleased to have you join us today, as well sir, particularly when you told me you had spent some time in the upper peninsula of Michigan.

Mr. MELIUS. Yes, I have. Thank you.

Mrs. MILLER. We appreciate your coming, and you have the floor.

**STATEMENT OF TOM MELIUS**

Mr. MELIUS. Thank you. As you mentioned, I am Tom Melius, Assistant Director for External Affairs at the U.S. Fish and Wildlife Service, and we appreciate the opportunity to testify today regarding the Service's implementation of the Information Quality Act, commonly referred to internally as the IQA.

The goal of the IQA, as you have stated, is to ensure and maximize the quality, objectivity, utility, and integrity of information disseminated by Federal agencies. The Service appreciates and fully supports the IQA's goal of ensuring the quality of scientific information used by government agencies and making this information transparent for the public. Science is the foundation of all of our conservation efforts, and the Service has a long and proud tradition of scientific excellence.

Let me briefly outline for you how the IQA is implemented at the Fish and Wildlife Service.

Affected persons or organizations may challenge the quality of information disseminated by the Service under IQA guidelines by filing a formal request for correction with the agency. Upon receipt, these requests are reviewed for appropriateness under our own IQA guidelines. Once a request is deemed to be appropriate, it is routed to the program or the regional office responsible for the information being challenged.

After researching the issue and developing a draft response, the reviewing office submits that decision to my office. My office coordinates with the Department and OMB personnel to ensure the accuracy of the response, and then I sign the document and deliver it to the requester.

Responses are issued within 45 business days of receipt of the original request, unless an extension is needed for additional review in which case the Service informs the requester of the extension and the reasons why it is needed.

If a request is approved, the Service will take the corrective action. If a request is denied, the requester has 15 business days to appeal. Appeals are forwarded to the Service's science advisor, who conveys a team of program or regional personnel with knowledge of the information in question. The team develops a recommendation, which is then considered by our director, who makes the final decision on appeals.

In fiscal year 2003, the Service received six requests for correction of information under the IQA, and of these six, five met the standards for consideration. One of the requests, dealing with trumpeter swan, ultimately went through the full appeals process, which involved reconsideration for the request by an independent panel led by our science advisor.

In fiscal year 2004, the Service received five requests. Two of these requests did not meet the standard for consideration and were subsequently dismissed. The remaining three requests met the standards; two involved the species of sage grouse and one involved the Florida panther. All of those have been completed, with the Florida panther having gone through the full appeals process.

We have not received any requests, so far, for fiscal year 2005.

Based on our experience with the IQA thus far, though, we offer these observations. First, we believe that the IQA has had beneficial effects on the way the Service considers the use of scientific information in decisionmaking. Two examples come to mind. The first deals with the proposed listing of the slick spot pepper grass, a species of grass that had been proposed for listing under our Endangered Species Act. The second deals with the scientific information concerning recovery of the Florida panther.

In the case of the slick spot pepper grass, that IQA request did require the Service to review the science that we had proposed in the listing for that species. That review did have influence, though, because our decision to move forward was not appropriate, so we did not list that particular plant species. In the case of the Florida panther, the IQA process identified areas where the Service had not updated scientific information on that species, which was evolving at the time. And, as a result, the Service has accelerated its schedule to correct and update particular files and data concerning corrective actions for that.

In another observation, we have found that handling the request for corrections under the IQA can be complex. Certainly, we have learned that our own guidelines, which allow us only 45 days for response to a request for correction, needs to be amended. We are currently considering the best method to provide additional time for review and response, while still responding to the public in a timely manner. Our new guidelines announcing these revisions will be reported in the Federal Register.

Finally, fulfilling our responsibilities under the IQA in a manner that is consistent with our legal obligations under the Endangered Species Act and the Administrative Procedures Act has presented some unique challenges. Our current approach to an IQA request that is received during a rulemaking process, but after the close of that comment period, is to prepare a response prior to the final rulemaking, but the release the response after the final rule is published. In such a case, all the issues raised in the IQA request are addressed separately from the rulemaking. The responses, though, to the questions do, however, inform the rulemaking process. This approach has served to raise issues that may have been overlooked in a more general rulemaking process, and we believe have helped improve the product that we finally issue.

In general, the Service believes the IQA process is working and provides a benefit to the public. We will continue to improve our process as we gain experience with responding to IQA requests.

This concludes my testimony, Madam Chairman. I would be pleased to answer any questions you may have. Thank you.

[The prepared statement of Mr. Melius follows:]

**TESTIMONY OF TOM MELIUS, ASSISTANT DIRECTOR FOR EXTERNAL AFFAIRS, U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE U.S. HOUSE OF REPRESENTATIVES GOVERNMENT REFORM COMMITTEE, SUBCOMMITTEE ON REGULATORY AFFAIRS, REGARDING IMPROVING INFORMATION QUALITY IN THE FEDERAL GOVERNMENT**

**July 20, 2005**

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Good morning. I am Tom Melius, Assistant Director for External Affairs for the U.S. Fish and Wildlife Service (Service). Thank you for the opportunity to testify today regarding the Service's implementation of the Information Quality Act, as mandated by Section 515(a) of the Treasury and General Government Appropriations Act of 2001.

The goal of the Information Quality Act (IQA) is to ensure and maximize the quality, objectivity, utility, and integrity of information disseminated by Federal agencies. The Office of Management and Budget (OMB) published final government-wide guidelines for IQA implementation in 2001 and 2002. In accordance with these guidelines, the Service published its own guidelines describing how the agency would implement IQA within its programs. The Service appreciates and fully supports the IQA's goal of ensuring the quality of scientific information used by government agencies, and of making this information transparent for the public. Science is the foundation for all of our conservation efforts and the Service has a long and proud tradition of scientific excellence.

Before discussing how IQA implementation has worked in the Service, I would like to clarify where in our organization we have placed IQA responsibility. Many agencies have designated the Chief Information Officer (CIO) as the official responsible for IQA, and indeed this is standard in the Department of the Interior. Under the Service's guidelines, the Assistant Director for External Affairs is the responsible official for implementing IQA. The Service implemented IQA in this way because in 2002 we did not have a CIO, and because at that time the Service's research coordinator reported to External Affairs. Currently, the Service's Science Advisor, who reports to the Director, is responsible for handling appeals of IQA decisions rendered by the Assistant Director for External Affairs. Since a CIO has recently been designated within the Service, it is our intention to reassign responsibility for administering IQA to the new CIO so that we will be in line with Department of the Interior practice.

Affected persons or organizations may challenge the quality of information disseminated by the Service under IQA guidelines by filing a formal request for correction with the agency. Upon receipt, these requests are reviewed for appropriateness under OMB's government-wide, Department of the Interior, and Service guidance. Once a request is determined to be appropriate under the IQA, it is routed to the program or Regional office responsible for the information being challenged. After researching the issue and developing a response, the reviewing office submits its decision to the Assistant Director for External Affairs in Washington, D.C. The Assistant Director for External Affairs then coordinates with Departmental personnel to ensure the accuracy of the response, and if deemed accurate, signs the document and delivers it to the

requester. Responses are issued within 45 business days of receipt of the original request (unless an extension is needed for additional review, in which case the Service informs the requester of the extension and the reasons why it is needed).

If a request is approved, the Service will take corrective action. If a request is denied, the requester has 15 business days to appeal. Appeals are forwarded to the Service Science Advisor, who convenes a team of program or Regional personnel with knowledge of the information in question. The team develops a recommendation which is considered by the Director of the U.S. Fish and Wildlife Service, who makes the final decision on the appeal. Final drafts of all responses and appeals under the IQA are reviewed by OMB in its IQA oversight role to ensure consistent implementation across the federal government.

The majority of our IQA requests have involved endangered or threatened species, or candidates for listing. In addition, several requests have been filed during a decision-making process where the requester has submitted comments during the comment period on a proposed decision and concurrently filed an IQA request.

In Fiscal Year 2003, the Service received six requests for correction under the IQA. These included:

- A request from Atlantic Salmon of Maine relating to Service biological opinions to other Federal agencies on issues pertaining to Atlantic Salmon in Maine;
- A request from the U.S. Air Force relating to the Service's proposed rule to list the slickspot peppergrass as an endangered species;
- A request from a ranching operation relating to information in the recovery plan and proposed critical habitat designation for the cactus ferruginous pygmy owl in Arizona;
- A request from the National Association of Homebuilders, also on the proposed critical habitat for the pygmy owl;
- A request from the Public Employees for Environmental Responsibility (PEER) relating to the Service's 90-day finding on a petition to list the Tri-State Area Flocks of the Rocky Mountain Population of trumpeter swans; and,
- A request from the Florida Marine Contractors Service relating to the Service's proposed designation of manatee protection areas in Florida.

Of these six requests, we considered that five met the standards for consideration under the IQA. The manatee request was submitted as a part of public comments on the proposed rule and did not include the information required under our IQA guidelines. We responded to this request within the context of the responses to public comments on the proposed rule. We responded to the other five requests within our IQA process. One of these, the trumpeter swan, ultimately went through a full appeals process which involved reconsideration of the request by an independent panel led by the Service's Science Advisor.

In Fiscal Year 2004, the Service received five requests for correction as follows:

- A request from PEER relating to information in a number of documents concerning the Florida panther;

- A request from Union Electric Company regarding relicensing of the Osage Hydroelectric Project in Missouri;
- A request from a private citizen relating to a petition the Service received from non-government organizations to list the Sand Mountain blue butterfly as endangered or threatened;
- A request from Partnerships for the West, a public interest group, relating to a number of documents pertaining to the status of the Greater Sage Grouse; and,
- A request from the Owyhee Counter Board of Commissioners in Idaho also relating to information pertaining to the sage grouse.

For the FY 2004 requests, we considered that two of these requests were not appropriate for consideration under the IQA guidelines. The Union Electric request challenged information that was part of an administrative adjudication, and not eligible for consideration under OMB's government-wide guidelines. The Sand Mountain blue butterfly request challenged a petition that had not been disseminated by the Service nor adopted as "sponsored information" by the Service. The remaining three requests met the standard for consideration under IQA. Of these, we responded to PEER on the Florida panther, and also responded to the requesters on the two sage grouse challenges just last week. PEER requested reconsideration of our response on the panther, and this also went through the full appeal process with reconsideration by an independent panel.

We have not yet received any IQA requests for correction in FY 2005.

Based on our experience with the IQA thus far, we offer these observations:

We believe that the IQA has had beneficial effects on the way the Service considers the use of scientific information in decision making. Two examples that come to mind are the listing of the slickspot peppergrass and the biological opinions on the Florida panther. In the case of the slickspot peppergrass, as a result of an IQA petition, the Service reviewed the science used in the proposed listing, and that review influenced the agency's decision not to list the plant. In the case of the Florida panther, the IQA process identified areas where the Service had not updated scientific information on the Florida panther, information that we acknowledged was evolving. As a result, the Service accelerated its schedule for several corrective actions, which included updating panther-related provisions of the Multi-Species Recovery plan to incorporate appropriate recommendations of the Science Review Team, and making this available for public comment. The Service ended further dissemination of the draft Landscape Conservation Strategy and continued its work to address all peer review comments as well as recommendations made by the Scientific Review Team. The Service also took necessary steps to correct Service files on several biological opinions.

We have found that handling the requests for corrections under IQA can be complex. Certainly we have learned that our own guidelines, which allow us only 45 business days for response to a request for correction, need to be amended. We are currently considering the best method to provide additional time for review and response while still responding to the public in a timely manner. Any new guidelines will be announced in the Federal Register.

Fulfilling our responsibilities under the IQA in a manner that is consistent with our legal obligations under the Endangered Species Act (ESA) and the Administrative Procedures Act (APA) has presented some unique challenges. Our current approach to IQA requests which are received during a rulemaking but after the close of a comment period is to prepare our response prior to the final rulemaking, with release of a written response after the final rule is published. In such a case, all the issues raised in the IQA petition are addressed separately from the rulemaking, and a separate response is prepared prior to the publication of the rule. The responses to the questions in the petition do, however, inform the rulemaking process. This approach has served to raise issues that may have been overlooked in the more general rulemaking process and, we believe, improved our final products.

In general, the Service believes the IQA process is working and provides a benefit to the public. We will continue to improve the process as we gain experience with responding to IQA requests.

This concludes my testimony. I will be pleased to respond to any questions the Subcommittee may have.

Mrs. MILLER. All right. Thank you very much.

And our next witness will be James Scanlon. Mr. Scanlon is the Acting Deputy Assistant Secretary for Science and Data Policy with the Department of Health and Human Services. He has been in this position since July 2002. As Acting Director, Mr. Scanlon coordinates all health and non-health data collection analysis activities. Mr. Scanlon is an expert in the health data and research.

Again, we are very honored to have you with us today, sir, and the floor is yours for your testimony. Thank you.

**STATEMENT OF JIM SCANLON**

Mr. SCANLON. Thank you, Madam Chairman. Thank you for the opportunity to testify today about the implementation of the Information Quality Act within HHS. As you indicated in your statement, HHS administers more than 300 programs and is comprised of 10 large operating divisions, including household names in the public health world like NIH, CDC, the Food and Drug Administration, and the Federal Medicare and Medicaid agencies.

In the course of carrying out their missions, our agencies disseminate a wide variety of information to the public, and this ranges from research, scientific and statistical reports to expert and authoritative health and medical information aimed at the general population.

Consequently, HHS is committed to supporting, developing, and disseminating information consistent with the Information Quality Act. It has long been an HHS goal to ensure that the best available scientific and technical information is used to support agency policy and regulatory and program decisionmaking.

Within HHS, we issued our HHS information quality guidelines, as the other agencies did, in October 2002, and we created an extensive HHS information quality Web site to support implementation. In implementing the IQA within HHS, we took several approaches that may differ from other agencies because of our size and the variety of our programs. First, we implemented the IQA through our science policy and data policy channels, not our CIO channels. Second, it became obvious early on that a one-size-fits-all approach across HHS would not work, so we developed a combination of HHS-wide umbrella guidelines with standard policies and procedures, supplemented by agency-specific guidelines within that overall framework.

Third, we designated a lead office, my office, as the lead coordinating office and implementing office to oversee implementation, and we created an HHS-wide Information Quality Working group with representatives from across HHS to ensure we had a coordinated and integrated approach across implementation.

The resulting guidelines, as I said, were issued in October 2002. The purposes are twofold: to provide policy and procedural guidance to our own agency staff about what is expected, and to inform the public about the policies and procedures that we do employ to ensure the quality of the information we disseminate. Part I of our guidelines on the Web site describes these department-wide umbrella guidelines and policies. Part II describes the agency-specific policies. So FDA, NIH, CDC, and Medicare would have supplemental policies as well. Responsibility for implementing the guide-

lines within the HHS operating divisions is the responsibility of the head of that agency—for example, the head of the NIH—that disseminates the information.

Overall departmental level responsibility for oversight and coordination rests with my office within the Office of the Secretary.

As I indicated, our guidelines do contain an administrative mechanism that allows effective persons to seek and obtain correction of information that they believe does not comply with the guidelines. And we established a common format across HHS to make it easier for complainants to deal with our various agencies.

Our Web site contains information about how to submit a request for correction and identifies the individuals in the agencies to whom requests are to be submitted.

Let me turn now to response time for our first 2 years of experience.

Our initial goal was to respond to all requests for correction within 60 calendar days of receipt. But our experience has shown that actual response times generally are considerably longer. This is because of the extensive expert staff time involved and the wide range of agency scientific and legal reviews that are involved in assuring a complete and responsive response.

In cases where the request will require more than 60 calendar days to resolve, the agency usually informs the requester that more time is required and indicates the reason why. If the requester is not satisfied with the original response, he or she may appeal that decision within 30 days.

Our position on appeal is very liberal: we pretty much consider any request for consideration that is submitted. And, generally, the appeal is handled at least one program level above the originating office, and usually involves senior HHS officials.

In terms of our experience with complaints, we have received 22 information requests for the first 2 years. Thirteen then went to the appeal stage. All but four have been closed. In terms of agencies, most of the correction requests nine were aimed at our National Toxicology Program, other parts of NIH received an additional two; and FDA and CDC received four and three, respectively.

The challenges included a variety of topics in public health, for example: CDC information on water fluoridation and sexually transmitted diseases; NIH information on the health effects of smokeless tobacco; and a number of correction requests aimed at toxicology profiles developed by our National Toxicology Program. So, virtually every agency has received at least one information quality request.

All the requests are taken very seriously by the agency. There are a number of examples where information on the Web site or in reports was updated or expanded or incorporated into the next version of periodic reports to reflect the updated information. For example, at the National Institutes of Health, an information quality request concerning the health risks of smokeless tobacco pointed out some problems with the information the agency was disseminating, and NIH then updated the information, providing a more complete and expansive set of information in support of the risks associated with smokeless tobacco.

At our National Toxicology Program, a number of toxicology profiles have been updated and expanded or incorporated into next revisions based on the information quality complaint process.

Thank you for the opportunity to testify. I would be happy to answer any questions.

[The prepared statement of Mr. Scanlon follows:]

**Testimony of James Scanlon**
**Acting Deputy Assistant Secretary for Science and Data Policy**
**Department of Health and Human Services**
**before the**
**U.S. House of Representatives Government Reform Committee,**
**Subcommittee on Regulatory Affairs**

**July 20, 2005**

Good morning, Madame Chairman and Members of the Subcommittee. I am James Scanlon, Acting Deputy Assistant Secretary for Planning and Evaluation and Director of the Office of Science and Data Policy within the Office of the Secretary at the Department of Health and Human Services. Thank you for the opportunity to testify about the implementation of the Information Quality Act (IQA) in the Department of Health and Human Services (HHS ).

HHS administers more than 300 programs. Comprised of ten large and diverse Operating Divisions, including the NIH, CDC, FDA, and the federal Medicare and Medicaid agency, HHS is the U.S. government's principal agency for protecting the health of all Americans and providing essential human services, especially to those who are least able to help themselves. In the course of carrying out their program missions, HHS agencies disseminate a wide variety of information to the public, ranging from research and statistical reports to expert and authoritative health and medical information. Many of these dissemination products rank among the most highly regarded and highest quality scientific, research and statistical information within the federal government, and in many instances they set the national and international standards for quality.

Consequently, HHS is committed to supporting, developing and disseminating information consistent with the objectives of the Information Quality Act. It has long been an HHS goal to ensure that the best available scientific and technical information is used to support regulatory and programmatic decision making.

**Requirements of the Information Quality Act**

In 2001, Congress enacted the Information Quality Act (IQA), which directed the White House Office of Management and Budget to issue government wide guidelines that provide policy and procedural guidance for ensuring and maximizing the quality, objectivity, utility and integrity of information, including statistical information, that the agency disseminates to the public. OMB issued its Guidelines in February 2002.

The OMB Guidelines in turn directed federal agencies to do three things:

1. Issue their own agency information quality guidelines by October 1, 2002;
2. Establish administrative mechanisms allowing affected persons to seek and obtain correction of information disseminated by the agency that they believe does not comply with the Guidelines; and
3. Report to the Director of OMB annually regarding the number and nature of correction requests that the agency receives and how such requests were resolved.

**HHS Implementation of the Information Quality Act**

Within HHS, we developed and issued our *HHS Guidelines for Ensuring the Quality, Objectivity, Utility and Integration of Information Disseminated to the Public* in October 2002, and created an extensive HHS information quality website to support implementation. All of the information I will be discussing this morning is available on the HHS information quality website: http://www.aspe.hhs.gov/infoquality. In implementing the IQA within HHS, we took several approaches that may differ from other agencies. First, we implemented the IQA through the science policy and data policy channels within HHS. Second, it became obvious early on that a "one size fits all" approach would not work within HHS, and we developed HHS wide umbrella Guidelines accompanied by agency-specific Guidelines within the HHS framework. However, our Guidelines incorporate standard HHS wide standards and procedures whenever possible, including the administrative request for correction mechanism.

Third, we created a department-wide HHS Information Quality Working Group to ensure a coordinated and integrated approach across HHS, assure implementation in a manner appropriate to agency statutes and missions, and build upon existing agency administrative procedures and data and scientific quality review mechanisms.

Fourth, within HHS, we implemented the Information Quality Act by working closely with OMB and our stakeholders in the health and human services communities, including a notice and public comment process on draft Guidelines .

The *HHS Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated to the Public* were developed within the framework of the OMB Guidelines. The purposes of the HHS Guidelines are to provide policy and procedural guidance to agency staff, and to inform the public about agency policies and procedures. Part I of the HHS Guidelines describes department-wide umbrella policies, guidelines and operating procedures. Part II of the HHS Guidelines describes component agency-specific guidelines in order to address specific program statutes and missions for operating divisions such as the Centers for Medicare & Medicaid Services, the Food and Drug Administration and the National Institutes of Health. Responsibility for implementing the Guidelines within HHS Operating Divisions rests with the head of the agency or program unit disseminating the information.

Overall departmental level responsibility for oversight and coordination of the implementation of the Guidelines within HHS rests with the Office of the Assistant Secretary for Planning and Evaluation. In addition, oversight and coordination across HHS is supported by our department-wide work group, led by the Office of Secretary and composed of senior representatives from all HHS Operating Divisions.

The HHS Information Quality Work Group was created to assure maximum sensitivity and understanding of the underlying science and data issues that might be raised within a very large federal science and public health agency with complex and diverse programs. It also was created as a mechanism to achieve an integrated departmental implementation of the Information

Quality Act by developing a uniform HHS set of principles and Guidelines format, a forum for addressing common issues and approaches, and a means to provide on-going monitoring of implementation problems and issues. HHS views the Guidelines as an evolving document and information quality as an evolving process.

As I indicated, our Guidelines contain an administrative complaint mechanism that allows affected persons to seek and obtain correction of information that they believe does not comply with the Guidelines. We established a common format for submitting information quality requests for corrections and requests for reconsideration (i.e., appeals) to HHS agencies.

Generally, the HHS approach calls for requesters to submit requests for correction that contain:

$ a detailed description of the specific material that needs to be corrected;

$ the specific reasons for believing the information is in error and supporting documentation, if any;

$ the specific recommendations for correcting the information; and

$ a description of how the person submitting the request is affected by the information error.

The HHS website contains instructions about how to submit a request for correction and identifies the official to whom requests are to be submitted. Although our goal is to respond to all requests for correction within 60 calendar days of receipt, our experience is that actual

response times generally are considerably longer because of the extensive expert staff time involved and the wide array of agency scientific and legal reviews are involved in developing a response. In cases where the request requires more than 60 calendar days to resolve, HHS informs the requestor that more time is required and indicates the reason why and an estimated decision date.

HHS Operating Divisions assign requests for corrections to individuals who have a high level of expertise in the subject area of the information dissemination that is being challenged. Both Information Quality Work Group and operating division staff closely monitor the development of responses to requests and reconsiderations in order to encourage expeditious treatment. The requestor may appeal (i.e., request a reconsideration) within 30 days of receipt of the HHS decision.

Our position on appeals is very liberal; we consider any request for reconsideration that is submitted. The HHS Guidelines require that the agency official who handles the original request "will not have responsibility for resolving the appeal." Generally, the appeal is handled at least one level above the originating office. In most cases, very senior level agency officials have responded to appeals, including the Commissioner of the Food and Drug Administration, the Deputy Director of the National Institute of Environmental Health Sciences, NIH, the Director of the National Heart, Lung and Blood Institute, NIH and the Associate Director for Science in the Centers for Disease Control and Prevention.

**Experience with the Correction Process**

Since the October 2002 effective implementation date of the HHS Guidelines, HHS has received 22 information quality requests for correction and 13 requests for reconsideration. Requests have been submitted by a variety of interested parties including trade associations, industry, advocacy groups, and private citizens. A number of organizations have submitted multiple requests to HHS as well as to other federal agencies. All the requests and HHS responses are posted at http://aspe.hhs.gov/infoquality The requests concern a wide range of HHS information. They include challenges to the following:

< CDC information on water fluoridation;

< NIH information on the health effects of smokeless tobacco;

< A number of National Toxicology Program background documents, including naphthalene, vinyl chloride, nickel and others;

< The HHS scientific evaluation of medical marijuana;

< Information on the U.S. Dietary Guidelines; and

< FDA information on the use of fluoroquinolones (i.e., antibiotics) in poultry feed.

All requests for correction and for reconsideration are taken very seriously by the agency. Here are three examples of requests that resulted in some corrective action:

< A request to CDC from a private citizen resulted in the redirection of a link on the CDC website to general information (rather than to only technical information) on gonorrhea.

< A request to the National Institute of Aging, NIH from the National Legal and Policy Center concerning the risk of using smokeless tobacco as compared to smoking cigarettes resulted in revised language that described the risk associated with using smokeless tobacco products without making an affirmative comparison of those risks to the risks associated with smoking cigarettes.

< A request to the National Toxicology Program from the Styrene Information and Research Center concerning information on the styrene manufacturing process in a fact sheet and press release resulted in a revised statement about the uses of Styrene-7,8-oxide.

**HHS Information Quality Website**

To ensure transparency and ease of use, HHS has created a department-wide data quality website at http://www.aspe.hhs.gov/infoquality. The website includes: 1) the HHS and agency specific Guidelines, 2) a short, user-friendly summary of HHS information quality requests for corrections and reconsiderations, 3) the data quality correction requests submitted to HHS along with the agency responses, 4) the HHS Annual Information Quality Reports to OMB, and 5) links to all agency Guidelines and agency Information Quality contacts.

Thank you for the opportunity to testify. I would be happy to answer any questions you may have.

Mrs. MILLER. Thank you very much. I appreciate all of you coming. I tried to listen to all of your testimony here. One of the common elements that I was sort of picking out there is how many requests you get and how many days you had to respond. And I don't know if I wrote down the right information as you were testifying, but I think I got 12 from Mr. Melius. Is that correct?

And, Mr. Scanlon, you said you had 22?

Mr. SCANLON. That's correct, ma'am.

Mrs. MILLER. And then 60 days to respond.

And in your case, Mr. Melius, 45 days to respond.

And the EPA, I thought you said 30. But I am not sure how many days they had to respond.

Ms. NELSON. We have received 30 so far, and we set 90 days as our goal for response.

Mrs. MILLER. Ninety days, when they first passed the law—and I was not here when they passed this law. I am trying to get myself up to speed on exactly all the impetus behind it and how it is working and what kinds of things we could do to assist all the agencies. Do you think it would be helpful, rather than each of you having a different amount of days to respond in the appeals process, if we had something—I know one size does not fit all, but is there anything that Congress could do to assist you with the amount of information for correction that you are getting and days to respond and the appeals process, and all that, so that we had a common theme throughout some of the agencies?

I will leave that open to any of you to answer.

Mr. MELIUS. I believe the guidelines that came out of OMB did provide some flexibility for agencies, in establishing our own guidelines, to create a structure where we could meet an unknown demand, and we are adjusting as we are going through that. On behalf of the Fish and Wildlife Service, we may have been a little bit too ambitious in our thoughts early on, that we could conduct reviews at the timeline that I identified.

In listening to my colleagues and other departments and agencies, they have a little bit more lengthier time, and we are finding out, as I indicated, that is causing some need for some extensions. So we are looking at a process through our revisions to give us a little bit more time for responding, but yet still meeting in a timely fashion that response. I am not certain the law needs to be changed; it is more or less our own internal guidelines to implement that.

Mrs. MILLER. Your own experience as you go forward.

Ms. NELSON. I would also add to that. I think my experience shows that there is an awful lot of discussion that occurs between agencies and among the agencies on our experiences in implementing our own guidelines and the guidelines that have come down from OMB. And I think what you will find is there will be a natural tendency to start to move toward some more consistent timeframes between and among the agencies as we all have our own experiences.

I do think it is probably best left to the agencies to come up with timeframes because we are all different, given the size and the complexity and the structures of our organizations, in terms of how many people we have to bring together and the complexity of the

issues we deal with. But I think you will begin to see more similarity in the future rather than less.

Mr. SCANLON. I think we have the same view. I don't think the law needs to be changed. And the OMB guidelines give us a fair amount of flexibility, recognizing the agency missions and statutes. We clearly estimated on the optimistic side when we projected a 60-day ability to turn around appeals and initial requests. We are looking at empirically how much time they have actually taken, and in our revision we probably would extend that. But, again, I think we have the flexibility to do that without any changes in the law.

Mrs. MILLER. OK. I appreciate that.

Just for my own, as I try to understand exactly the kinds of activity that this law is generating for your agencies; perhaps, Mr. Melius, you could expand a little bit for me, if you would. You used the example of the trumpeter swan. Now, what kind of information would you have that somebody would question what you had about the trumpeter swan? And you mentioned that particular request went all the way through your appeal process. Could you sort of lead me through?

Mr. MELIUS. Sure, I will use that example, because that did go all the way through the appeals process. There was a petition to list a portion of trumpeter swan population as a endangered and threatened specie, and when you do that, information comes in from a variety of avenues that we review to make sure that our action is based upon the best science available. And when information comes in like that and we react with either a proposal to list or not to list, then information dealing with populations, the numbers of the species, is then challenged and reviewed to make sure whatever we are using, from our biologists or other biologists is indeed the best science that we have available to us to make those decisions.

On the trumpeter swan there was a proposal to request to make the certain part of the population a specific entity under the Endangered Species Act. We decided not to do that. That was the end result. But during that process, data that we had used was challenged, and initial response went back that after our first review we decided not to change anything and continue with the process. That was then appealed. A request came in for appeal. So, we formed a panel of experts in trumpeter swan biology. They came together and looked at the information that we had used to make that decision, and, again, we did not need to correct information because of that appeal. Though one of the things that did come out of that particular request was that when the Director of the Fish and Wildlife Service did ask to have the compilation of those studies sent out for a peer review, other experts looked at it also. They reported back to us after the peer review that, again, we had acted properly and the data that was used to make that decision not to list was appropriate.

Mrs. MILLER. Just one other question on that. Who would ask you for that kind of information?

Mr. MELIUS. The particular group that had—you mean who had asked for correcting that information?

Mrs. MILLER. Yes, yes.

Mr. MELIUS. That particular request came from PEER.

Mrs. MILLER. I am just trying to get a handle on the kinds of requests that you get for correction from the various agencies and if there is a common theme. And I guess I would ask this to all the different panelists. As you are getting requests for corrections, is somebody tracking this? If you get eight requests all on the same type of information that you have there, that is obviously a red flag that perhaps something could be wrong with the information that you have there, or that at least a lot of people have that consternation. Is somebody tracking the kinds of benchmarking, what kinds of requests you are getting for correction? And then, if they go into the appeals process, that you don't start that up again? Do you then put that all on your Web site so people can see that you have corrected it?

Ms. NELSON. Madam Chairman, in EPA we do that. All requests for correction, as well as the requests for reconsideration, are tracked by my office. So everything comes in, we understand what it is, we work with the work group, we review our answers. Ours have actually been very varied in terms of the kinds of requests we have received, the 30 requests we received, very little duplication in terms of those. But once we begin to see those, that certainly then should be, as you said, a flag that perhaps there is one particular area in the agency that needs a little bit more attention. We have not seen that to date. But we have the information to know if that were to exist.

Mr. MELIUS. We also have all of our requests listed on our Web site, as well as all the information relating to each one of those posted as soon as we complete that action. It varies, of the IQAs that we have received, from an environmental group to a private citizen to a homebuilder on one of them. So, it is not a distinct segment of the Nation that is just specifically asking for corrections, it is kind of all over the board. But, again, we are only kind of 2 years into this process, and as we are implementing it we are trying to be as transparent with the requests that are coming in and the actions we take by all of us having very active Web sites providing that information.

Mr. SCANLON. All of the incoming requests and the responses, appeals and responses to appeals are monitored within HHS not only by my office, but by our departmental work group. And we too receive requests for virtually all segments of society, from private citizens—as you would imagine, some of our health information is directed at individual behavior or health facts—as well as industry groups that might be affected by a listing or de-listing or a characterization about chemicals, as well as advocacy groups in some cases, where they believe we hadn't gone far enough in an advisory. So we are quite varied. We haven't seen really a systematic kind of a problem.

The most popular of our requests, the National Toxicology Program has received most of the requests. That is almost the nature of their work; they have to assess compounds, chemicals, and so on for potential carcinogens, and it is a very elaborate science-based process. But in virtually every case there were distinctions, for the most part, that were updated. In virtually no case was the original finding or the bottom line overturned. Nevertheless, they are look-

ing at their overall science review. Perhaps it is just because they receive so many, and they are probably going to strengthen it in a few places.

But as my colleagues have said, it is quite varied. There is not a systematic pattern emerging, for the most part.

Mrs. MILLER. You know government is often accused of "make work," and sometimes we make work. Unfortunately, for the agencies that perhaps stops you from doing your regular regulatory kinds of processes or other kinds of things that you should be about. Again, I wasn't here when the Information Quality Act was passed, but I know there was quite a bit of debate at that time about whether or not it would strain the resources of the agency, whether or not it was really a worthwhile kind of endeavor for all of you. Some have said that you might be overwhelmed with all these different requests. I guess I don't know what it all means in relative terms to have 12 requests for correction. I am not quite sure what all of that has been, your personal experiences. Could you try to give me a handle on whether or not you feel that this is a worthwhile act, that you do have the resources to comply?

Ms. NELSON. Would you like me to start?

Mrs. MILLER. Please.

Ms. NELSON. I will say I do believe it is a very worthwhile act. I think anything that helps set the foundation and the core for quality decisions is very worthwhile within the agency. I also believe you are correct. There was a lot of uncertainty in terms of the volume of requests that were coming to an agency. At least for our part, the volume is not what at least some people had projected before the guidelines went into place. We do take the act very, very seriously. I think it is one reason we set a 90-day deadline when we put our first guidelines in place. We knew that the issues EPA deals with tend to be very, very complex, based on very difficult issues that don't always have a lot of certainty with them. So we set a long deadline for that so that we could address these issues in a very serious manner. It would certainly be easy to turn some of these around quickly if you didn't address them seriously, but we try to do that.

That kind of attention to these very significant requests does result in a redirection of resources. I have to be honest in saying that. When you take an act seriously, it does mean you are redirecting resources. Of course, there were no new resources. That doesn't mean, though, that redirection is harmful to the agency. In some respects, I believe, even in areas where we have not granted the request articulated or asked by the requester, we have in fact made some changes within our organization that I believe make it stronger and will result in better decisions in the future.

So, to summarize, yes, it has absorbed resources; yes, we have had to redirect resources. I don't think it has been overly burdensome, and I do think in many respects that redirection of resources will make for a better agency in the future.

Mr. MELIUS. I would agree that the first year we were watching and waiting to see just what type of requests, what volume of requests may come in. But as I have indicated, the management so far with the dozen or so that have come into the Fish and Wildlife Service and none yet this year, obviously, is manageable, though,

as I mentioned, we take it very seriously. And that means staff time is devoted to the research, the analysis, the correction, if that is the final outcome. But as my colleague has mentioned, it has heightened the awareness of the quality and the transparency of the work we do with the science. So, like I said, we support the goals, and at this point we are able to manage and move forward with this particular act.

Mr. SCANLON. Well, we too were concerned, at the initial passage of the act, that we would be overwhelmed with requests, and it turned out that, as we indicate, 22 over 2 years. We have managed to absorb that within the current staffing patterns, though every now and then, because some of these areas are very precise scientific areas, it may take some of our scientific staff away a little bit to deal with that specific response. But normally we have absorbed it within the regular operations of the agency at the level we are receiving now.

Some of the requests we received were quite elaborate legal briefs, and I don't think we were anticipating at the beginning that we would be involving our legal staff quite as much as we did. In many cases the correction request interacts with Administrative Procedure Act requests such as rulemaking, citizen petition, and other areas, and it actually takes a little while to disentangle how it all fits together. But, again, we have managed to absorb that, so far, into the current agency resources.

Mrs. MILLER. I have had not a number, but several people who have said the act isn't really working as it was originally designed, and that they were even advocating for repeal. I am certainly not getting the sense from any of you that—I don't believe I am getting that sense, that any of you think the act should be repealed. But is there anything that, again, we could do or any suggestions you may have on how it could be modified to assist the agencies in compliance, now that you have had a couple years of experience under your belt? Particular suggestions that any of you may have, or are you just going to continue to fine-tune the process that you have put in place?

Start again with Ms. Nelson.

Ms. NELSON. I think the jury is still out on that question. October will mark the third anniversary of the implementation, but it takes a while. Even though that is the 3rd year anniversary, we really don't have "3 years of experience." I think it is still a little too early. For ourselves, even within EPA, we are just at the process now—because now we have 30 requests—that we are beginning to see enough that we can look for patterns or trends and understand whether we even want to modify our own guidelines. So, I think it is just premature to do that at this point in time, to think about changes to the act itself.

Mr. MELIUS. We would agree. Again, the guidance offered by OMB and the subsequent guidelines that we have developed give us that flexibility. And, as I mentioned, the one issue that we are grappling with is just the timeline in getting a timely response back.

The other issue, as my colleague mentioned—and we have not had a situation, but it deals with making sure that we are following the Administrative Procedures Act properly. Many of our issues

deal with notices involving endangered species and some of them are even court-ordered, imposing certain deadlines. We have not had situations where a request comes in challenging information that is up against a deadline ordered by a court, so we have not had to face how you handle administration of IQA, and yet, you still have a court-ordered deadline within an action. So our solicitors are still grappling, and legal time is being devoted to make sure we have the right pathway figured out on that. But that is more in our own guidance, not necessarily in the act.

Mr. SCANLON. Well, at HHS I think the concept of pre-dissemination quality review was an old and well established concept, so we supported the goals of the Information Quality Act and had in fact been practicing these before. I think the statute itself probably doesn't need any changes. In our view, it gives us enough flexibility. And the OMB guidelines give us enough flexibility to fine-tune and adjust for what the experience may hold ahead. So I think, again, it might be premature for any major changes.

Mrs. MILLER. Ms. Nelson, it is my understanding—you can correct me if I am wrong—that EPA does obviously a lot of this environmental modeling on various issues, and that oftentimes—I am not sure really how often, but sometimes apparently the EPA will go out into the private sector for various reasons. I am certain you can't afford to have all of those people on staff all the time for every single thing that you do. But when you do use private concerns for some of your modeling, that, of course, is proprietary information; the model, the construct of the model may be built by using software or what have you that is not really in the public domain, and a person that might question or want to ask for a correction of some of the information you may have up there is somewhat disadvantaged if they are not able to access the foundation of the modeling that has occurred there. How does that work and what would a person have to avail themselves, the tools to be able to actually make a good analysis of whether or not what you have up there is something they think is correct or whether they could request correction based on the modeling that you have, utilizing private concerns as well?

Ms. NELSON. This was an issue we discussed when our own guidelines were being developed. I think you probably know that—first of all, you know I don't have a science background, so I will be very careful venturing into the area of science, unlike my colleague at the other end of the table. EPA does, though, have a chief science advisor, the Assistant Administrator for the Office of Research Development. Dr. Gelman, who served in that position at the time we were developing our guidelines, was very active in the development of those guidelines. He is no longer there and we have somebody in an acting capacity, but still that role of chief science advisor exists today.

The development of those particular models does fall under the jurisdiction of the science advisor, and it is something we have dealt with as an organization. Those models and the use of those proprietary models is an issue that we are working through our Science Policy Council, and we are waiting for some advice from our Science Policy Council on that very issue. Once that policy has been reviewed and we receive comments from the Council, we will

send that out for public input in terms of the use of proprietary models in decisionmaking.

Sometimes that is the only thing we have available to us in terms of making decisions. And I think that is something we do have to keep in mind. Sometimes we just have to go with the best available science, and that is what exists.

But if you would like a more detailed answer to that particular question, I would be happy to consult our science advisor on that issue, because I think that does more appropriately fall within his realm than mine.

Mrs. MILLER. That would be helpful, if you could advance it to the committee staff here. Perhaps if it is in draft form, maybe a timeline as well of when we can look for that kind of a thing. That would be very helpful. I appreciate that.

Ms. NELSON. Certainly.

Mrs. MILLER. Also, it is my understanding that one of the requests for correction to the EPA—back to Ms. Nelson here—was to establish an interagency work group to look at some of the reviews and that. Do you have any comment on how that might work and what the agency's response was to that particular avenue?

Ms. NELSON. Well, let me say in general I do think that the interagency work groups are very valuable. We have used many of those to get as far as we are on the information quality guidelines, and we spend a great deal of our time throughout the agency on interagency work groups. So I think it is an important way of doing business today in the Federal Government, as we try to do a better job of serving the citizen in a citizen-centric way.

The particular request to which you are referring I believe is part of one that is under a request for reconsideration as we speak. We are currently looking at the multiple facets of that particular request for reconsideration. It is a very, very detailed and complex matter, one that, as you alluded to, involves a number of agencies, as well as a number of data bases and other issues affecting those agencies. We are currently reviewing that and will address that issue. But it would be premature at this point in time for me to state what the agency's final position is because we are currently working collaboratively with those other partners on how best to respond. But, in general, I would say I support the notion of working together across agency to better serve the citizen and to present a more consistent view when we can do that, when it is appropriate.

Mrs. MILLER. I appreciate that. And, again, if you could keep the committee up to speed on how you are proceeding with those kinds of things, we find that very helpful also.

I want to thank all of our panelists. We have no other members to ask you questions here, so before I dismiss you, I would like to just ask if there is any question I have not asked. You all are working with this act and living with it everyday. If you were me, what kind of questions would you be asking you? Is there something else that the committee should be aware of that I have not asked you the proper question?

I will start with Ms. Nelson.

Ms. NELSON. I think you have done a fine job. [Laughter.]

Mrs. MILLER. You are welcome in Michigan anytime. Thank you.

Mr. MELIUS. I think you have asked a lot of the very important questions, and as all of us have said, we are learning as we are going through this, and we are trying to be as responsive and transparent as we can. And, I think it is a little bit too early yet, but we are all learning as we move down this path.

Mr. SCANLON. I would agree. I think we have covered most of the major issues. Again, we are learning almost month-by-month, and it is a work in progress. And within the framework we have, I think we just have to clarify a few more things and work them out.

Mrs. MILLER. All right. I will excuse you all and thank you very, very much for your attendance this morning. All of your testimony has been very enlightening. Thank you so much.

We will recess for a quick moment to empanel the next panel.

[Recess.]

Mrs. MILLER. Before you all sit down, I am going to ask you all to stand up so I can swear you all in before we begin with our second panel. If you could just raise your right hands.

[Witnesses sworn.]

Mrs. MILLER. Thank you all, gentlemen.

All right, we have our second round of panelists ready. First up is Mark Greenwood. Mr. Greenwood is a partner in the Washington, DC, office of Ropes and Gray, where he primarily practices environmental law. Prior to his joining Ropes and Gray in 1994, Mr. Greenwood worked for the U.S. Environmental Protection Agency for 16 years. He held a variety of senior positions in the Office of General Counsel, all primarily dealing with legal environmental issues. From 1990 until beginning to work for Ropes and Gray in 1994, Mr. Greenwood was the Director of the Office of Pollution Prevention and Toxins.

Mr. Greenwood, we welcome you to the committee, and the floor is yours, sir.

## STATEMENTS OF MARK GREENWOOD, PARTNER, ROPES AND GRAY; JEFF RUCH, EXECUTIVE DIRECTOR, PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY; WILLIAM KOVACS, VICE PRESIDENT FOR ENVIRONMENT, TECHNOLOGY, AND REGULATION, U.S. CHAMBER OF COMMERCE; AND SIDNEY A. SHAPIRO, UNIVERSITY DISTINGUISHED CHAIR IN LAW, WAKE FOREST UNIVERSITY

### STATEMENT OF MARK GREENWOOD

Mr. GREENWOOD. Thank you, Madam Chairman. I serve as counsel to the Coalition for Effective Environmental Information. It is a group of companies and business organizations interested in how government agencies collect, manage, use, and disseminate environmental information.

We really appreciate the opportunity to appear before the committee today to talk about implementation of the Information Quality Act [IQA], as we sometimes call it. While our organization was not involved in the enactment of this statute, we have been active in its implementation.

In our view, the core objectives of the IQA represent commonsense values that the public, the agencies, and all interested parties should be able to embrace. While some groups have expressed

concern that the IQA will be used to undermine the core work of the agencies, we do not see evidence warranting this concern.

In my remarks this morning, I will highlight a few of the points from the longer written testimony which we submitted to the subcommittee.

I think it is important to recognize the key role that the IQA is playing in the emerging role of E-Government. The power of the Internet now allows agencies to deliver, to computer desktops all over the world, data that has historically been kept in Governments' internal files. The agencies have embraced this new capability with remarkable speed.

This trend toward E-Government offers many positive benefits. But the benefits we all hope for will not materialize unless there is a strong commitment to high quality information. This is where the IQA steps in. By setting standards for information quality and mechanisms to ensure compliance, the IQA is filling an essential role that must be maintained and enhanced. In this sense, the IQA should be considered one of the core good Government laws of the information age equivalent to such statutes as the Freedom of Information Act.

The principles of the IQA represent common sense. Over a 2-year period, OMB and the agencies developed a set of guidelines reflecting the following policies: agencies must use accurate data and explain the methods and assumptions used in their technical analyses; agencies must use the best available peer review data in making scientific judgments; agencies must communicate information in an understandable way to interested audiences, including the general public; and interested parties have a right to seek and obtain correction of information that does not meet the IQA standards.

We find it difficult to argue with those principles. Importantly, these are neutral values that do not favor one faction over another. To move the IQA, however, forward, in light of the controversy that has occurred, we think it will be important to address some key implementation issues, which I would like to talk about for just a moment.

This agreement about the scope of the IQA and the nature of the remedies under the statute have tended to dominate the correction requests that have been filed so far. In particular, some correction requests have become controversial because they have not focused on informational remedies, which are the appropriate subject of the IQA. Withdrawal of a regulation, for example, is not the right remedy for an IQA problem. While a rule may be improper if it is based on flawed data, the question of whether a rule is valid is a matter to be resolved under an agency's organic statutes and the Administrative Procedure Act, not the IQA. Clarification of the remedies available under the IQA will help define the law's appropriate role.

Another set of concerns about the IQA relates to questions about accountability and oversight to assure agency compliance. At any agency level, it has not been clear what internal management systems have been put in place to assure that the IQA standards will be met. And, at a broader level, there is a substantial question of

whether judicial review is available for an agency to deny a correction request.

Now, some preliminary court decisions suggest that review is not available, although this issue will probably not be definitively resolved in the courts for some time. We share the view of many parties that judicial review of IQA decisions should be available. But other parties, including the Department of Justice, oppose that position.

A final set of implementation issues concerns what agencies need to do to build information quality into the fabric of their operations. OMB recognized this larger purpose by requiring agencies to develop some form of pre-dissemination review before information is provided to the public. In particular, agencies should be identifying patterns of errors in public information and developing solutions to prevent future mistakes. Little information is available on how agencies are implementing this aspect of the law.

In closing, thank you for the opportunity to address the committee on these matters. We encourage your continued interest in the implementation of the IQA, and your leadership is necessary to resolve some of the implementation issues I have described. Thank you.

[The prepared statement of Mr. Greenwood follows:]

**STATEMENT OF MARK A. GREENWOOD**
**COUNSEL TO THE COALITION FOR EFFECTIVE ENVIRONMENTAL INFORMATION**

**BEFORE THE**
**SUBCOMMITTEE ON REGULATORY AFFAIRS**
**UNITED STATES HOUSE OF REPRESENTATIVES**

**HEARING: IMPROVING INFORMATION QUALITY IN THE FEDERAL GOVERNMENT**

**JULY 20, 2005**

Ms. Chairman and Members of the Subcommittee, I am Mark Greenwood, partner in the law firm Ropes & Gray. I serve as counsel to the Coalition for Effective Environmental Information (CEEI), a group of companies and business organizations interested in the policies guiding how government agencies collect, manage, use and disseminate environmental information.

We appreciate the opportunity to appear before this committee to address the important topic of how the federal government is implementing the Information Quality Act (IQA). While our organization was not involved in the enactment of this statute, we have been active in its implementation. In our view, the core objectives of the IQA represent common sense values that the public, the agencies and all interested parties should be able to embrace.

We recognize, however, that substantial debate has arisen around the implementation of the law. In our view, many of the concerns that have been expressed about the potential adverse effects of the IQA on agency rulemaking or public access to information have not materialized in practice. But given those concerns, we think it is particularly valuable for this committee to initiate this hearing to review the experience with the IQA Hopefully your efforts will assist resolution of some of the implementation issues that have made the law more controversial than is warranted.

In my testimony today, I will address three topics: (1) the importance of the IQA in the rapidly developing world of "E-Government"; (2) the common sense nature of the IQA's policies; and (3) the implementation issues that need resolution if the IQA is to achieve its potential.

**The IQA's Objective – High Quality Information for Public Use – Is a Critical Need in the Development of "E-Government"**

The federal government has long been in the business of collecting and disseminating information for public use. In the last decade, however, governmental activity in this area has taken on much greater significance.

In particular, the Internet has played a transformational role. Today the federal government routinely assembles data that have historically been used only by government workers and delivers this data electronically to computer desktops all over the world. This is a qualitative change in public access to government data, which has many positive implications. At the same time, it places much greater responsibility on government agencies to explain the limitations of these data, which are well-understood by those who work routinely with the data but not by the general public.

The power of Internet access to information has also accelerated the tendency of government agencies to use disclosure of information as a policy tool to influence behavior, in lieu of regulation. In the environmental field we have seen the growth of "public right to know" programs that disclose information about the environmental performance of specific companies, facilities and products. One of the best known programs of this nature is the Toxic Release Inventory that reports annually on releases of hundreds of chemicals from thousands of facilities.

Public disclosure of information now plays a central role in a variety of EPA programs. The proliferation of this approach is reflective of a philosophy that EPA articulated in a report issued in the mid-1990's:

> EPA does not produce widgets, maintain parks, or fight wars. EPA's products are information-based products, whether they be rules,

> environmental education, new science, or enforcement actions...Information that is cared for as an asset, that is treated as a trust for all staff, EPA's partners and the public, is the ultimate weapon in EPA's mission to protect the environment.[1]

While this reference to information as a "weapon" raises some concern, the assumption that agencies like EPA can and should employ information dissemination in pursuit of their missions is now widely accepted. Over the last ten years, the government's expanded use of the Internet has matured into the concept of "E-Government". In essence, agencies are now expected to exploit the powers of computing and electronic networking to enhance services, open up new sources of information to the public and make agency operations more efficient.

A wide variety of federal agencies now maintain complex, multi-faceted Websites. Some of the most basic functions of government are now being transacted in the electronic medium, including reporting, rulemaking and permitting. Through innovative sites like FirstGov.gov, the federal government is aligning agency sites and providing more effective public access to a wide range of government information sources.

The Congress has supported these developments with funding and a variety of statutes setting the expectations for what should be done. Over the last several years, Congress has enacted laws such as the Electronic Freedom of Information Act, the Government Paperwork Elimination Act, the Electronic Signatures in Global and National Commerce Act and the E-Government Act, all of which were designed to facilitate some aspect of "E-Government".

The move toward E-Government is a positive trend that offers benefits to a wide variety of parties. There is, however, an essential policy that must be a central element of the E-government framework: a commitment to high-quality information.

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[1] U.S. EPA, *Providing Information to Decision Makers to Protect Human Health and the Environment: Information Resources Management Strategic Plan,* EPA Pub. No. 220-B-95-002, at 30 (April 1995).

Without that commitment to quality, the value of E-Government will be lost to everyone. The users of information will be short-changed. Those who are characterized by government information may experience unfair economic harm. Policymakers in agencies and the Congress can make unwise choices if they rely on faulty data. Indeed, government information continues to enjoy a presumption of validity in the public's mind that carries with it a special responsibility for quality to make sure that this reputation is warranted.

Over the last several years, the importance of information quality has been recognized in a variety of agency and Congressional initiatives. Yet none of these efforts have been as comprehensive or systematic as the effort to enact and implement the IQA. This statute is now the centerpiece of the effort to bring a commitment to quality to the expanding world of E-Government. Thus the IQA plays an essential role that must be maintained and refined over time.

In our view, the IQA is one of the core "good government" laws of the Information Age, which should be thought of in the same vein as the Freedom of Information Act (FOIA).

**The IQA and the OMB Guidelines Establish a Reasonable Set of Core Policies**

Everyone can endorse "information quality" as an important value. Yet this term is amenable to differing interpretations. One of the key roles of the IQA and its implementing guidelines is the translation of "information quality" into a set of concrete principles. Through a two-year process that began after the IQA's passage, OMB and the agencies have crafted a reasonable set of standards that reflect a common sense ethic about what information quality should mean.

These standards for information quality emphasize data accuracy and transparency in analytical work. For example, the OMB Guidelines introduced the standard of "reproducibility" in analytical work, as a refinement of the statutory standard of "objectivity". This obligation to assure "reproducibility" means that agencies must explain the methods and assumptions used in their analyses with sufficient clarity to allow someone else to replicate the analysis and thereby understand how an agency reached its conclusions.

The IQA's emphasis on assuring transparency of agency analyses and conclusions is a particularly important aspect of the law. This emphasis further underscores the IQA's alignment with FOIA. The IQA assures that the rationale for the government's conclusions are disclosed, while FOIA assures public access to government documents.

As another means to assure objectivity of information, the OMB Guidelines have emphasized the value of peer-reviewed scientific information. Agencies are called upon to use best available peer-reviewed data and to employ best available methods for collecting information. This obligation does not unnecessarily constrain agencies, recognizing that they must rely upon "available" information to reach conclusions.

The statute and OMB Guidelines have drawn the scope of the IQA broadly, applying its terms to most agencies and most forms of information dissemination. OMB has been criticized for including information arising in a rulemaking within the scope of the IQA. Certainly the substantive and procedural provisions of the IQA are most clearly needed for the non-regulatory actions that agencies take, such as public Websites, where no such standards exist.

Nonetheless, OMB was also correct to recognize that the same standards of quality should also apply to information used in rulemaking. Information used in a rulemaking can have a life of its own, independent of the particular rule under development. For example, an inaccurate characterization of a product as unsafe by a government agency can have immediate impact in the marketplace. Application of the IQA's procedural provisions to information used in rulemaking does raise some issues about how those provisions should be reconciled with the rulemaking procedures of the Administrative Procedure Act. The OMB Guidelines have developed a workable solution for reconciling these parallel sets of procedures.

Perhaps the most important aspect of the IQA is that it makes customer needs a central focus of the law. The standards for the "objectivity" and "utility" of information each emphasize the need to communicate effectively with all interested audiences, including the general public. This responsibility goes beyond the need to offer accurate

information. Agencies must also put information in context and make it understandable to a wide audience.

In contrast to most pre-existing federal laws on information management, the IQA offers a *procedural* mechanism to assure that agencies are responsive to customers. Interested parties are explicitly given an opportunity to "seek and obtain" correction of information that does not meet the IQA standards. Most federal agencies have now established such procedures, including deadlines for action, appeal rights and public Websites documenting the progress of individual correction requests.

In essence, the IQA is recognizing a public right to high-quality information from government. This right is made tangible by the procedural protections of the statute and the OMB Guidelines. This is an extremely important aspect of the IQA that must be maintained and fairly implemented.

These basic principles of the current IQA represent common sense. They reflect mainstream values about what the government should be providing the public. In fact, many Americans have probably assumed that these obligations have been part of the law for some time. Importantly, the IQA establishes neutral principles that do not favor one faction over another. In this sense, the IQA is a statute for everyone.

**Several Issues Need Special Attention in the Continuing Implementation of the IQA**

Given the mainstream values embodied in the IQA, it has been somewhat surprising that this law has generated so much debate. The continuing controversy surrounding the IQA is additionally surprising because many of the concerns that were initially expressed about the law have not materialized during the last three years since the OMB Guidelines were issued.

The record does not show that agencies have been overwhelmed by correction requests. There also is little evidence to suggest that the IQA has derailed many rulemakings or stalled public access to information as a general matter.

Nonetheless, criticisms of the IQA continue. This controversy is likely to diminish over time if certain implementation issues can be resolved. We believe that resolution of the following issues would greatly enhance the long-term success of the IQA:

***1. The IQA's Scope and Remedies***

The IQA's obligations apply to information that is disseminated to the public. Under OMB's Guidelines, an agency "disseminates" information when it publicly presents information that the agency has adopted or endorsed.

Recent interpretations of the IQA by the agencies have suggested that certain publicly available documents are not subject to the IQA if they are considered to be preliminary documents for review, such as a draft risk assessment. Similarly, agencies have ruled that certain agency planning documents that are intended primarily for intra-agency review are not subject to the IQA, even though copies of such documents have been provided to the public.

These interpretations have the potential to erode the broad applicability of the IQA. Once agencies begin to circulate documents containing agency conclusions, the impact of those documents, including public reliance on the conclusions in the documents, will begin. The fact that an agency may attach a label such as "draft", "preliminary" or "planning" to the document does not necessarily negate the impact of the document. This is particularly true when such a document remains in place for some time. For example, EPA has issued various versions of its cancer risk assessment guidelines. Despite the fact that these versions of the cancer guidelines carried a "draft" label, they were used as operative EPA policy throughout Agency and state programs for many years.

It is not surprising that agencies will look for opportunities to narrow the scope of the IQA's applicability. Such efforts will, however, be resisted strongly by interested parties who seek broad applicability of the law's principles. Until the full scope of the IQA is clarified, controversies will continue.

The question of what constitutes an appropriate remedy for an IQA problem has been a particularly volatile issue. Much of the controversy surrounding the IQA can be traced to disagreements in this area.

The IQA addresses the quality of information. This means that the remedy for an IQA problem is an "informational" remedy. In some cases, data needs to be modified to be more accurate. In other cases, further explanation is needed to put information in context. In rare cases, where information is fundamentally flawed, it may be necessary to remove data from public Websites.

The remedy for an IQA problem, however, is not the withdrawal of a regulation. While information violating the IQA standards may have been used as a justification for a particular rule, the legal remedies for changing the rule itself must be defined under the organic statute authorizing the rule and the Administrative Procedure Act. This distinction between *information* in a rulemaking and the *rule itself* has become confused in some correction requests that have been filed. As a result, critics of the IQA have mistakenly seen the law as an industry tool to attack federal regulations.

Similarly, the IQA does not dictate a particular philosophy for how agencies must define the public interest in making decisions in areas of scientific uncertainty. The IQA applies to scientific assessments, but the OMB Guidelines simply call on agencies to use best available peer-reviewed data in reaching decisions. This common sense directive requires agencies to make reasonable judgments based on such data. It does not eliminate agency discretion to act or reach judgments to protect health or the environment in the absence of complete information.

The issues about the scope and remedies of the IQA are now being debated in the context of individual correction requests. Some of these debates may have to be resolved in the courts. Until these issues are resolved, the practical meaning of the IQA will remain uncertain.

### *2. The Appropriate Level of Accountability and Oversight*

A statute like the IQA will not lead to significant change in agency information management practices until it is clear how compliance with the law will be assured. As a practical matter, this becomes a question of who in the agencies will be accountable for the law's implementation and who will oversee agency behavior.

At the agency level, it has not been clear what internal management systems have been put in place to assure that the IQA's standards will be met. What efforts have agencies undertaken to provide for staff training about the law? What set of incentives and disincentives have agencies established to assure staff compliance? How have the IQA standards been woven into the fabric of agencies, including matters of planning and budgeting?

An important strategic question in this regard is who has lead responsibility for implementation of the IQA in an agency and what powers have been given to that leader to assure that there are consequences associated with noncompliance with the law. For example, is the IQA steward a "gatekeeper" to the agency's Website to assure that only information meeting the law's standards will be posted electronically?

At an Executive Branch level, OMB clearly has the lead responsibility to assure compliance with the statute. To assist this oversight role, OMB has required agencies to report on correction requests that have been filed. While this is a logical first step in an oversight function, a focus on correction requests alone does not provide a deeper insight into how agencies are assuring compliance with the law. For example, it does not provide OMB with an understanding of the internal management systems that agencies will be using to assure compliance.

At a broader level of oversight, the important question is the availability of judicial review of agency decisions to deny correction requests. A few IQA disputes have progressed to the courts, resulting in initial decisions denying judicial review of such agency decisions. It will take some time before this question is completely resolved through the courts.

The availability of judicial review for IQA correction requests is a fundamental matter that will ultimately determine the success of the law. We believe that judicial review should be available for several reasons. Judicial review is one of the best safeguards to assure compliance with law. Federal administrative law establishes a presumption in favor of judicial review for agency actions. Such review has historically been allowed for decisions under information management laws like FOIA. There is no compelling reason to treat decisions under the IQA differently.

Furthermore, the availability of judicial review, even if it is only invoked infrequently, provides an appropriate incentive to the agencies. Agency staff are busy and must make choices about what legal mandates deserve the greatest attention. The availability of judicial review is a signal that the Congress and the courts take a law seriously. Federal law includes a variety of statutes that are essentially hortatory in nature, creating no agency consequences for non-compliance. Such mandates are least likely to draw agency commitment and resources.

At all three levels described above, there is substantial uncertainty. Without further clarity about the system of accountability and oversight for the IQA, we will not know whether the law will be taken seriously.

### *3. Systemic Change to Improve Information Quality*

If this committee were to examine implementation of the IQA five years from now, we would have to conclude that the law had not achieved its potential if the primary discussion was about the status of correction requests. The IQA establishes a general mandate for agencies to assure information quality in all of its work. In most agencies this will require various forms of systemic change to achieve the statutory goals.

OMB has recognized the need for agencies to build information quality into the fabric of their work. In particular, the OMB Guidelines call upon agencies to establish mechanisms for "pre-dissemination review" to assure that the standards of the IQA are met before information is disseminated to the public. OMB anticipates that such review is built into each stage of information development, rather than being a late-stage "clearance" process.

Little information is available on how agencies are implementing this aspect of the IQA standards. Yet this mandate is one of the most fundamental needs. While the availability of information correction mechanisms is useful, everybody's interests are served if agencies "get it right the first time." This avoids misunderstanding and the sometimes high transaction costs of correcting the record once misinformation has been broadly disseminated.

An important question that deserves further inquiry is how agencies are responding to evidence of systematic errors in their information systems. Have they identified patterns of errors and what efforts are they undertaking to avoid repeated mistakes?

As an example, EPA has been working for over a decade to improve the quality of the "identification" information about facilities, such as the facility's name, address, geospatial coordinates and technical contacts, that is displayed in the Agency's public Websites. Despite significant efforts, including innovative software and networking with the states, substantial errors continue to occur.

For example, EPA has posted a Website called Enforcement and Compliance History Online, which presents reports on the environmental compliance record of over 800,000 facilities. When the site was first posted, EPA received almost 7,000 correction requests. Roughly half of the requests involved incorrect facility identification information. As a result, some companies have been listed for violations at facilities that they do not own.

The crux of this problem is not a question of technology. The problem arises because EPA continues to allow its various programs to maintain independent databases that collect the same facility identifier information at different times in different ways. Inconsistencies are inevitable in these circumstances.

Within a few weeks, the National Academy of Public Administration will be publishing a report that documents this problem and recommends constructive solutions. CEEI participated in the development of this report, along with a cross-section of public interest groups, state agencies and academic experts. This is a good example of a situation where

systemic changes, the kinds of management changes that the IQA can foster, can bring together the interests of many different parties.

In conclusion, we urge this committee to continue to inquire into the implementation of the IQA. This law addresses a critical need of the E-Government era with common sense principles. In particular, we suggest that the committee provide leadership when needed on the issues outlined in this testimony to assure that the larger objectives of the IQA are served.

Thank you for the opportunity to address the committee.

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Mrs. MILLER. Thank you very much.

Next is Jeffrey Ruch. I hope I am pronouncing that correctly. Since 1997, Mr. Ruch has been the executive director of the Public Employees for Environmental Responsibility. Mr. Ruch was one of the founders of the PEER organization, and in its first 4 years he served as the general counsel and program director. Prior to his creating PEER, Mr. Ruch was the policy director and a staff attorney at the Government Accountability Project, and for the 17 years leading up to this he was involved in California State government.

Mr. Ruch, we welcome you to the committee and look forward to your testimony.

**STATEMENT OF JEFF RUCH**

Mr. RUCH. Thank you, Madam Chair. And I would like to begin with the note that you sounded in your opening statement concerning transparency, and note that there is an inherent conflict between values of transparency and policies that require an administration to only speak with one voice. In the Federal Government, if you only speak with one voice, that means that 1.8 million voices must be stilled. And in the case of science or other technical matters, where the answers aren't always clear-cut or in Black and White, that can lead to an awful lot of unanticipated consequences. I just want to note one.

We recently uncovered documents that the EPA's science arm, Office of Research and Development, now has a $5 to $10 million budget for public relations activities that is designed to enhance its corporate image, aid in product placement, and aid in marketing. We are unclear as to what role public relations has with respect to public science.

But more fundamentally, the issue I think that this subcommittee should be concerned with is that in Federal service now, truth is a firing offense. So that employees can be fired for accurately providing information of high utility and integrity. A key example—which is an Interior agency, not one of the three, but this case has a shadow over the entire Department of Interior, and we think, the Federal Government—involves the chief of the Park Police, Teresa Chambers, who was fired for her remarks as an official spokesperson confirming information that had been provided to a reporter by a union.

To the extent that those kind of cases stand, it has a chilling effect and makes it difficult for people to speak openly and provide any measure of transparency in Federal service.

Now, specifically with respect to the quality of information, I think as my testimony tried to make clear, in our perception, the quality of information disseminated and relied upon by the Federal Government is deteriorating, and the root causes of those are several. One is that scientists and specialists have almost no legal protection for raising problems. So, for example, questioning the methodology or the utility or the accuracy of a study is the sort of thing that can lead to disciplinary action for which truth is no defense.

Second, even for those that have whistleblower protections, the whistleblower protections have now been limited to people that go outside the chain of command, so that specialists who raise problems inside the agency can be legally retaliated against for staying

within the chain of command. Almost perversely, the only way you get legal protection is by going outside the chain of command. So, these issues can't be elevated. It is difficult to create a paper trail so that the general citizenry can raise issues of transparency.

And, finally, as we document in the testimony, we see a growing agency culture that rewards dissembling and dishonesty so that in instances where the agency has been found to have been less than candid, even to the point that there is a decision that the agency's action has violated the law, in more cases than now, the responsible official is rewarded or promoted.

Turning to the Information Quality Act, we likened it to a bucket in a rowboat that is sinking. Now, a bucket is a good thing, but your rowboat is still going to sink. The law has certain qualities, but in the face of these overwhelming kinds of pressures, it really doesn't do much good.

First, one key weakness it has is that the Information Quality Act requires the consent of the violator in order to work. We point to the Army Corps of Engineers, which completely ignores all Data Quality Act requirements; yet, there is no sanction.

Second, there is absolutely no standard for what constitutes quality information and there is no consistency. We pointed to examples in the Fish and Wildlife Service, where the director, for no reason at all, ignored the panel of scientists that had been convened to oversee the review. And if asked in questions, I can give you other examples where this becomes a problem.

And, third, there is no followup. With respect to the panther example, the agency announced the next day that no decision would be changed by the Data Quality Act decision. The key documents are still in place, and will be in place until the end of the year, and maybe longer. The director who made the decision resigned and put implementation in the hands of the official he overruled. And the scientist who filed the challenge with us was fired. So, if that is a victory, I guess I could be spared further victories.

With respect to recommendations, besides addressing the whistleblower issue, first, we strongly urge you to look at existing information quality laws, like NEPA, the Endangered Species Act. These are far more meaningful measures and checks against information inaccuracy. Second, we very strongly urge that you look at the absence of protections for public employees who come to Congress and provide you information. Those employees can be fired without any legal recourse. And, finally, we think that something needs to be done to address the agency culture that rewards those that dissemble.

In conclusion, we think that unless Congress itself takes the quality of information seriously, the quality of information won't improve. Thank you.

[The prepared statement of Mr. Ruch follows:]

# Testimony of Jeff Ruch
## PEER Executive Director
## "Improving Information Quality in the Federal Government"
**Subcommittee on Regulatory Affairs**
**House Committee on Government Reform**
**July 20, 2005**

Good morning. My name is Jeff Ruch and I am the Executive Director of Public Employees for Environmental Responsibility (PEER).

PEER is a service organization dedicated to protecting those who protect our environment. PEER provides federal, state, local and tribal employees dedicated to ecologically responsible management with a safe, collective and credible voice for expressing concerns. Headquartered in Washington, D.C., PEER has a network of ten state and regional offices. Most of our staff and board are former public employees who left public service after experiencing ethical conflicts within their former agencies.

On a daily basis, public employees in crisis contact PEER. In our D.C. office alone, we average five "intakes" per day. A typical intake involves a scientist or other specialist who is asked to shade or distort the truth in order to reach a pre-determined result, such as a favorable recommendation on a project or approval; of commercial release of a new chemical.

From PEER's perspective, the federal government is suffering from a **severe disinformation syndrome.** The level of official dissembling from federal environmental and resource agencies has never been worse.

Today, I will outline the dimensions of this disinformation syndrome, trace some of the dynamics that drive this syndrome, examine the slight effectiveness and profound weaknesses of one tool, the Information Quality Act, and recommend key remedial steps.

### I. The Disinformation Syndrome

The cases that PEER sees increasingly involve agencies manipulating scientific or other technical conclusions to fit a preset political agenda. Moreover, as detailed below, employees who try to expose falsehoods often lose their careers while managers who deliberately sanction official falsehoods more often than not are rewarded or promoted and are rarely, if ever, punished.

Admittedly, the employees who seek out PEER are a self-selected sample. Employees come to PEER to report dysfunctions or retaliation. In that respect, PEER sometimes resembles a battered staff shelter. Scores of individual cases do not necessarily represent an overall agency culture. As a means of obtaining a broader perspective for determining how intense and widespread these pressures have become, PEER, in partnership with the Union of Concerned Scientists (UCS), has undertaken a series of surveys of federal agency scientists. I believe that the results should be of interest to the Subcommittee.

This past February, we released the results of a survey of biologists, ecologists, botanists and other science professionals working in U.S. Fish & Wildlife Service (USFWS) Ecological Services field offices across the country The survey posed 42 questions that had been selected by a committee of current and former agency staff to gauge current perceptions of scientific integrity within the USFWS, as well as political interference, resources and morale. Despite agency directives not to reply—even on their own time—nearly 30% of all the scientists returned surveys yielding the following results:

- Nearly half of all respondents whose work is related to endangered species scientific findings (44%) reported that they "have been directed, for non-scientific reasons, to refrain from making jeopardy or other findings that are protective of species;"

- One in five agency scientists revealed they have been instructed to compromise their scientific integrity—reporting that they have been "directed to inappropriately exclude or alter technical information from a USFWS scientific document;"

- More than half of all respondents (56%) reported cases where "commercial interests have inappropriately induced the reversal or withdrawal of scientific conclusions or decisions through political intervention;" and

- More than a third (42%) said they could not openly express "concerns about the biological needs of species and habitats without fear of retaliation" in public while nearly a third (30%) felt they could not do so even inside the confines of the agency. Almost a third (32%) felt they are not allowed to do their jobs as scientists.

In essays submitted on the topic of how to improve the integrity of scientific work at USFWS, one biologist wrote, "We are not allowed to be honest and forthright, we are expected to rubber stamp everything. I have 20 years of federal service in this and this is the worst it has ever been." By far, the most frequent concern raised by the scientists in the written responses was political interference.

A number of the essays spoke to the climate of fear within the agency. One biologist in Alaska wrote, "Recently, [Department of Interior] officials have forced changes in Service documents, and worse, they have forced upper-level managers to say things that are incorrect…It's one thing for the Department to dismiss our recommendations, it's quite another to be forced (under veiled threat of removal) to say something that is counter our best professional judgment."

One manager wrote, "There is a culture of fear of retaliation in mid-level management. If the manager were to speak out for resources, they fear loss of jobs or funding for their programs." And a biologist from the Pacific region added that the only "hope [to correct the record is that] we get sued by an environmental or conservation organization."

These results strongly suggest that political science, not biology, has become the dominant discipline in today's Fish & Wildlife Service. While political pressures within Fish & Wildlife Service have been particularly intense, especially on issues relating to threatened and endangered species, we do not believe that this agency is unique with regard to manipulation of scientific information.

This past June, PEER and UCS released the results of a similar survey of scientists within the National Oceanic & Atmospheric Administration Fisheries Service. While NOAA Fisheries resides within a completely different Cabinet agency, the results paralleled those from within the Interior Department:

- A strong majority (58%) said they know of cases in which high-level Commerce Department appointees or managers "have inappropriately altered NOAA Fisheries determinations;"

- More than one third of respondents working on such issues (37%) have "been directed, for non-scientific reasons, to refrain from making findings that are protective" of marine life;

- Nearly one in four (24%) of those conducting such work reported being "directed to inappropriately exclude or alter technical information from a NOAA Fisheries scientific document;" and

- More than half of all respondents (53%) are aware of cases in which "commercial interests have inappropriately induced the reversal or withdrawal of NOAA Fisheries scientific conclusions or decisions through political intervention."

In essays submitted on the topic of how to improve the integrity of scientific work at the agency, once again the predominant concern raised by the scientists was political interference. One biologist wrote, "It seems that we are encouraged to think too much about the consequences and how to get around them, rather than just basing our recommendations on the best available data." Another added, " . . . it is not uncommon to be directed to not communicate debates in writing. I have also seen written documents that include internal discussions/debate purposefully omitted from administrative records with no valid reasoning."

In both USFWS and NOAA Fisheries, official spokespersons dismissed these results and suggested that the survey methodology was flawed. Notwithstanding the fact that hundreds of agency scientists reported scientific manipulation, neither agency deemed it valuable to explore the matter further. These official responses only reinforce the perceptions that debate, let alone dissent, is unwelcome within the federal ranks,

particularly among scientists who come from disciplines that are supposed to value disputation and rigorous examination.

While we know of few official surveys on precisely these topics, those that we do know about produced outcomes that paralleled the results produced by the PEER/UCS surveys. A previously unpublished internal survey of Food and Drug Administration scientists, that PEER obtained through the Freedom of Information Act, closely tracks the concerns raised by the agency's own Associate Director for Science and Medicine in the Office of Drug Safety, Dr. David Graham, in testimony before the Senate this past November.

The Health and Human Services Office of Inspector General conducted the survey in late 2002 as part of a management review of how the agency was meeting stringent deadlines for approving new drugs. OIG polled 846 FDA scientists, with nearly half (47%) completing the survey. Survey findings included the following:

- Nearly one in five scientists (18%) said that they "have been pressured to approve or recommend approval" for a drug "despite reservations about the safety, efficacy or quality of the drug;"

- Less than one third of scientists (29%) felt that the "work environment" at FDA allowed wide leeway for "expressions of differing scientific opinions related to" new drug application decisions, while 21% said the work environment offered little or no room for dissent, with fully half (50%) answering that scientific dissent was allowed only "to some extent"; and

- Less than one in five (17%) felt the agency had "adequate procedures in place to address scientific disagreements" to a "great extent," while 45% felt adequate procedures existed only to "some extent" and more than a third (38%) said procedures for resolving dissent existed only to a "small extent" or "not at all."

## II. Factors Driving the Disinformation Syndrome

In PEER's view, three major factors are contributing to the declining state of truthfulness in federal agencies:

### 1. Whistleblowers Lack Adequate Legal Protection

The House Government Reform Committee is currently reviewing legislation to strengthen the distressingly weak Whistleblower Protection Act. I will not reiterate that discussion in this testimony except to note that scientists who raise concerns about the quality of studies or the validity of findings often have no legal protection at all.

In the federal civil service, scientists have little protection against reprisal for delivering accurate but politically inconvenient findings. For example, the practice of "good science" is not recognized as protected activity under the federal Whistleblower Protection Act, unless 1) the scientist is reporting a falsification that violates a law or

regulation; or 2) the scientific manipulation itself creates an imminent danger to public health and safety.

Absent those unusual circumstances, a disclosure of a skewed methodology or suppression of key data is treated as if it were a policy dispute, for which the disclosing scientist has no legal protection or standing.

In 2003, nearly half of the federal civilian workforce lost traditional civil service protections (in the Departments of Homeland Security and Defense). In these agencies, the emerging management regime resembles a private sector, at-will employment system. Scientists in these agencies can easily be fired, de-funded, transferred or otherwise redirected simply because the results of their scientific work cause political displeasure.

The only body of law that protects government scientists is the handful of environmental statutes, including the federal Clean Air and Clean Water Acts, that protect disclosures made by any employee, public or private sector, that further the implementation of those acts. Scientific disclosures falling outside of these eight laws, however, lack similar legal protection.

Senator Dick Durbin (D-IL) has introduced a bill that wiould prohibit political tampering or censorship of government science and protect scientists who blow the whistle on abuses. The bill is a companion to the House "Restore Scientific Integrity" bill introduced earlier this year by Rep. Henry Waxman (D-CA) and Bart Gordon (D-TN).

**2. Agencies Reward Lack of Truthfulness**

The other side of the whistleblower coin is the fabrication on which the whistle is being blown. In PEER's experience, it is rare that agency fabricators are ever punished. To the contrary, it is common for official fabricators to be rewarded and promoted. In the U.S. Forest Service, the phrase describing this phenomenon is "Screw up and move up."

The reason behind this perverse dynamic seems evident: managers who dissemble to achieve a pre-determined result are simply doing the bidding of the agency's top political appointees. To convey just how widespread this "lie to succeed" culture has become in federal service, consider the example of the Forest Service. Successful environmental litigation against the Forest Service usually revolves around an agency action that a federal court has found to be "arbitrary and capricious" or "lacking a rational basis."

Thus, in order for a non-profit group to prevail against the government in a challenge under statutes like the Endangered Species Act or the National Environmental Policy Act, that group, in essence, must show that the government is proceeding on almost a complete absence of factual basis. The way these small non-profit groups successfully meet this heaviest of burdens in civil jurisprudence is by demonstrating that the agency falsified its own scientific record, ignored its own specialists, and produced a decision document or finding that gets laughed out of court.

How often does this happen? In the Forest Service it happens about once every two

weeks. According to an internal memo obtained by PEER, the Forest Service lost 44 court cases during the past two years in which the agency was found guilty of violating environmental laws by a federal court. The list of 44 cases, covering the period 2003 and 2004 fiscal years, is limited to cases where the court found both that the Forest Service violated the law and that its position could not be "substantially justified." In those instances, the agency was ordered to pay the attorneys fees of the environmental group bringing the lawsuit. As a result, the Forest Service has made payments to environmental groups totaling $2.2 million over the last two years.

The agency figures point to a growing rate of court rulings against the agency, with 27 adverse rulings in FY 04 and 17 adverse rulings in FY 03. An online search of federal court decisions in cases where the Forest Service was a defendant showed 10 adverse rulings in 2002 and only 4 in 2001. The totals for prior years were even smaller with the highest total for any year going back to 1994 being 3 adverse rulings. The list of 44 cases understates the extent of violations by the Forest Service in that it does not include cases that were settled by the agency in order to avoid adverse rulings. Nor does it include cases that were thrown out on technical grounds even though substantive environmental violations occurred.

More disturbing than the rulings is that, to our knowledge, not a single Forest Service manager was transferred, disciplined or suffered any discernible negative career consequences for committing deliberate environmental violations where a federal court found that the agency official acted in the face of overwhelming evidence to the contrary. In other words, the Forest Service appears to reward its line managers for breaking the law.

**3. Congressional and Other External Oversight Has Diminished**

With unfortunately very few exceptions, Congressional scrutiny of the quality of information disseminated, used or relied upon by federal agencies is in marked decline. Without going into the reasons for the lack of willingness or ability of Congressional committees to act as a meaningful check on incorrect information issued by the Executive Branch, suffice it say that agency whistleblowers who approach committees with cases of misinformation face long odds of success – or survival.

Outside of Congress, a federal employee may approach the U.S. Office of Special Counsel. Sadly, the performance of this office has been far less than special, especially of late. According to the figures released by Special Counsel Scott Bloch, in the past year the Office of Special Counsel dismissed or otherwise disposed of 600 whistleblower disclosures where civil servants have reported waste, fraud, threats to public safety and violations of law (100 disclosures are still pending). The Special Counsel has yet to announce a single case in which he has ordered an investigation into the employee's charges.

To put those numbers in perspective, in 700 cases where federal employees reported fraud or abuse from 2000 through 2003, none have moved forward. There are no official reports of what, if any, action occurred as a result of employee whistleblower disclosures

in 2004 and 2005. It seems that a federal employee would have better chances of winning the Powerball lottery than of getting a problem redressed by the Office of Special Counsel.

Lastly, there is the agency Inspector General. The "IGs," however, are under no compulsion to investigate complaints of false or fraudulent agency documents, even when an agency employee makes a formal complaint. If it decides to investigate, an IG is under no deadline to finish a report, and some investigative reports are kept in draft or un-releasable status for years. Moreover, an IG can reframe the issue it decides to investigate and report back on a question that is not the focus of the original complaint. PEER has seen instances where employees who make complaints to an IG themselves become the subject of the IG investigation. Further, on technical or scientific questions, the IG often does not have the resident expertise to undertake an inquiry. And finally, even if the IG identifies a false or fraudulent study or record, it has no power to do more than recommend its correction.

Consequently, a federal employee who seeks to correct an incorrect federal document, especially on any matter of political import, faces daunting odds.

## III. Pros and Cons of the Information Quality Act

### 1. Overview

In 2000, Congress enacted a provision commonly referred to as the Data Quality Act or the Information Quality Act (IQA). It was enacted without hearings as part of an omnibus measure (Section 515 of the FY 2001 Treasury and General Government Appropriations Act; PL106-554). Today's hearing, five years after the fact, is, I believe, the first Congressional hearing on the IQA.

The IQA directed the President's Office of Management and Budget (OMB) to establish government-wide standards in the form of guidelines designed to maximize the "quality," "objectivity," "utility," and "integrity" of information that Federal agencies disseminate to the public. The Act also required agencies to develop their own conforming data quality guidelines, based upon the OMB model.

I believe I was invited to testify today because PEER is one of the few non-industry organizations to make use of the IQA. PEER has used the IQA to assist federal scientists seeking to stop their agencies from perpetuating a fraud. We think other progressive and public interest organizations should be using the IQA. Perhaps, this is a distinctly minority viewpoint among organizations in which PEER is commonly in coalition. As stated earlier, PEER is a service organization for public employees; as such, we do not feel that we have the luxury of using only laws that are considered politically correct in seeking to help our clients.

In the handful of scientific challenges where we have employed the IQA, no better procedural avenue presented itself to achieve the results sought by our employee clients.

Compared to the other avenues of oversight described above, the IQA has certain advantages:

1. It allows the scientist/complainant to frame precisely the grounds for rescinding, removing or disclaiming a particular document or study;
2. The agency rules require it to respond within a time certain. In some instances, the agency reply is the first time the agency will have gone on record in response to the issue raised in the complaint;
3. If the agency rejects the challenge, the rules allow the complainant to appeal;
4. The appeal is usually decided by officials not involved in the issuance of the document that is the subject of the complaint; and
5. The entire exchange of complaint, response, appeal and final decision is a matter of public record.

**2. Weaknesses of the IQA**

In PEER's assessment, the IQA is better than nothing, but only slightly.

The frailties of the IQA reflect the fact that it was a last minute rider stuck onto an omnibus bill with no hearings or debate. The Act reflects the drafting of corporate authors who apparently viewed the mechanism of an IQA challenge as a way to monkey wrench regulation. Presumably, this is why the principal users of the IQA have thus far been industry groups.

Notwithstanding this usage pattern, the IQA is a weak law that essentially consists of a process to formally request that an agency correct itself. As detailed below, the Act has no teeth, requires no consistency and lacks follow-through mechanisms to ensure that the same "mistake" does not recur.

**A. Requires the Violator to Discipline Itself**

A classic example of how meaningless the IQA is to federal operations can be found the U.S. Army Corps of Engineers. In PEER's experience, no agency is more anathema to requirements that its studies display "quality," "objectivity," and "integrity" than the Corps. Unsurprisingly, the Corps has not even adopted IQA rules. An IQA challenge against a Corps document must be filed with the Department of Defense.

Just last week, the House of Representatives passed Water Resources Development legislation authorizing an estimated $2.5 billion in new construction to accommodate barge traffic on the Upper Mississippi River and the Illinois Waterway.

In 2000, the Corps economist for this project, Dr. Donald Sweeney, filed a whistleblower disclosure saying top commanders had altered key numbers in an effort to "cook the books" so that the project would appear justified. A Pentagon investigation upheld the whistleblower and two generals were disciplined. In the wake of that scandal, the Corps announced a "restructured" study. But at the heart of the restructured study are economic models that have been severely criticized by three separate panels of the National Academy of Sciences and even by President Bush's OMB.

In 2003, PEER filed an IQA complaint that the Corps ignored. The Corps also ignored the appeal that PEER filed for lack of responsiveness. After several months, PEER filed a complaint in federal district court which we abandoned after the Corps issued a new but equally flawed successor draft to its Upper Mississippi River and Illinois Waterway Navigation System Study.

Despite the scandal and the cascade of critical reports, the House overwhelmingly defeated an amendment to make the project authorization contingent on reliable information indicating future growth in barge traffic.

If Congress repeatedly demonstrates that it does not care about the quality of information that the Executive agencies serves to it, no tinkering with the IQA will make a difference.

**B. No Consistency Required**

The experience with the Corps demonstrates that some agencies completely ignore the IQA. Other agencies, however, are at least going through the motions of compliance.

PEER has filed two IQA complaints with the U.S. Fish & Wildlife Service, each producing completely dissimilar results.

In May 2003, PEER charged that USFWS relied on false information when it determined that Rocky Mountain trumpeter swans do not constitute a distinct population segment, thereby blocking an effort to protect the rare swans under the Endangered Species Act. The previous January the Service published a 90-day Finding in response to a lawsuit seeking to designate the Tri-state Population of trumpeter swans as a Distinct Population Segment. The finding concluded that there was no "substantial information" to justify a listing. More to the point, the finding also allowed the agency to authorize swan hunters in Utah to shoot trumpeters, which had previously been protected.

In order to support this finding, the Service produced and relied primarily on a previously unpublished study that directly contradicted decades of biological understanding of the Tri-state Population. The PEER complaint detailed how the study failed to meet the most basic standards of the Information Quality Act:

- While the IQA requires that the Service rely on peer-reviewed studies, the primary basis of the finding had never been evaluated, or even read, by trumpeter swan experts;

- The study omitted important available data that contradicted the authors' thesis; and

- The authors used politically driven language and sweeping generalizations that were not supported by data.

In fact, the study's lead author complained that the Service distorted her conclusions. In a March 7, 2003 letter to USFWS Director Steve Williams, biologist Ruth Shea argued that the Service "wrongly cites" the study "while omitting any mention of that report's real conclusion."

The PEER complaint asked that the Interior Department remove the original 90-day Finding. The agency initially rejected the complaint and PEER appealed.

This was to be the very first appeal under IQA that USFWS handled. Per its rules, the agency empanelled three scientists who had not been involved in the trumpeter swan decision to review the matter. In November 2003, the panel issued a recommendation in PEER's favor. That recommendation sat on the desk of then-Director Steve Williams until March of the next year.

In a one-page letter dated March 26, 2004, Director Williams overruled his scientific panel and rejected PEER's appeal. Williams did not explain his reasons, nor did the IQA require him to do so.

Nonetheless, the Director ordered the challenged agency's work to undergo a "peer review process." In other words, Mr. Williams ruled the data was not broken but that he would fix it right away.

Soon thereafter, another organization filed a lawsuit under the Endangered Species Act to force a federal listing of the trumpeter in Greater Yellowstone. Due to the lawsuit, the agency shelved even the Pyrrhic peer review that it had promised.

Less than two months later, PEER filed a second IQA complaint with USFWS. This complaint was filed jointly with PEER by one of the agency's own scientists. It charged that the U.S. Fish & Wildlife Service was knowingly using flawed science in assessing the habitat and population of the endangered Florida panther. Studies relied upon by FWS to make decisions about proposed development in Southwest Florida inflated panther population and inaccurately minimized habitat needs.

The principal problems cited by the complaint included —

- Equating daytime habitat use patterns (when the panther is at rest) with nighttime habitat use patterns (when the panther is most active);
- Assuming that all known panthers are breeding adults, discounting juvenile, aged and ill animals; and
- Using population estimates, reproductive rates, and kitten survival rates not supported by field data.

That summer, the agency rejected the complaint and PEER and the USFWS scientist appealed. In November, USFWS fired our co-complainant, Andrew Eller, Jr., an 18-year

biologist, who had spent the past ten years working in the Florida panther recovery program.

As with the trumpeter swan challenge, the agency created a three-scientist panel to review the appeal. Again, the panel found in our favor. This time, Director Williams agreed with the panel. In a letter dated March 16, 2005, Williams formally conceded that his agency had been using flawed science in assessing the habitat and population of the endangered Florida panther and ordered the Southeastern Regional Office to effectuate the requested relief.

This seeming victory was mitigated by several factors. Just ten days earlier Director Williams indicated he would resign. His letter to PEER about the IQA decision was formally released on the Monday morning following his very sudden departure. I highly doubt that if the same decision were before Matt Hogan, the acting USFWS Director, or even Dale Hall, who President Bush just nominated to serve as the next Director, the decision would have been the same.

Moreover, on the day that it was released, the USFWS Southeastern Regional Office held a press conference in which it announced that not one single decision or biological review would change as a result of the decision. So, despite an admission of that its key population and habitat assessment measures were significantly inaccurate, the agency intends to continue approving mega-developments in the shrinking, tattered habitat of the endangered Florida panther without skipping a beat.

As of today, the USFWS still has not delivered the relief sought by the IQA complaint. Instead, according to a statement on the Southeastern Regional Office website, they hope to have a revised document ready for comment on December 31, 2005.

Despite the IQA decision that vindicated him, the USFWS did not reinstate Andy Eller. Eller was finally restored to his former pay-grade in a settlement that PEER reached with the agency in late June 2005.

To our knowledge, no responsible official was ever disciplined Instead, the central official in the affair has reportedly received a Meritorious Service Award.

**C. No Enforcement Mechanism**

As the foregoing discussion illustrates, nothing in the IQA forces the agency to implement the corrective action that it promises in any sort of timely fashion. Even in cases where the agency has issued disclaimers, there is little to prevent the agency from continuing to base decisions on the disclaimed documents.

In short, the IQA produces meaningful relief only if the agency feels like giving it.

## IV. Recommendations

The underlying problem is one of corruption – intellectual corruption where heads are turned the other way so long as disinformation delivers the desired result. This corruption is fed by ideology more than money. In this sense, the federal government today is thoroughly corrupt.

The most important measures for cleaning up the corruption and improving the quality of information in the federal government have little to do with the IQA. The following three simple steps would go a long way, in our judgment, to increasing the factual content of official documents:

**1. Stop Punishing Civil Servants for Telling the Truth**

As laws are written and implemented currently, the fact that a public servant was trying to stop his or her agency from lying is almost no defense.

We have lost sight of the fact that federal employees work for the taxpayer, not a particular bureau or department. Civil servants work within agencies not for agencies and owe their ultimate allegiance to the public.

As the case of U.S. Park Police Chief Teresa Chambers amply illustrates, agencies are aggressively punishing their employees for telling the truth without permission. In the Chambers case, the Interior Department has made up a new undefined category of "sensitive" information, the disclosure of which will result in termination. The resulting chill on candor even has a name: "the Chambers Effect."

Last August, the U.S. Department of Interior Office of Inspector General published a survey in which it found that agency workers live within in a "culture of fear" where "hatchet people" mete out punishment based on office politics. The Inspector General sent its survey out to more than 25,000 employees, including supervisors, human resource managers and lawyers, in agencies such as the National Park Service, Bureau of Land Management and the Fish & Wildlife Service. Nearly 40% of those who received surveys responded, with key results including—

- More than one quarter of staff fear retaliation for reporting problems;
- A solid majority do not see the disciplinary system as being fairly administered on a consistent basis; and
- Nearly half believe that discipline is taken on the basis of whom the person knows rather than what they did.

The federal workforce is literally scared to death. There can be no hope of improving the quality of federal agency information if the specialists within the agencies face termination if they dare to try.

**2. Congress Should Stop Being Content With Being Lied To**

If agencies can lie with impunity to Congress, why should they be expected to tell anyone else the truth?

During the past several months there have been instances where scientists and other experts were constrained from communicating findings directly to Congress. The most prominent instance involved Richard Foster, the Medicare actuary who was ordered under threat of termination not to reveal that the Bush Administration's prescription drug benefit plan would cost an additional $150 billion over previous estimates. A deceived Congress narrowly passed a huge bill, the true implications of which are only now being realized.

In its subsequent review of that case, the Congressional Research Service (CRS) opined that the restrictions on Foster violated prohibitions against interfering with the communication by a federal employee to Congress (Lloyd Lafollette Act, 5 U.S.C. § 7211 and § 618 of the Consolidated Appropriations Act, 2005, PL 108-477). The Government Accountability Office came to a similar conclusion.

The problem was what to do about this blatant violation of the right to communicate with Congress. A review of those prohibitions shows that Congress envisioned the denial of appropriated funds for such violations but Congress failed to provide a means for invoking that sanction. Without a way to enforce it, the law becomes merely a rhetorical prop.

Members of Congress were reduced to asking then HHS Secretary Tommy Thompson to withhold the salary of one of his top deputies. Not surprisingly, Secretary Thompson demurred.

PEER would suggest that Congress allow for citizen suits to recover appropriated funds misused in restricting communication directly from the salaries paid to officials who violate this law. This somewhat personal sanction would yield a very public benefit.

**3. Government Officials Should Be Held Responsible When They Lie or Deliberately Disregard the Truth**

Under Sarbanes-Oxley, corporate CEOs are held personally responsible for the annual reports that they sign. This notion should be expanded to include federal officials as well.

At the very least, in cases where federal courts have issued adverse rulings based upon an agency's arbitrary and capricious action, the responsible official should actually be held responsible, in the form of a disciplinary action that would be a permanent part of his or her personnel record.

Why would Congress want to reward, promote and honor officials who violate the very statutes that they are sworn to uphold? Today, such officials have a much better chance of career advancement than those who insist on following the law.

Until the time that there is more than a remote chance of some personal, negative career accountability for approving official documents that do not pass even minimal litmus test of reliability and accuracy, Congress should have no expectation that the quality of federal agency data will improve.

## V. Conclusion

While certain members of the Subcommittee may be more interested in strengthening the provisions of the IQA, such actions would have marginal impact, at best. Making the IQA subject to the Administrative Procedure Act, and thus subject to judicial review, would help curb some arbitrary agency decisions. It would not address the fundamental problems, however.

When your rowboat has a hole in the bottom, having a bigger bucket will help you bail water faster, but even with the new, big bucket, you will still sink. Similarly, a stronger IQA in the absence of steps that protect those who tell the truth and punish those who lie will not keep one's head above a deluge of disinformation.

Thank you for this invitation to testify.

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Mrs. MILLER. Thank you very much.

Our next panelist, our next witness is Mr. William Kovacs. Mr. Kovacs is a vice president of Environment, Technology, and Regulatory Affairs with the U.S. Chamber of Commerce. His principal responsibility is to be the officer responsible for developing U.S. Chamber policy on topics such as environment, energy, natural resources, agricultural and food safety, and regulatory and technology issues. Prior to joining the Chamber of Commerce, Mr. Kovacs spent nearly 20 years practicing in private practice. He is a recognized expert on environmental policy.

We certainly look forward to your testimony today. We appreciate your attendance before the committee, and the floor is yours, Mr. Kovacs.

**STATEMENT OF WILLIAM KOVACS**

Mr. KOVACS. Thank you, Madam Chair. I am going to submit my testimony for the record and just summarize it.

We really appreciate you having the oversight hearings on information. Everyone needs good information. Everyone, not just the business community or Congress, but even the agencies. The reason we care so much is the fact that regulatory compliance costs are estimated at about $850 billion annually. To put that in perspective, all the corporations in the United States pay about $123 billion in corporate taxes. So when you have 4,100 regulations a year, and 191,000 regulations total, we see it as something where, if we are going to spend this kind of money, we need to get it right because we need to direct our resources to the right place.

Having said that, the Data Quality Act is certainly in its formative stages. The outcome as to its effectiveness is unknown, but I can say—and after listening to the agencies, I think I probably need to emphasize it—resistance by the agencies is certainly common. And the resistance falls in two areas. One is that they have determined that the Data Quality Act is not reviewable by any court, and, second, because it is not reviewable, the determination of what is good quality data rests with the agency. So if those two points are correct, then the Data Quality Act really will not be very effective.

Having said that, the U.S. Chamber has decided that because of the concerns we have for making sure there is good scientific data, we have undertaken two actions: one, which is a hard-nosed action against the Department of Health and Human Services, which was just here, and that is now in litigation, and I will explain that a little bit; and the second is the data inconsistency petition which we have with EPA, and there we have taken a much more cooperative—although they may not view it that way, we have taken a much more cooperative position.

On the salt litigation, what we have done here is we have asked HHS, on the sodium study—and the reason we picked sodium was it is something that affects, salt affects everyone in the public. And they have come out with some guidelines, which say lower salt intake actually benefits everyone, all sub-populations. And we have seen data that contradicts that. But that wasn't the point. The point was, what we did is we asked them, under the Data Quality Act, to produce the data so that we could take the data and repro-

duce the data to see if we could get the same scientific result. That is one of the provisions of the act. HHS denied all of the data to us at all points in time.

At that point we decided to sue them, and the defense is, as I have mentioned before, that the agency has discretion and the act is not judicially reviewable. If they win—and it is going to be argued later this year in the Fourth Circuit—the Data Quality Act has very little effect on this.

Data inconsistency was the reason we picked this particular issue—and we took a totally different approach. We aren't hard-nosed on this. We took 16 of the data bases of EPA, and on the data bases they had different values assigned to the same chemical. So, for example, you could have chemical X in the ChemFate data base having a value of 1. I am really simplifying this. And in a Transport data base chemical X could have a value of a billion.

Now, the reason why these data bases are important is they apply to every single risk assessment. These are the data bases that apply to every risk assessment, every cleanup, and all of the chemicals that are presently allowed to go on the market. So in terms of having a broad, national impact, you are talking about all of the data that is used to actually make health decisions. So we thought, because of that—it was so simple—that we had to take it.

Now, with this particular data, we decided we were going to be cooperative. This wasn't going to be a game of "gotcha." We weren't going to hide anything. We filed the petition and we gave all of the scientific data to EPA and we said, look, your data bases are different. We think you need to involve NIST and USGS and other people, because they use these data bases. The EPA flatly refused us.

We did a petition for reconsideration, which has been mentioned. We sent it out for a scientific study and the ground rules on our scientists were as follows: you have complete independence to determine this data is inconsistent and you have complete independence to determine whether this data is good; you have complete independence on making this data public, which we did to EPA; and you have complete independence to publish it.

And we can now say that it has all been completely peer reviewed, and it has been accepted and will be published by the Journal on Environmental Science and Technology, one of the prominent journals in the world. And this is a public issue. They have to get them straight.

Now, my conclusions—as I run out of time—one is neither approach, whether it be the hard-nosed litigation approach or the cooperative approach, has worked. In both instances the agencies have appeared to resist. Two, if we prevail on the salt litigation, then the Data Quality Act will mean something; there will be judicial review and the guidelines imposed by OMB will be meaningfulness.

If we don't obtain judicial review through the courts, then we are in a position where Congress has to decide either to give us judicial review or live with the discretion that the agencies have over data.

And, finally, we have recommended that EPA bring forward this interagency working group. You have agencies like NIST and the

Geological Survey that have great expertise in this area and really could help us get these data bases or be consistent and correct.

Thank you very much.

[The prepared statement of Mr. Kovacs follows:]

**STATEMENT OF WILLIAM L. KOVACS**
**VICE PRESIDENT**
**U.S. CHAMBER OF COMMERCE**
**BEFORE THE**
**COMMITTEE ON GOVERNMENT REFORM**
**SUBCOMMITTEE ON REGULATORY REFORM**
**U.S. HOUSE OF REPRESENTATIVES**
**ON THE SUBJECT OF IMPROVING INFORMATION QUALITY IN THE FEDERAL GOVERNMENT**
**JULY 20, 2005**

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Madam Chairman, members of the subcommittee, thank you for inviting me to testify on "Improving Information Quality in the Federal Government." I am William Kovacs, Vice President of the Environment, Technology, and Regulatory Affairs division at the U.S. Chamber of Commerce. The Chamber is the world's largest business federation, representing more than three million businesses of every size, sector, and region.

The quality of information that the public relies on when making decisions is a matter of importance to all of us. For me to have confidence that my decisions are sound, I must first have good information. This is just plain common sense. Similarly, members of Congress must be able to rely on their staffs, as well as the Congressional Research Service, to provide good information. In the business sector, tens of billions of dollars are spent to secure good quality information for decision making. Why then shouldn't we expect U.S. government agencies to do the same? That is, why shouldn't we expect government agencies to utilize good information when developing regulations and disseminating information that impacts our lives, businesses, and institutions? After all, since the cost of regulation is estimated at approximately $850 billion annually,[1] the government must assume some responsibility that its mandates are supported by good quality data. Doesn't that make sense?

The Information Quality Act (IQA) seeks to ensure that our government's decisions are based on good quality data. The IQA requires federal agencies to ensure and maximize the quality, objectivity, utility, and integrity of disseminated information and establishes a system whereby interested parties can seek correction of erroneous, disseminated information. The Chamber has been a strong proponent of the IQA, because by utilizing sound data, we can assure ourselves that, as a nation, we are focusing our resources on the problems that need to be addressed, and that our decisions are based on good quality information.

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[1] W. Crain and T. Hopkins, *The Impact of Regulatory Costs on Small Firms*, Report RFP No. SBAHQ-00-R-0027, for the Office of Advocacy, U.S. Small Business Administration (July 2001).

Before turning to the specifics of my testimony, let me address a mischaracterization of the IQA raised by those who oppose its implementation. The IQA has frequently been derided as a tool of industry, which critics claim is being used to conduct an "end-run" around environmental and employee safety regulations. One particularly vociferous critic has even charged that agencies *can't afford the time or expense of revamping [incorrect data]. Correcting the errors would take EPA away from other priorities.* Nothing could be farther from the truth. The IQA is designed to promote integrity in the agency decision making process, and to enhance the accuracy of the data underlying government regulatory decisions. As such, the IQA is a tool for everyone—from businesses to environmentalists to citizens—providing all an equal opportunity to correct faulty government data, and promoting confidence in government decision making. Moreover, because of the difficulties in mounting an IQA challenge, agencies have received very few substantive petitions for correction.[2] Truth be told, it is hard work developing a data quality petition. It requires conducting complex factual and scientific research, obtaining expert opinions, and understanding a myriad of federal regulations. Perhaps this is why so few data quality petitions have been filed. Notwithstanding these number counting exercises, in the end, the data used by federal regulators must be correct; if it is not, then every activity that uses the flawed data will have flawed results.

While the available facts establish that application of the IQA is not overly burdensome on federal agencies, there remain questions about the efficacy of the IQA. Federal agencies have strongly resisted compliance with the IQA. They have taken the position that it is not judicially reviewable and that determinations about the quality of

[2] Some individuals have argued that the IQA is just another tool for regulatory obstruction. But is it? According to FY 2003 annual agency reports sent to OMB, 19 federal agencies and departments received 24,619 requests for correction. This may seem like a burdensome number, however, it isn't. This is because, of these requests, 24,433 were submitted to the Federal Emergency Management Agency (FEMA) for minor revisions and amendments to flood insurance rate maps. FEMA typically receives thousands of such requests year in and year out. With the advent of the IQA, FEMA has processed such requests through its information quality process. As such, the IQA did not stimulate these requests; rather it merely provided an alternative means to address them. Similarly, of the 89 correction requests received by Department of Transportation, 87 concerned individual data items on motor carrier safety reports. The point of these statistics is that excluding FEMA, 18 federal agencies and departments received just 186 requests for correction. OMB deemed 30 to 40 substantive in nature, and only eight influential. Of the eight influential requests for correction, four were denied outright, one was partially addressed through a process change, and three were still pending at the close of the FY 2003 reporting period. In other words, the regulatory process has not come to a grinding halt as a result of being swamped by correction requests submitted by business and industry stakeholders. This fact contradicts those who view the IQA as a tool for regulatory obstruction.

data used by an agency are solely within the discretion of the agency.[3] Simply put, agencies want sole discretion over what data to use, regardless of whether it is the best data, or even correct data.

Because of the importance that the Chamber attaches to the government's use of good quality data, it has undertaken two significant data quality challenges that aim to address agency resistance to the IQA. First, the Chamber has filed a challenge to data disseminated by the United States Department of Health & Human Services (HHS) concerning the relationship between salt and hypertension. This "salt litigation" seeks to establish the judicial reviewability of the IQA. Second, the Chamber has filed a data inconsistency correction request with the United States Environmental Protection Agency (EPA) over numerous chemicals listed in its various databases. The problem is essentially this: depending on which database you look in, you will find vastly different numerical values for the same chemical when these values should be exactly the same. These discrepancies among the databases disseminated by EPA create significant, arbitrary differences in risk assessment outcomes and enforcement activities.

I will briefly discuss each of these important IQA challenges in turn.

**SALT LITIGATION**

On April 15, 2005, the Chamber filed an Appellate Brief with the 4th Circuit Court of Appeals as part of the Chamber's litigation against HHS. The litigation stems from the agency's denial of the Chamber's IQA petition, which included a request for disclosure of information that the agency relied on in concluding that salt has significant adverse health effects on the general population. HHS denied the petition, as well as a

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[3] A June 10, 2002, memorandum from John Graham, Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget to the President's Management Council, discusses the "appeals mechanism" for IQA denials. In the memo, issued at the time most agencies were in the process of developing their IQA Guidelines, Graham states that by agencies asserting in IQA Guidelines that IQA denials are not judicially reviewable doesn't necessarily make it so. Specifically, he states that *agencies should be aware that their statements regarding judicial enforceability might not be controlling in the event of litigation.* Graham goes on to say: *We note, in this regard, that a number of agencies emphasize that their guidelines are not intended to provide any right to judicial review. A few agencies even stress that their guidelines may not be applicable based on unspecified circumstances and that the agency may be free to differ from the guidelines where the agency considers such action appropriate. Regardless of what kinds of litigation-oriented disclaimers the agencies may include, agency guidelines should not suggest that agencies are free to disregard their own guidelines. Therefore, if you believe it is important to make statements that your agency's guidelines are not intended to provide rights of judicial review, we ask that you not include extraneous assertions that appear to suggest that the OMB and agency information quality standards are not statements of government-wide policy, i.e., government-wide quality standards which an agency is free to ignore based on unspecified circumstances.*

See also, Brief for the Appellee at 30, Salt Institute v. Michael O. Leavitt, 345 F. Supp. 2d 589, No. 05-1097 (4th Cir., 2004), in which the U.S. Department of Justice states, *It is well established, however, that an agency's reports and other statements lacking the force and effect of law do not constitute final agency action within the meaning of the APA.*

subsequent administrative appeal, insisting that its recommendation on salt intake was scientifically sound while and has steadfastly refusing to make the requested information available, which would allow the public to test the quality of HHS data against the conclusions drawn from it. For this reason, the Chamber, together with the Salt Institute, sued the agency seeking, among other things, to compel release of the information for use in determining the reproducibility of the HHS findings. The lawsuit also a ruling that whether the IQA is judicially reviewable.

The district court dismissed the lawsuit for lack of standing and also held that an agency's disposition of an IQA-based information and correction request is solely within the discretion of the agency. The Chamber is appealing the court's decision, arguing that the IQA creates information rights that become judicially enforceable under the Administrative Procedure Act after there has been final agency action on an IQA petition and appeal. The National Association of Home Builders and the Grocery Manufacturers of America have also filed amicus briefs with the 4th Circuit on this issue.

If the district court's decision is reversed on appeal—as the Chamber believes it will be—the decision will enable parties to seek judicial review of an agency's final disposition of IQA petitions. Conversely, if the Chamber does not prevail in its court challenge to establish judicial reviewability of the IQA, Congress will then either have to provide for judicial review, or accept the contention that federal agencies have sole discretion over the quality of information disseminated to the public and to Congress.

**DATA INCONSISTENCY**

A second initiative of the Chamber concerns data inconsistencies within databases and models disseminated by EPA. This information is used, for example, in understanding how chemicals are distributed in the environment, in performing risk assessments, and in determining remedial measures for contaminated sites and natural resource damages.

The Chamber, through a request for correction filed with EPA, set forth comparisons of different databases showing that the data disseminated by the agency is inconsistent and faulty. The Chamber also provided evidence demonstrating how the use of such faulty data can cause the unnecessary expenditure of tens of millions of dollars in cleanup costs at a contaminated site. The Chamber suggests that such unwarranted costs aggregated over all the uses to which such data are employed would amount to the unnecessary expenditure of billions of dollars without a corresponding amount of protection for health and safety. In its request for correction, the Chamber cited questionable databases that are used, for example, to assess the environmental impacts of groundwater contamination, leaking underground storage tanks, MTBE in ground water, Superfund hazardous waste cleanups, occupational exposures, and natural resource damage claims. To appreciate the extent of such activities, consider that there are more

than 12,000 active and inactive Superfund sites in the United States. There is little doubt that improving the faulty data could lead to better regulatory decisions; reduce uncertainties; mitigate the prospect of time-consuming litigation; and reduce instances in which scarce resources (time and capital) are wasted addressing the wrong problem, or the right problem in the wrong way.

In its request for correction, the Chamber asked that the erroneous data be corrected. To understand the complexity of the correction request, it is necessary to recognize that there are two types of problems with the disseminated databases and models: [1] there are data inconsistencies among them; and [2] even leaving aside the data inconsistencies, the databases and models contain erroneous data and data of uncertain quality, and being able to assure that all the individual data associated with the databases and models are reliable is a challenging undertaking.

Data inconsistency is relatively easy to understand. It occurs when the same chemical has a different numerical value depending on which database you are looking at. For example, in the ChemFate database, one particular property parameter, $K_{ow}$ for total PCBs,[4] is assigned a value of 7,900, whereas in the Soil and Transport Fate database, the same $K_{ow}$ for total PCBs is assigned a value of 169 million. Both values cannot be right, and the choice of which value to use will ultimately result in vastly different assessments and remediation costs when applied to real world cleanup decisions.

Unfortunately, making the data in the databases consistent is only the first step. The initial data selected must also be reliable. Assuring this latter objective is a more difficult undertaking. To understand the problem in simple terms, imagine that in one database the price of a quart of milk is listed as $10 million and in a second database the price of a quart of milk is listed as $5. Officials responsible for establishing consistency between the two databases meet and subsequently revise the two databases, but now in each database the price of a quart of milk is listed as $15,000. So there is certainly consistency—both databases yield the same answer—but the answer happens to be wrong, as a quart of milk certainly doesn't cost $15,000. Analogously, problems with the data entries in databases and models disseminated by EPA need to be addressed, because many, if not most, of the data entries in the databases are not well established. In fact, one request the Chamber made to its consultant, Cambridge Environmental, was to check EPA's original research to determine if appropriate data values were properly reflected in the databases. The conclusion regarding the several values considered was that information reported in original research was not properly taken into consideration, and this is reflected in incorrect data entries in the disseminated databases and models.

[4] $K_{ow}$ is a coefficient representing the ratio of a compound in octanol (a non-polar solvent) to its solubility in water (a polar solvent). It is generally used, for example, as a relative indicator of a tendency of an organic compound to absorb to soil.

### HOW TO ADDRESS THIS PROBLEM

The Chamber believes that addressing this problem requires developing and applying an agreed upon standard methodology for critical review of data—something that, as required by Congress, the National Institute for Standards and Technology does so well and which has also been done by the U.S. Geological Survey. This is why assembling a federal interagency work group to look at the problem would be a desirable course of action, as the intellectual expertise of federal employees who understand this issue is resident collectively among various government agencies. The Chamber contends that such an interagency group could establish an efficient process for forward progress on this matter.

### CHAMBER PROVIDED EPA WITH ALL THE CHAMBER'S INFORMATION

This is not a game of "gotcha." Getting the data right is a serious matter with consequences potentially impacting every risk assessment developed by government, every environmental cleanup, and every natural resource damage claim. It will even impact what new chemicals can go on the market. Recognizing the seriousness of this issue, the Chamber provided EPA not only with petitions, but also with the research it had commissioned from Cambridge Environmental, including all attachments and a copy of a key study performed by the U.S. Geological Survey. The Chamber gave EPA all of its research, including simple, clear examples of the data inconsistencies.

### EPA'S RESPONSE – A REFUSAL TO CONSIDER THE FACTS

EPA's response to the Chamber's correction request literally ignored the issue raised. EPA responded that:

1. The databases and models in question are individually in conformance with the EPA's Information Quality Guidelines.
2. It temporarily removed one database from its web site, but did not acknowledge any problems.
3. Some databases were superseded by new databases (an action that is not guaranteed to fix the problem).
4. A valid reason for differing values among databases is site-specific conditions.
5. Ownership of databases and models resides with contractors or third parties, and the responsibility for correctly using them and determining the quality of the data therein rests with the user, not EPA.
6. Disclaimers have been attached to, or made in regard to, certain databases and models.

**THE CHAMBER SENT EPA'S RESPONSE BACK TO CAMBRIDGE ENVIRONMENTAL FOR REVIEW**

Cambridge Environmental found that:

1. Database and model errors cannot be explained away by invoking site-specific conditions. Such conditions account for only a small portion of the variances in the data.
2. Peer review was poor, in some instances, did not occur at all, and in other cases the wrong information was used.
3. Databases that supersede older databases are not necessarily correct, because errors propagate from one information source to another.
4. EPA funded the development of databases and models whose reliability it failed to properly assess.
5. In various ways, EPA disclaimed responsibility for the quality of disseminated information. One such example of disclaimer language is: *This software and the accompanying files are provided as is and without warranties whether expressed or implied. The user assumes the entire risk of using the program.*[5]

In sum, EPA refused to examine inconsistencies among disseminated models and databases; refused to accept responsibility for the quality of the models and databases it disseminates, instead passing accountability to contractors, third parties, or users of the databases and models or issuing disclaimers; and failed to adequately peer review the databases and models. This is both arrogant and irresponsible.

* * * * *

Madam Chairman, the Chamber can provide Congress with all of the written information developed on this issue that has been communicated to federal government officials, including expert reports and attachments. Moreover, for the record, the Chamber was informed on July 12, 2005, by Igor Linkov of Cambridge Environmental, that the Cambridge Environmental study was submitted to the prestigious journal, *Environmental Science & Technology,* and has been successfully peer reviewed and accepted for publication.

**CONCLUSION**

In conclusion, the Chamber remains hopeful that the courts will affirm the judicial reviewability of the Information Quality Act in the near future. As to the problems among databases and models that EPA disseminates, the Chamber suggests that the administration or Congress establish an interagency panel that includes the National

[5] Refer to footnote 8 of the Chamber's April 11, 2005 *Request for Reconsideration* of the Chamber's *Request for Correction.*

Institute of Standards and Technology, the U.S. Geological Survey, and other federal agencies that use the disseminated information. The purpose of the interagency panel will be to examine how physical chemical property data associated with disseminated databases and models can be critically reviewed to improve their reliability.

I thank this committee for the opportunity to present the Chamber's views and recommendations about the Information Quality Act and its utility.

Mrs. MILLER. Thank you. I appreciate that.

Our final witness has been to our committee on a previous issue, and we certainly welcome him back, and that is Mr. Sidney Shapiro. Mr. Shapiro is a University Distinguished Chair in Law at Wake Forest University and is a national scholar and expert in administrative law and regulatory policy. Mr. Shapiro received his bachelors from the Wharton School of Finance at University of Pennsylvania and his juris doctorate from the University of Pennsylvania Law school in 1973.

Mr. Shapiro, the floor is yours, sir.

**STATEMENT OF SIDNEY A. SHAPIRO**

Mr. SHAPIRO. Thank you, Madam Chair.

You mentioned that the IQA predates you. In late 2000, in fact, Congress enacted the IQA as a two paragraph rider buried in an appropriations bill. There were no hearings on the act and no one referred to it during the debate on the larger bill. Moreover, there was not, by any stretch, a consensus that the IQA was necessary at the time of its enactment. There was no evidence that existing mechanisms for the correction of information were inadequate, nor was there any solid evidence that agency information was flawed and in need of correction. I am not denying the regulation is often controversial, but the disputes are almost always about regulatory policy, not the accuracy of data.

Despite the lack of the need for an IQA, its defenders claim it is a modest and useful attempt to vet the information on which Government relies. In March 2005, the Center for Progressive Reform issued a report based on a review of IQA petitions. The report demonstrates that the IQA has much more to do with creating new opportunities to oppose and weaken regulation than the correction of information. The report found eight reasons this was true.

First, regulated entities sought to censor information. These petitions wanted to exclude or withdraw inconvenient information entirely, rather than make some correction.

Second, many IQA petitions challenged agency policy decisions and precautionary policies, rather than claiming some error in technical or scientific data.

Third, other regulatory entities were making an end-run around existing administrative procedures. These petitions attempted to bypass traditional administrative opportunities to raise the same arguments, or, having failed in those opportunities, to raise the arguments once again using an IQA petition.

Four, petitions were filed in an effort to delay already overdue regulatory actions, which had already been the subject of extensive opportunities for public participation.

Fifth, still other regulated entities sought to prevent action in the face of incomplete, but accurate, information. There is a crucial difference between incomplete and inaccurate information. Congress has authorized EPA and other agencies to act before there is complete evidence about risk to humans and the environment. Regulated entities oppose such precautions and seek to camouflage their opposition by claiming incomplete data is the equivalent of poor quality data, which is politically convenient for them but simply not true.

Sixth, additional regulatory entities sought to use the IQA—rather than the Freedom of Information Act, as we have just heard—to seek access to underlying data, even though the IQA gives no access to data.

Seventh, regulated entities claim the IQA amended substantive statutes and created new statutory requirements that an agency has to meet before a regulation can be promulgated, which the act clearly does not do.

Finally, regulated entities sought to sidestep the courts by attempting to discredit information that they could not exclude in judicial trials or would prefer not to encounter in future litigation.

Fortunately, agencies have rejected most of these efforts to undermine the regulatory process, but there is still a cost. The IQA has resulted in delays in decisionmaking and consumption of agency resources that are needed to achieve substantive mandates.

Those who defend the IQA deny it is an effort to oppose regulation because there have been IQA petitions filed by environmental and other pro-regulatory groups. However, most of the IQA petitions—72 percent of them—have been filed by regulated entities or their trade associations. If this pattern continues—and I see no reason it will not—regulated entities will dominate the complaint process and heavily tilt it in the direction of disrupting regulatory programs.

I believe the time has come for Congress to reevaluate the desirability of a separate, unneeded statute to aim at such a vague and ultimately undefinable goal as information quality. I believe that experience to date with the IQA establishes that it should be repealed.

Finally, Madam Chair, if I might, I would like to supplement my testimony with an issue of the American Journal of Public Health, which just came out today. It is about the development of good information in the Government and the politicization of science, and, therefore, I believe it has direct relevance to this committee. Thank you.

[The prepared statement of Mr. Shapiro follows:]

**Testimony of**

**Sidney A. Shapiro**

**University Distinguished Chair in Law**
**Wake Forest University**
**Winston-Salem, North Carolina**

**Scholar**
**Center for Progressive Reform**

**Before the**
**Subcommittee on Regulatory Affairs**
**Committee on Government Reform**
**U.S. House of Representatives**

**July 20, 2005**

**Hearing on "Improving the Information Quality in the Federal Government"**

**Testimony of**
**Sidney A. Shapiro**
**University Distinguished Chair in Law**
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**U.S. House of Representatives**

**July 20, 2005**

Madame Chairman, Ranking Member Lynch, and Members of the Sub-Committee, thank you for the opportunity to testify before you today. My name is Sidney A. Shapiro. I am the University Distinguished Chair in Law at Wake Forest University, Winston-Salem, North Carolina. I have also been the John M. Rounds Professor of Law at the University of Kansas, Lawrence, Kansas. I hold a B.S. in Economics from the Wharton School of Finance and Commerce, University of Pennsylvania, and a J.D. from the University of Pennsylvania Law School. My expertise is in administrative law and regulatory policy. My most recent book is *Sophisticated Sabotage: The Intellectual Games Used to Subvert Responsible Regulation*, published by the Environmental Law Institute Press. I am also the co-author of *Risk Regulation at Risk: Restoring a Pragmatic Approach*, published by Stanford University Press, two law school textbooks on regulatory law and practice and administrative law, as well as a one-volume administrative law treatise. I have published over 40 articles.

I am the author of articles about the Information Quality Act (IQA): One, entitled "The Information Quality Act and Environmental Protection: The Perils of Reform By Appropriations Rider," appeared in 28 WILLIAM. & MARY ENVIRONMENTAL LAW & POLICY REVIEW 339 (2004). The other, "The Case Against the IQA," is forthcoming in the next issue of the ENVIRONMENTAL FORUM.

I am also a Scholar at the Center for Progressive Reform (CPR). Founded in 2002 as the Center for Progressive Regulation, CPR is a 501(c)(3) nonprofit research and educational organization dedicated to protecting health, safety, and the environment through analysis and commentary. CPR is comprised of university-affiliated academics with expertise in the legal, economic and scientific issues related to regulation of health, safety and the environment. CPR believes sensible safeguards in these areas serve important shared values, including doing the best we can to prevent harm to people and the environment, distributing environmental harms and benefits fairly, and protecting the earth for future generations. CPR rejects the view that the economic efficiency of private markets should be the only value used to guide government action. Rather, CPR supports thoughtful government action and reform to advance the well-being of human life and the

environment. Additionally, CPR believes people play a crucial role in ensuring both private and public sector decisions that result in improved protection of consumers, public health and safety, and the environment. Accordingly, CPR supports ready public access to the courts, enhanced public participation and improved public access to information.

**I. IQA Does More Harm Than Good**

There was no solid evidence that data quality was a series problem in the federal government at the time Congress quietly enacted the IQA as a two-paragraph rider buried in an appropriations bill. This is not surprising. Administrative agencies had in place elaborate and time-tested procedures for data verification and correction prior to the IQA.

Despite the lack of need for the IQA, its defenders claim that it is a modest and useful effort to vet information on which the government relies. A March 2005 report by CPR, entitled *Truth and Science Betrayed: The Case Against the Information Quality Act*,[1] (which is available at http://www.progressiveregulation.org/articles/iqa.pdf), finds otherwise.

The case against the IQA is twofold. First, it causes delay and imposes unknown, but likely substantial, opportunity costs. Second, the use of the IQA has very little to do with correcting government information and very much to do with creating new opportunities to oppose and weaken existing and new regulatory controls. Petitions are routinely filed in attempts at:

- *Censorship.* Industry petitioners have tried to exclude or withdraw inconvenient information entirely rather than correct incorrect information;
- *"Correcting" policy.* Many IQA petitions challenge agency policy decisions and precautionary policies rather than technical or scientific information;
- *End running regulations* by challenging decisions, not information, bypassing traditional remedies in those laws;
- *Delaying* already overdue regulatory actions that have already complied with extensive opportunities for public participation;
- *Preventing agency action in the face of incomplete information* — as is frequently the case in environmental law — not poor quality information, as the law is designed to address;
- *Conducting fishing expeditions* by seeking underlying data without complying with Freedom of Information Act procedures, even though the act gives no access to those data;
- *Creating substantive conditions or standards* for rulemaking, implementation, or dissemination not contemplated by Congress; and

[1] Thomas O. McGarity, Sidney A. Shapiro, Rena I. Steinzor, Joanna Goger & Margaret Clune, *Truth and Science Betrayed: The Case Against the Information Quality Act*, Center for Progressive Regulation (March 2005), *available at*: http://www.progressivereform.org/articles/iqa.pdf (last visited 07/11/2005).

- *Sidestepping the courts* by attempting to discredit information that corporate defendants have either been unable to successfully exclude at trial, or would prefer not to encounter in future litigation.

The IQA's defenders point to the fact that there have also been IQA petitions filed by public interest groups. However, most requests (72 percent), are filed by regulated entities or their trade associations. There is little question that over time these entities will dominate the complaint process and heavily tilt it in the direction of disrupting regulatory programs.

The time has come for Congress to reevaluate the desirability of a separate statute aimed exclusively at such a vague and ultimately undefinable goal as "information quality." I believe that experience to date with the IQA establishes that it should be repealed.

**II. A Solution in Search of a Problem**

In late 2000, Congress quietly enacted the IQA as a two-paragraph rider buried in an appropriations bill,[2] although there is really no evidence that there was a serious problem with data quality in the federal government prior to the legislation. OMB's justification for its broad IQA guidelines, for example, has no examples of the government relying on poor quality data.[3] When Mark Greenwood wrote an essay in the *Daily Environment Report* prior to the passage of the IQA, which advocated for a data correction process, he was hard pressed to come up with examples of poor quality information used by agencies.[4]

This failure to find examples of poor quality data is not surprising. Administrative agencies had in place elaborate and time-tested procedures for data verification and correction prior to the IQA. Thus, it is not surprising that CPR Scholar and Professor Wendy Wagner of the University of Texas School of Law has found that "[a]fter more than [30] years of vigorous public health and safety regulation . . . there are surprisingly few examples of EPA using unreliable science or using science inappropriately to support a final regulation."[5] She continues, noting that if one subtracts the instances of "private science," where industry or independent contractors fabricated data in order to support an application for a permit or license, "the examples of regulatory bad science are winnowed down to a few, virtually all of which are contested."[6]

My testimony today, which is based on the CPR report, describes the problems created by the IQA and indicates why these problems justify the conclusion that the Act

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[2] Section 515 of the FY 2001 Appropriations Act, P.L. 106-554, 114 Stat. 2763A-153-154 (December 21, 2000).

[3] *See* OMB, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies*; Republication, 67 Fed. Reg. 8452 (February 22, 2002) (hereinafter, "OMB Guidelines").

[4] *See* Mark Greenwood, *White Paper from Industry Coalition to EPA on Concerns Over Information Programs*, BNA DAILY ENVIRONMENT REPORT (May 4, 1999), *available in* Westlaw, 85 DEN E-1, 1999.

[5] Wendy Wagner, *The "Bad Science" Fiction: Reclaiming the Debate Over the Role of Science in Public Health and Environmental Regulation*, 66 LAW AND CONTEMPORARY PROBLEMS 63, 72 (2003).

[6] *Id.*

does more harm than good. I will describe how the IQA causes delay and imposes unknown, but likely substantial, opportunity costs. I will also demonstrate how use of the IQA has very little to do with correcting government information and very much to do with creating new opportunities to oppose and weaken existing and new regulatory controls.

**III. Causing Delay and Imposing Opportunity Costs**

**A. Delay:** The Act's ability to stall decision-making and consume resources is clear from a look at the first two years of implementation. While OMB stated in its first Report to Congress on the IQA that the number of "substantive correction requests that were responded to was relatively small," a look at the numbers as calculated by OMBWatch reveals a different picture. OMB reported that the agencies had only received 35 correction requests "that appear to be stimulated by the Information Quality Act,"[7] but there were actually 98 substantive IQA petitions filed in fiscal year 2003.[8]

This number of requests might appear manageable if it were divided evenly among the agencies and if the requests merely involved the correction of information on an agency website. However, the bulk of these petitions have been aimed at a few agencies with regulatory powers, particularly EPA. Since the period covered by OMB's report, an additional seventeen petitions have been filed with EPA alone (between October 2003 and June 2005).[9] In addition, there have been at least 23 Requests for Reconsideration (RFR) filed with HHS and EPA alone.[10]

Furthermore, a majority of these requests are lengthy, substantive complaints about scientific judgments and policy that have taken the agency months to answer. For example, it took EPA nearly 9 months to reject a complaint that it was inaccurate to characterize bromate as a likely human carcinogen.[11] It took EPA an additional eight months to uphold its original decision and deny that petitioner's RFR.[12] Similarly, an eleven-page request from the Perchlorate Study Group filed on December 22, 2003 was

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[7] OMB, *Information Quality: A Report to Congress, Fiscal Year 2003* at 8, available at: http://www.whitehouse.gov/omb/inforeg/fy03_info_quality_rpt.pdf (last visited 07/11/2005) (hereinafter, "OMB Report").

[8] OMBWatch, *The Reality of the Information Quality Act's First Year: A Correction of OMB's Report to Congress*, DQ-6 (July 24, 2004), http://www.ombwatch.org/info/dataqualityreport.pdf (last visited 07/11/2005) (hereinafter, "OMBWatch Report").

[9] *See Information Quality Guidelines - Requests for Correction (RFC) and Requests for Reconsideration (RFR) Submitted to EPA*, http://www.epa.gov/quality/informationguidelines/iqg-list.html (last visited 07/12/2005).

[10] *See HHS Information Quality Website: Information Requests for Corrections and HHS' Responses*, http://aspe.hhs.gov/infoquality/requests.shtml (last visited 07/11/2005); and *Information Quality Guidelines - Requests for Correction (RFC) and Requests for Reconsideration (RFR) Submitted to EPA*, http://www.epa.gov/quality/informationguidelines/iqg-list.html (last visited 07/12/2005).

[11] Request for Correction from David A. Smith, Ozone Industry (August 18, 2003), http://www.epa.gov/quality/informationguidelines/documents/12385.pdf; EPA Response to Petition (April 28, 2004), http://www.epa.gov/quality/informationguidelines/documents/12385-response.pdf.

[12] Request for Reconsideration from David A. Smith, Ozone Industry (September 23, 2004), http://www.epa.gov/quality/informationguidelines/documents/12385A.pdf; EPA Response to Request for Reconsideration, http://www.epa.gov/quality/informationguidelines/documents/12385A-response.pdf (June 9, 2005).

not answered until September 15, 2004,[13] nearly nine months after the petition was filed, and EPA is still working to respond to the industry group's RFR more than six months after it was filed.[14]

The additional layer of an appeals process, which OMB requires, provides an added mechanism for delay. There have been at least ten RFRs submitted to EPA.[15] While seven months was the shortest period of time to elapse between the filing of a request for correction and resolution of the associated RFR,[16] three petitions took well over a year to finally resolve,[17] and four remain to be answered more than a year after the original petitions were filed.[18]

**B. Opportunity Costs:** While OMB suggests in its first report to Congress that the IQA has not affected the pace or length of rulemakings (without referencing any data to support this conclusion),[19] it also acknowledges that it is taking agencies longer than expected to respond to requests and appeals, taking longer to find the correct personnel to handle the request, and that it is difficult to ensure that personnel have sufficient time to give "priority" to the request,[20] all of which suggest that agencies are hard-pressed to

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[13] Request for Correction, Perchlorate Study Group (December 22, 2003), http://www.epa.gov/quality/informationguidelines/documents/13679.pdf; EPA Response to Request for Correction, http://www.epa.gov/quality/informationguidelines/documents/13679-response.pdf (September 15, 2004).

[14] Request for Reconsideration, Perchlorate Study Group (December 21, 2004), http://www.epa.gov/quality/informationguidelines/documents/13679A.pdf.

[15] *See Information Quality Guidelines - Requests for Correction (RFC) and Requests for Reconsideration (RFR) Submitted to EPA*, http://www.epa.gov/quality/informationguidelines/iqg-list.html (last visited 07/12/05).

[16] Competitive Enterprise Institute, Request for Correction (February 10, 2003), http://www.epa.gov/quality/informationguidelines/documents/7428.pdf; EPA Response to Request for Reconsideration (September 23, 2003), http://www.epa.gov/quality/informationguidelines/documents/7428ResponsetoCEI.pdf.

[17] BMW Manufacturing Corporation, Request for Correction (February 7, 2003), http://www.epa.gov/quality/informationguidelines/documents/7421.pdf; EPA Response to Request for Reconsideration (May 13, 2004), http://www.epa.gov/quality/informationguidelines/documents/7421A-response.pdf; *See also* Chemical Products Corporation, Request for Correction (October 29, 2002), http://www.epa.gov/quality/informationguidelines/documents/2293.pdf; EPA Response to Request for Reconsideration (December 11, 2003), http://www.epa.gov/quality/informationguidelines/documents/2293AResponse.pdf; *and* David A. Smith, Ozone Industry, Request for Correction (August 18, 2003), http://www.epa.gov/quality/informationguidelines/documents/12385.pdf; EPA Response to Request for Reconsideration (June 9, 2005), http://www.epa.gov/quality/informationguidelines/documents/12385A-response.pdf.

[18] *See Information Quality Guidelines - Requests for Correction (RFC) and Requests for Reconsideration (RFR) Submitted to EPA*, http://www.epa.gov/quality/informationguidelines/iqg-list.html (last visited 07/11/05). Requests for Reconsideration filed by the National Paint and Coatings Association, U.S. Chamber of Commerce, National Multi-Housing Council, and Perchlorate Study Group remain unanswered as of July 11, 2005. Dates of the original Requests for Correction submitted by these petitioners are as follows: National Paint and Coatings Association, RFC #04020 filed June 2, 2004; U.S. Chamber of Commerce, RFC #04019 filed May 27, 2004; National Multi Council Housing RFC #04017 filed March 11, 2004; and Perchlorate Study Group RFC #13679 filed December 22, 2003. *Id.*

[19] OMB Report, *supra*, n. 7 at 9.

[20] *Id.* at 10.

simultaneously address IQA complaints and do the other business of the agency. In light of the trade-off, it is difficult to see how the IQA will not delay rulemaking.

OMB further recommends in its Report and directly to agencies that agency scientific and technical staff be increasingly engaged in the IQA process, which will undoubtedly come at the expense of agency scientific and technical involvement in other necessary projects. For example, OMB told the National Institute of Health (NIH) in November, 2004, that it should add three time-consuming steps to its process of responding to IQA complaints about the National Toxicology Program (NTP) after NIH had received six IQA complaints.[21] OMB requested these steps even though it conceded that in its letter to NIH that "NTP already has a rigorous process of scientific deliberation."[22]

OMB did not subject its IQA guidelines to any explicit cost-benefit analysis, and there is very little information available to help the public determine how many agency resources are consumed responding to IQA requests. As OMBWatch pointed out in its report, the agencies' annual reports to OMB, which follow a template developed by OMB, fail to include information on staff or other agency resources.[23] Direct requests by CPR to obtain such information from EPA failed to illicit any further information. In July, 2004, a member of EPA's Office of Environmental Information's Quality Staff responded to a request for resource information by explaining that "[a]t this time, I am not able to provide you with a report on the financial resources or personnel-hours dedicated to responding to the public's request and overall management of the EPA's Information Quality Guidelines (IQG) program."[24] The fact that the costs associated with implementing the IQA are unknown means that the IQA's opportunity cost is also unknown – that is the extent to which other agency programs and initiatives are languishing while resources are diverted to respond to IQA petitions.

**III. New Opportunities to Oppose and Weaken Regulation.**

Besides diverting agencies from their core responsibilities, a review of the petitions filed in the first two years of the IQA indicates that the IQA has very little to with correcting government information and very much to do with creating new opportunities to oppose and weaken existing and new regulatory controls. CPR's review of IQA petitions indicates a number of ways in which the IQA has become a deregulatory tool in the hands of industry petitioners.

**A. Fishing Expeditions:** Petitioners have imposed burdens not contemplated by the Act on federal agencies by seeking to obtain underlying data rather than requesting the correction of information.[25] The IQA explicitly provides that agencies issue guidelines

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[21] Letter from Dr. John Graham, Administrator, OIRA to Dr. Elias Zerhouni, Director, NIH (November 16, 2004), available at: http://www.whitehouse.gov/omb/inforeg/prompt/nih_ntp111604.pdf (last visited 07/11/2005).

[22] *Id.*

[23] OMBWatch Report, *supra*, n.8 at DQ-4.

[24] E-mail from Vincia C. Francis-Holloman, EPA, Office of Environmental Information Quality Staff to Matthew Shudtz, Research Assistant to Professor Rena Steinzor, University of Maryland School of Law (July 1, 2004) (on file with CPR).

[25] *See, e.g.*, Perchlorate Study Group, Request for Correction, 5-11(December 22, 2003), http://www.epa.gov/quality/informationguidelines/documents/13679.pdf; NPC Services, Inc., Petition for

that establish administrative mechanisms allowing affected persons to seek and obtain *correction of information*, but the Act says nothing about providing access to the underlying data. Nevertheless, relying on the "reproducibility" standard set forth in the OMB guidelines for "influential information," petitioners have attempted to use the IQA as a shortcut around established Freedom of Information Act (FOIA) procedures, thus consuming additional agency resources.

**B. Correcting Policy:** Some petitioners have filed complaints for strategic purposes. The Competitive Enterprise Institute (CEI), for example, filed petitions with EPA, the National Oceanic and Atmospheric Administration, and the Office of Science and Technology Policy challenging climate change models used in the National Assessment on Climate Change and seeking withdrawal or exclusion of the models.[26] CEI filed its challenge notwithstanding the fact that the final report had been the subject of hundreds of public comments and exhaustive peer review.[27] Specifically, 300 scientific and technical experts provided detailed comments on drafts of the report.[28] After CEI sought judicial review of agency denials of its petitions, the government agreed to put a disclosure on the NACC that it had not been reviewed according to the standards of IQA.[29] CEI then asserted in a press release that the disclaimer established that the "the National Assessment is propaganda, not science,"[30] a statement which is consistent with the sound science campaign used by industry to attack scientific information used by the government. As the members of the Committee may know, this campaign seeks to convince the public that incomplete information is the same thing as poor quality information, thereby undermining public support for regulation of hazards about which there is reasonable, but incomplete information. By filing and publicizing their IQA

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Disclosure and Correction, 5-6 (August 3, 2004), http://www.epa.gov/quality/informationguidelines/documents/04023.pdf.

[26] See, e.g., CEI Petition to EPA, Request for Response to/Renewal of Federal Data Quality Act Petition Against Further Dissemination of 'Climate Action Report 2002' (February 10, 2003), http://www.epa.gov/quality/informationguidelines/documents/7428.pdf. Similar petitions were filed with the National Oceanic and Atmospheric Administration and the Office of Science and Technology Policy.

[27] Sidney A. Shapiro, *The Information Quality Act and Environmental Protection: The Perils of Reform by Appropriations Rider*, 28 WM. & MARY ENVTL. L. POL'Y REV. 339, 359, n. 114 (2004) (citing Nat'l Assessments Synthesis Team, US Global Change Research Program, *Climate Change Impacts on the United States: The Potential Consequences of Climate Variability and Change* (2000)). *See also*, Thomas O. McGarity, *Our Science is Sound Science and Their Science is Junk Science: Science-Based Strategies for Avoiding Accountability and Responsibility for Risk-Producing Products and Activities*, 52 U. KAN. L. REV. 897, 925 (2004) (noting that the National Assessment on Climate Change had "received extensive peer review and public vetting").

[28] Shapiro, *The Information Quality Act and Environmental Protection: The Perils of Reform by Appropriations Rider*, *supra*, n. 27 at 359, n. 114 (citing Nat'l Assessments Synthesis Team, US Global Change Research Program, *Climate Change Impacts on the United States: The Potential Consequences of Climate Variability and Change* (2000)).

[29] *See* U.S. National Assessment of the Potential Consequences of Climate Variability and Change, http://www.usgcrp.gov/usgcrp/nacc/ (last visited 07/11/02005); *see also* OMBWatch, The OMB Watcher, *First Data Quality Act Lawsuit Filed*, August 11, 2003, http://www.ombwatch.org/article/articleview/1733/1/185 (last visited 07/11/2005).

[30] CEI Press Release: *White House Acknowledges Climate Report Was not Subjected to Sound Science Law* (November 6, 2003), http://cei.org/gencon/003,03740.cfm (last visited 07/11/2005).

complaints, even ones that have no merit, opponents of government regulation support their sound science campaign.

A petition by BMW Manufacturing Corporation challenged EPA's legal determination that the company was in significant non-compliance with the Resource Conservation and Recovery Act (RCRA) after EPA had conducted inspections at a BMW facility and had found violations involving disposal of hazardous wastes.[31] Because the company later came into compliance with RCRA, it sought to have its historical record erased using the IQA. After its petition was denied, BMW sought reconsideration of its petition, and specifically set forth 17 "legal questions" for the appeals panel to review regarding the company's compliance status.[32] One year and three months later, the EPA appeals panel reached the appropriate result and upheld the denial of the original petition, concluding that EPA's decision on the compliance status of a facility was outside the scope of the IQA.[33]

**C. Imposing Substantive Legal Standards:** There is, as noted earlier, no indication that Congress intended that the IQA establish substantive criteria that augments or amends existing regulatory statutes, but industry petitioners have nonetheless asserted such claims. For example, a petition filed by the Center for Regulatory Effectiveness (CRE) and the makers of the most widely used herbicide in the United States, Atrazine, sought to exclude studies on the hormonal effects of the herbicide in frogs from EPA's decision regarding its reregistration because those studies were not subject to EPA-approved testing protocols.[34] There is, however, no such requirement in the Federal Insecticide Fungicide and Rodenticide Act (the statute providing for the registration of pesticides and herbicides) that EPA is barred from considering studies that precede an approved protocol.[35] In this case, the tactic appears to have succeeded since EPA apparently intends to seek additional data concerning whether Atrazine causes the hormonal effects.

The IQA has also been used in an effort to undermine the long-used and universally-employed "weight of the evidence" approach to evaluating environmental problems. This approach necessarily acknowledges that some studies may be more reliable than others, but considers the totality of the information in making judgments rather than eliminating certain studies or pieces of information entirely to the point that there is nothing left upon which to make a decision. By using the IQA to break apart this information into small parts rather than allowing it to be analyzed collectively, petitioners seek to undermine this fundamental approach to determining risks to the environment.

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[31] BMW Manufacturing Corp., Request for Correction (February 7, 2003), http://www.epa.gov/quality/informationguidelines/documents/7421.pdf.

[32] BMW Manufacturing Corp., Request for Reconsideration (November 25, 2003), http://www.epa.gov/quality/informationguidelines/documents/7421A.pdf.

[33] EPA Response to BMW Manufacturing Corp. Request for Reconsideration (May 13, 2004), http://www.epa.gov/quality/informationguidelines/documents/7421A-response.pdf.

[34] Center for Regulatory Effectiveness, Request for Correction (November 25, 2002), http://www.epa.gov/quality/informationguidelines/documents/2807.pdf.

[35] *See* Wendy E. Wagner, *Importing Daubert to Administrative Agencies Through the Information Quality Act*, 12 J. OF LAW & POL'Y 589, 601 (2003).

Other petitioners have filed complaints seeking interpretations of the IQA which are clearly not authorized by Congress but which would inhibit agencies in protecting people and the public if adopted. For example, petitioners have asserted the failure of EPA (and other agencies) to comply with the risk principles set forth in the Safe Water Drinking Act (SDWA)[36] despite the fact that OMB's guidelines direct agencies to "adopt or adapt" the SDWA principles[37] and that EPA (and other agencies) have adapted, rather than adopted, the principles except for when the SDWA directly applies.[38]

Despite the fact that challenges to agency policy positions, judgments and legal determinations are entirely outside the scope of the IQA, OMB and industry petitioners have expanded the reach of the Act to challenge such decisions in a way that consumes untold agency resources, delays crucial action and circumvents existing statutory processes for regulatory decisionmaking.

**D. Subverting Regulatory Processes:** Still other petitioners have used the IQA to raise claims that were previously made in prior proceedings or that the petitioner can make in the normal course of agency proceedings. Such invocations of the IQA flout the intent of Congress as evidenced by the Act's language. The IQA requires each agency to "establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the guidelines issued under the [IQA] . . . ."[39] Rulemaking, however, would be included in the common meaning of the words "administrative mechanism."[40] Notice and comment rulemaking provides extensive opportunities for interested parties to object to information relied on by the agency in the course of developing its proposed regulation, and such procedures are governed by well-established standards of review under the Administrative Procedure Act. Thus the language of the IQA suggests that Congress's intent was for agencies to "establish" "administrative mechanism[s]" where no such mechanisms previously existed. Stated differently, Congress could not have meant the IQA to apply to rulemaking because the requirement that an agency establish an "administrative mechanism" to hear complaints on the quality of information used during the course of a rulemaking is entirely superfluous or redundant.[41]

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[36] *See e.g.*, U.S. Chamber of Commerce, Request for Correction, 7 (May 26, 2004), http://www.epa.gov/quality/informationguidelines/documents/04019.pdf; NPC Services, Inc., Petition for Disclosure and Correction, 5-6 (August 3, 2004), http://www.epa.gov/quality/informationguidelines/documents/04023.pdf.

[37] OMB Guidelines, *supra*, n. 3, § V.3.b.ii.C. *See also* Safe Drinking Water Act Amendments (SDWA) of 1996, 42 U.S.C. § 300g-1(b)(3)(A)& (B).

[38] *See, e.g.*, EPA, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by the Environmental Protection Agency*, October 2002, EPA/260R-02-008, at § 6.4, p.22 http://www.epa.gov/quality/informationguidelines/documents/EPA_InfoQualityGuidelines.pdf (last visited 07/11/2005) (specifying that EPA's adaptation of SDWA principles must be "consistent with Agency statutes and existing legislative regulations).

[39] Section 515(B)(2)(b) of the FY 2001 Appropriations Act, P.L. 106-554, 114 Stat. 2763A-153-154 (December 21, 2000).

[40] Shapiro, *The Information Quality Act and Environmental Protection: The Perils of Reform by Appropriations Rider*, *supra*, n. 27, 365.

[41] *Id.*

Nonetheless, petitioners have filed IQA petitions concerning information they had ample opportunity to challenge during previous regulatory processes.[42] Such petitions may simply be an effort to make the same argument in multiple venues, which slows down the effort to regulate or disseminate information while contributing no useful new information or arguments. Alternatively, as discussed previously, petitioners file IQA complaints, rather than make arguments in the normal course of agency business, because they want to assert that the IQA establishes independent, substantive conditions that an agency must meet before it can regulate or disseminate information.

## IV. Case Studies: The Paint Rule and Devil's Swamp Lake[43]

**A. The Paint Rule:** A petition filed by the National Paint and Coatings Association (NPCA) and the Sherwin-Williams Company illustrates several of the previously explained problems with the IQA. NPCA's request involved a model rule drafted by the Ozone Transport Commission concerning the emission of volatile organic compounds (VOCs) released into the air during the application of thousands of architectural and industrial maintenance paints and coatings.[44] VOC emissions contribute to the creation of ground-level ozone, a pollutant regulated under the Clean Air Act (CAA) because it is associated with such respiratory ailments as shortness of breath, impaired lung function, severe lung swelling and even death.[45] As part of their ongoing efforts to meet CAA standards, several Mid-Atlantic states adopted versions of model rule, tailored to their specific circumstances ("Paint Rule"), after a full rulemaking process. The states then submitted their Paint Rules to EPA, asking that the agency approve the revisions to their CAA plans, and EPA proposed to approve the rules.[46]

The paint industry petition complained about a single spreadsheet among the rather voluminous materials relied on by the states to justify their Paint Rules. The NPCA and Sherwin-Williams argued that some cells of the spreadsheet, which projected the reductions in VOC emissions under the states' rules, were erroneous.[47] In some of the

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[42] *See, e.g.*, National Paint & Coatings Association and Sherwin-Williams, Request for Correction (June 2, 2004), http://www.epa.gov/quality/informationguidelines/documents/04020.pdf; NPC Services, Inc., Petition for Disclosure and Correction, 5-6 (August 3, 2004), http://www.epa.gov/quality/informationguidelines/documents/04023.pdf. Both petitions are discussed at length, *infra*, Section IV.

[43] The legal and factual shortcomings of the IQA petitions filed with respect to the Paint Rule and Devil's Swamp Lake by the National Paint & Coatings Association and NPC Services, Inc., respectively, are explored more fully in CPR's letters to Dr. John D. Graham, Administrator, OMB Office of Information and Regulatory Affairs and the Honorable Michael O. Leavitt, Former Administrator, EPA. The letters are available online at: http://www.progressivereform.org/articles/Paint_DQA_0804.pdf (CPR Response to IQA petition filed with EPA by the National Paint & Coatings Association and The Sherwin-Williams Co.); *and* http://www.progressivereform.org/devil_swamp/Devil_Swamp_Leavitt_Graham.pdf (CPR Response to IQA petition filed with EPA by NPC Services, Inc.).

[44] National Paint & Coatings Association and Sherwin-Williams, Request for Correction (June 2, 2004), http://www.epa.gov/quality/informationguidelines/documents/04020.pdf.

[45] *See* H.R. Rep. No. 101 - 490, at 199 (1990).

[46] See, e.g., EPA, *Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of VOC Emissions From AIM Coatings*, 69 Fed. Reg. 29674 (May 25, 2004).

[47] National Paint & Coatings Association and Sherwin-Williams, Request for Correction, 3-4 (June 2, 2004), http://www.epa.gov/quality/informationguidelines/documents/04020.pdf.

states under review by EPA, the paint industry had raised the identical claim in the rulemaking process and had received thorough responses from the states – albeit not the responses they would have liked – explaining the alleged errors in the spreadsheet, and further explaining that the spreadsheet was by no means the sole basis for adopting the Paint Rule.[48] During the state rulemaking in Delaware, the first of the Mid-Atlantic states to adopt the Paint Rule, the paint industry raised several related arguments, but failed to raise the specific objections to the spreadsheet that would later become a hallmark of their objections to similar rules adopted by other Mid-Atlantic States. NPCA and Sherwin-Williams sued the Delaware Department of Natural Resources & Environmental Control over its adoption of the Paint Rule, but the court rejected the industry's arguments, finding that the state's decision was "supported by substantial evidence."[49]

Unable to convince state agencies and courts of their arguments concerning the state Paint Rules, the industry filed its IQA petition with EPA, arguing that the spreadsheet violated the IQA and that EPA must therefore reject any revision to a state Clean Air Act plan that included such a rule.[50] Thus, in addition to attempting to apply the IQA to *state* rulemakings, the paint industry was also using the IQA as an attack on the weight of the evidence approach used by the states. In the same manner, the industry was arguing that the Act provides substantive standards that limit EPA's authority to act under the CAA. Whether these efforts will succeed is still uncertain. Although EPA ultimately denied NPCA's petition,[51] the industry has filed a Request for Reconsideration[52] and is challenging EPA's approval of the Paint Rule in federal court on IQA grounds.[53]

**B. Devil's Swamp Lake:** A petition filed by NPC Services, Inc.[54] likewise illustrates multiple problems posed by the IQA. NPC was formed by eleven petrochemical companies identified by EPA in the mid-1980s as the parties responsible for contaminating a Superfund site in Devil's Swamp, just north of Baton Rouge, Louisiana.[55] Inside Devil's Swamp sits the man-made Devil's Swamp Lake, a veritable

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[48] *See, e.g.*, New Jersey Department of Environmental Protection, *Rule Adoption, Envtl. Protection, Office of Air Quality Management, Air Quality Regulation Program, Air Pollution Control, Prevention of Air Pollution from Architectural Coatings*, Response to Comment 116, 36 N.J. Reg. 3078(a) (June 21, 2004).

[49] *Nat'l Paint & Coatings Ass'n. v. Delaware Dep't of Natural Resources & Envtl. Control*, 2004 WL 440410, *7 (Del Super. 2004).

[50] National Paint & Coatings Association and Sherwin-Williams Company, Request for Correction, 8 (June 2, 2004), http://www.epa.gov/quality/informationguidelines/documents/04020.pdf.

[51] EPA, Response to NPCA Request for Correction (February 25, 2005), http://www.epa.gov/quality/informationguidelines/documents/04020-response.pdf.

[52] Sherwin-Williams Company, Request for Reconsideration (May 26, 2005), http://www.epa.gov/quality/informationguidelines/documents/04020A.pdf.

[53] *See Sherwin Williams Fighting EPA Approval of State Rules for VOCs in Paints, Coatings*, BNA ENVIRONMENT REPORTER (February 25, 2005).

[54] NPC Services, Inc., Petition for Disclosure and Correction, (August 3, 2004), http://www.epa.gov/quality/informationguidelines/documents/04023.pdf.

[55] *MSOF Corp. v. Exxon Corp., et al.*, 295 F.3d 485, 488 (5th Cir. 2002). NPC was formed by: Exxon Corporation, Exxon Chemical Corporation, USS Chemical Company, Copolymer Rubber & Chemical Corporation, Dow Chemical Company, Ethyl Corporation, Shell Chemical Company, American Hoechst Corporation, Allied Chemical Corporation, Rubicon Chemical Company, and Petro Processors of Louisiana Inc. *Id.*

toxic soup, contaminated by PCBs, lead, mercury, hexachlorobenzene and hexachlorobutadiene,[56] and still used by the surrounding low-income population for subsistence fishing. NPC's petition demanded that EPA in effect withdraw its proposed addition of Devil's Swamp Lake to the Superfund National Priorities List (NPL).[57]

NPC filed its complaint for strategic purposes, despite the fact that EPA had repeatedly stated NPC's members would not be liable for the cleanup of Devil's Swamp Lake.[58] NPC sought to challenge a regulation that it previously had ample opportunity to contest in EPA rulemaking – the EPA's Hazard Ranking System (HRS). EPA decides which sites are placed on the NPL based on the site's score according to the HRS, a complex multi-factor formula set forth in the Code of Federal Regulations.[59] NPC's petition suggests that the HRS itself does not, in NPC's estimation, satisfy IQA standards.[60] Indeed, an attorney for NPC characterized the company's IQA petition as an "attempt to look at the science that underlies the HRS site scoring process."[61] Any challenge to the HRS regulations, however, would be thirteen years too late if brought in court.[62] Thus, NPC used the IQA both in an attempt to further delay a long-overdue and urgently necessary regulatory action, and as a means of attacking an established regulatory process that can no longer be challenged in court.

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[56] Louisiana Department of Environmental Quality (LDEQ) and Department of Health and Hospitals, Office of Public Health (LOPH), *Louisiana Health/Fish Consumption Advisories (Other Chemical Contaminants)*, *Louisiana Health/Fish Consumption Advisories (Other Chemical Contaminants)*, http://www.oph.dhh.state.la.us/environmentalepidemiology/healthfish/docs/other%20chemical%20Advisories%20Complete%20List.pdf (last visited 07/12/2005).

[57] NPC Services, Inc., Petition for Disclosure and Correction, (August 3, 2004), 6, http://www.epa.gov/quality/informationguidelines/documents/04023.pdf. NPC's demand that EPA retract the HRS Documentation Record supporting its proposal to add Devil's Swamp Lake to the NPL pending various reviews that NPC asserted the agency should perform amounted to a request to withdraw the proposed listing.

[58] EPA, *HRS Documentation Record for Devil's Swamp Lake* (LAD981155872), 5, 25 (February 2004), http://docket.epa.gov/edkpub/do/EDKStaffCollectionDetailView?objectId=0b0007d48023eb15&docIndex=0 (last visited 07/12/2005), document no. SFUND-2004-0004-019.

[59] *Board of Regents of the Univ. of Washington v. EPA*, 86 F.3d 1214, 1217 (D.C. Cir. 1996). The HRS methodology is set forth as Appendix A to the National Contingency Plan, 40 C.F.R. Pt. 300, App. A, and was revised in 1990. *See Hazard Ranking System, Final Rule*, 55 Fed. Reg. 51532 (Dec. 14, 1990).

[60] Although NPC's Petition never explicitly challenges the HRS, in each of its six "requested disclosures," the company seeks information about not only the data, but also the methods used to determine various conclusions set forth on EPA's *Worksheet for Computing HRS Site Score* and *Surface Water Overland/Flood Migration Component Scoresheet*. The "methods" EPA used to compute the information set forth on those worksheets are taken from the HRS itself. Accordingly, NPC's requests to evaluate those methods in order to "test the objectivity and reproducibility" of the site score suggests that the HRS itself may not, in NPC's estimation, satisfy IQA standards.

[61] *Data Quality Petition Challenges EPA's Superfund Risk Ranking Process*, INSIDE EPA (September 3, 2004).

[62] The HRS was last revised on December 14, 1990. *Hazard Ranking System, Final Rule*, 55 Fed. Reg. 51532 (Dec. 14, 1990). Pursuant to the Comprehensive Environmental Response, Compensation & Liability Act (CERCLA, or "Superfund"), any challenge to the HRS must have been made within ninety days from the date the revised HRS regulation was promulgated, *i.e.* by March 14, 1991. *See* 42 U.S.C. § 9613(a). Accordingly, any implicit challenge to the HRS raised in NPC's Petition is time-barred. *See, e.g.*, *RSR Corp. v. EPA*, 102 F.3d 1266, 1269 (D.C. Cir. 1997) (finding challenge to HRS time-barred).

Moreover, NPC's petition sought interpretations of the IQA that are clearly beyond its scope. The petition argued that EPA's analyses supporting its assignment of an HRS score failed the IQA because they did not comport with the SDWA standards, although, as explained *supra* in Section III.B., EPA has not adopted those principles, nor was it required to do so. In addition, NPC's petition demanded that EPA provide information underlying the calculation of the HRS score, but as noted earlier, the Act does not provide a mechanism for the public to obtain information – FOIA performs that role.

Ultimately, EPA opted to include NPC's IQA petition as an additional comment on the proposed listing. More than a year later, the listing of Devil's Swamp Lake has yet to be finalized.

**V. A Critical Look at Arguments in Defense of the IQA**

The supporters of the IQA see nothing wrong with OMB's expansive interpretation of the IQA because additional protections are warranted and appropriate in their view. Since regulations, or even the dissemination of information about risks to people and the environment, can cost corporations millions of dollars, they argue that additional procedures to vet information is a good idea. This claim, however, ignores the lack of evidence that the government previously relied on poor quality information. It also ignores the trade-off between additional procedures and the impact of delay on the government's statutory responsibilities to protect people and the environment. In light of this trade-off, the government should not employ more procedures than are necessary to ensure the reliability of the information on which it relies.

Another popular argument among the Act's defenders is that the IQA is not anti-regulatory, since environmental and other public interest groups can and have filed IQA petitions. While it is technically accurate that environmental groups have filed IQA petitions, industry, trade organizations, and conservative groups have filed the large majority of the petitions. A July 2004 report by OMB Watch concluded that 72 percent of all requests for correction were filed by industry, and a majority of those requests challenged information relating to safety and the environment.[63] The industry petitions, moreover, were far more substantive and required much longer response times than petitions filed by individuals.[64] Finally, as noted earlier, the IQA provides industry the opportunity to make collateral attacks on regulatory and informational efforts by EPA and other agencies. These tactics force public interest groups to use scarce resources monitoring agencies and ensuring that they do not succumb to extravagant industry claims concerning the scope of the IQA. Thus, on balance, the IQA is likely to do more harm than good concerning the positions supported by environmental and similar public interest groups.

The lack of justification for the IQA might have been apparent to Congress had the Act been subject to the normal legislative process, rather than being passed as a rider hidden in a massive appropriations bill. These suspicious origins, however, did not stop OMB from making the IQA into an open-ended opportunity for industry petitioners to

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[63] OMBWatch Report, *supra*, n. 8 at DQ-7-8.

[64] *Id.* at DQ-8.

challenge an agency's policy judgments about whether information before it is sufficient to justify agency action under a statutory mandate

**VI. Conclusion**

We have now had enough experience with the IQA to know that it results in significant time and resource burdens for agencies, which are difficult to justify in light of the fact the Act is layered on top of existing procedures that adequately vet such information. A review of the petitions filed to date also indicates that industry petitioners are aggressively using the Act to further their own strategic goals, raise claims that have already been made or that could have been made in another forum, seek expansive interpretations of the Act that if ever adopted by the courts would seriously hamper EPA and other regulatory agencies, and attack the weight of the evidence approach used by EPA and other agencies to assess scientific information about risks to people and the environment.

Unfortunately, the disruptive and antiregulatory impacts of the IQA are about to get worse. After providing in its IQA Guidelines that information that has been subjected to formal, independent, external peer review will "generally be presumed to be of acceptable objectivity,"[65] OMB issued in September 2003 a set of prescriptive procedures for the conduct of peer review by federal agencies that would require an additional layer of review for a broad range of scientific information and assessments. In April 2004, OMB revised the proposal in response to criticism by environmental and public health advocates, as well as scientific organizations. Nonetheless, the *Final Information Quality Bulletin for Peer Review*, issued in December 2004, remains a concern because of its breadth and potential to delay the regulatory process.[66] The IQA says nothing about peer review, and efforts to impose such broad requirements across federal agencies have repeatedly failed in Congress throughout the last decade. While peer review may enhance agency evaluations in some cases, it is neither necessary nor appropriate in every case and should be restricted to those instances where it is already mandated as part of the regulatory process.

It is important that the government adequately vet the information that it uses. Agencies, however, did this before the IQA, and there is no proof that the procedures that were used were inadequate for this purpose. The IQA therefore appeared from the time of its passage as an industry effort to slow regulation and bypass or amend existing statutory standards. The experience to date with the Act offers substantial proof for this conclusion.

The time has therefore come for Congress to reevaluate the desirability of a separate statute aimed exclusively at such a vague and ultimately undefinable goal as "information quality." I believe that experience to date with the IQA establishes that it should be repealed.

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[65] OMB Guidelines, *supra*, n. 3, § V.3.b.i.

[66] *See* OMB, *Final Information Quality Bulletin for Peer Review* (December 16, 2004), http://www.whitehouse.gov/omb/memoranda/fy2005/m05-03.pdf (last visited 07/12/2005).

Mrs. MILLER. Without objection, we certainly will enter that as part of your testimony.

And I certainly appreciate everyone on the panel appearing here today. It is certainly my observation that our second panel in our hearing today has a little more divergent observations of the IQA than the first panel did. And I would start with Mr. Greenwood.

You mentioned, sir, that part of the implementation process, and perhaps, some of the problems with implementing IQA is informational remedies that are available. And I think you suggested that perhaps if they could clarify, clarification of some of the remedies would be helpful if the agencies were able to do that. Could you flush that out a little bit for me on how you might——

Mr. GREENWOOD. Sure. I think the point I am trying to clarify there is that, as you heard from the other witness here, there is a suggestion that you can directly attack a regulation through an IQA petition. And the fact that it comes up in a rulemaking proceeding may give people the thought they can do that. Our sense is you can't do that. You are really challenging information. Most of the time, when you want to get a remedy for information problems, you are adding information. And you are certainly not tampering with the regulatory process. You are simply adding information, clarifying, making something more understandable. And that is usually an addition of information.

So I don't know that the committee would necessarily have to clarify this, but it would be one of these things that will probably come out of the process over time, that many times when we talk about information, we are not talking about withdrawing information or hiding anything. In fact, we are actually putting more information in the public domain to the benefit of everybody.

Mrs. MILLER. Following up on that, I think a common theme for several of our witnesses was transparency and sunshine, or what have you. And I think in your testimony you mentioned an analogy between this and the Freedom of Information Act. Do you see similarities there?

Mr. GREENWOOD. I think these are very much parallel statutes because the Freedom of Information Act is about making sure the Government documents are accessible, and the Information Quality Act is making sure that the rationale for how agencies have decided something is going to be also transparent. So I think, again, it is all part of that network of laws that really should be there in the information age to have the agency explain itself and provide the documentation when appropriate.

Mrs. MILLER. Mr. Kovacs, if I could, I was very interested in your talking about the Chamber's litigation about sodium with the HHS there. Is this a lawsuit that is just filed by the Chamber? Do you have anybody filing an amicus? Is there any other interested parties?

Mr. KOVACS. We filed it jointly with the Salt Institute, and I believe it is the grocery manufacturers and the homebuilders who have joined as amicus.

Mrs. MILLER. Just out of curiosity, why would the homebuilders be interested in the sodium issue?

Mr. KOVACS. Well, I don't know that they are interested at all in the sodium issue. I think what they are interested in is whether

there is judicial review of the statute. And one of the points—if you don't mind, if I could just continue.

Mrs. MILLER. Certainly.

Mr. KOVACS. One of the points in the sodium that was the most fascinating was really on the issue of mootness. One of the things that HHS did several weeks before the trial in the District Court was that they had filed a series of affidavits, which said all of the data has been released, and, therefore, now that it is released, the case is moot.

That caused us, then, literally at that time period, to hire an expert to go in and review all of the data that had been released and file a counter-affidavit on that particular matter. And when we got into court, after we had filed our affidavit, the first question that the judge asked HHS is are we going to proceed on mootness. And the first answer was no. And the reason it was no is because they tried to say they released the data when they didn't.

And this is why it is so complex and why the HHS needs some many lawyers involved; it is because we are playing these kind of games. Information that the Federal Government generates that protects the health and safety of the people of the United States needs to be in the public domain so that we understand it and can challenge it, or accept it if it is right.

Mrs. MILLER. Could you tell me when you think you might get an answer to your lawsuit, when that might be settled?

Mr. KOVACS. It is not going to be settled, I think that is pretty clear. I think we are going to argue it later on this year, with an answer probably in January or February timeframe.

Mrs. MILLER. Would it be your suggestion, then, to improve the law, that the law does make accommodation for judicial review?

Mr. KOVACS. Right now, Madam Chair, we are very comfortable with our arguments, and they are very simple, that when you have a data quality petition and you have a review by the agency along with an appeal, we view the decision on appeal as final agency action, and that gives us a right to judicial review within the courts. And that has been pretty standard; it is how it is used in FOIA, it is how it is used in NEPA. And there are thousands of lawsuits on both FOIA and NEPA, so we think we are going to follow that path. If not, we will be back.

Thank you.

Mrs. MILLER. I see. I appreciate that.

One other question for Mr. Kovacs. We are all, of course, very interested in our Nation's competitiveness. When you see some of these various studies about regulations, that is one of the things this committee has spent a lot of time on, very oftentimes onerous governmental burden of regulations, and how much it costs businesses, whether they are large, mid-sized, or small, and these kinds of things.

Just out of curiosity, I wonder whether the Chamber or if you are aware of any other groups that have done any studies on this particular act, the IQA, any kind of quantifying what the burden actually is on businesses, perhaps even individuals, but particularly businesses and how it might harm our competitiveness?

Mr. KOVACS. Well, there are a lot of studies on the cost of regulation, I think, and the impact on competitiveness. Whether they

have been done in relation to the IQA, the IQA is just so new that we are all sort of fumbling through this process. And the reason the Chamber cares on the competitiveness issue so much is our CO is really clear, we are going to pay the cost of regulation either way. And even if you didn't have regulation, we would regulate ourselves because you would have so many lawsuits. So health and safety is something that has to be protected no matter what. And we are going to spend probably more than $850 billion next year and more than that the year after. The question is let us spend the money the right way, because, if we do, we are going to address the right problem. If we spend the money the wrong way on regulatory issues, we are going to go 10 years out, and we are still going to have the problem even after we have spent the money. That is why we care.

Mrs. MILLER. I think my time has expired to questions, so I will turn the floor over to Mr. Clay.

Mr. CLAY. Thank you very much, Madam Chair. And thank you for conducting this hearing on this important subject.

Let me start with Mr. Shapiro. Good morning.

Mr. SHAPIRO. Good morning.

Mr. CLAY. We are hearing today from the other witnesses on this panel basically that there is nothing wrong with wanting the Government to put out good information, and the Information Quality Act helps to make sure that happens. Do you agree with their argument? And, if not, why not?

Mr. SHAPIRO. Perhaps I can give two responses. I appreciate the question. First, everyone is interested in Government having the best information possible and acting on it. But at the time the IQA was adopted as an appropriations rider, it was largely, if not entirely, duplicative of existing administrative procedures, which were going to the same purpose. Therefore, I think it is fair to say that it is largely unnecessary. People already have opportunities to seek the correction of erroneous information.

Second, there is a difference between information and data and numbers. If the problem is that a number is wrong or that a piece of data is wrong, it should be corrected. There is no excuse to having wrong data. But most of the disputes in regulation deal not with is the No. 7 or is the No. 8; they deal with the kind of conclusions one makes from the available, and often conflicting, information that is in front of us. And those are policy issues. And the difficulty with the IQA is it inserts this process, these complaints, these data complaints, right in the middle of the other administrative processes for dealing with policy. And, therefore, it is really not about the correction of information. It is really about people trying to get the agency to change their policy viewpoint.

Mr. CLAY. And you think that the IQA was duplicating the Paperwork Reduction Act?

Mr. SHAPIRO. Among others. Let me give you a good example. We have heard here today—in fact, in the previous testimony by the other panel—about an IQA petition that was received in the middle of a rulemaking process. Now, anyone can comment on a rule, and those who are interested often file detailed comments. And regulated entities in particular file detailed comments objecting to the evidence, which the agency is using in making or offering a rule

to be adopted. The agency is required by existing law to make available to any regulated entity all of the information, before it goes to the final rule, that it is relying on. And at that point regulated entities, the public or anyone else, can come in and say that scientific study is wrong, that one is incomplete, salt doesn't do what you say, salt only does this. So the rulemaking process sweeps all of this into consideration, and then the agency looks at all that information.

And, further, the courts require the agency, in rulemaking, before they promulgate the final rule, to respond to each and every significant comment in the preamble to the final rule. So the agency cannot ignore these comments filed by the regulated entities. If you have the IQA in the middle of this, then you are starting two processes to do the same thing, and it is complex, it is duplicative, it is unnecessary, and it wastes resources.

Mr. CLAY. Thank you.

Mr. SHAPIRO. Sorry for such a long answer.

Mr. CLAY. No problem.

Mr. Shapiro, it has been reported that industry groups met with OMB earlier this year to discuss proposals to change the regulatory system. One specific proposal that was reportedly raised was an amendment to the IQA to explicitly provide for judicial review. Do you have any concerns with this proposal?

Mr. SHAPIRO. I can't imagine a way to make a bad situation worse. What will happen if you add judicial review to the IQA is that groups will be able to start collateral regulatory actions, judicial review actions, dealing with the same issues that are going through the normal administrative process. So if an agency is dealing with a rulemaking and will eventually have to respond to all the complaints about its information, as well as its policies, all that will come up normally in judicial review. If there is judicial review in the IQA, then someone will be able to start a separate judicial action just dealing with some piece of data or some piece of information—or actually some policy in the rule—and take that up out of context of the whole rulemaking and just attack that one piece of data in a separate lawsuit, which loses sight of the overall picture and is a very bad way for us, I think, to determine whether or not a rule is good or take some other action.

Mr. CLAY. OK. I thank you for your responses.

Thank you, Madam Chair.

Mrs. MILLER. Thank you.

Mr. Ruch? How is it pronounced?

Mr. RUCH. Ruch.

Mrs. MILLER. Ruch. OK. Mr. Ruch, I wanted to ask you, because I think you were in the room when our first panel was here and I was asking Mr. Melius about the trumpeter swan in my own effort to try to get a better handle on it. I have been informed you actually were the one that asked for that particular correction, I believe.

Mr. RUCH. Yes.

Mrs. MILLER. As I understood his testimony, he was saying that the petition was actually denied, but they would give you some sort of peer review. Do you think that having a better peer review before they disseminate the information could have helped your par-

ticular case? Perhaps you could add a little bit for me of what that particular case entailed.

Mr. RUCH. Sure. That result was the agency saying the data isn't broken, but we are going to fix it immediately. It involved the trumpeter swan population in Greater Yellowstone and their natural migratory pattern—I am not a biologist—would have taken them through Utah. But the Fish and Wildlife Service allowed hunting of swans in Utah. So the issue of whether or not they were protected under the Endangered Species Act affected whether or not the swans were going to be shot as they flew south. That was sort of the context.

We are a service organization for employees inside these agencies. We were approached by specialists within the agency to say that the scientific basis for the agency's decision that this was not a distinct population that, therefore, jurisdictionally qualified for protection, that the agency's basis just couldn't be supported by the data, and that what they had was a non-peer reviewed summary of information, and the key study, the lead author of that key study claimed that her work was being misinterpreted by the agency.

So we view it because in many instances what is going on—in our perception—inside these agencies, is that a politically predetermined action has been taken that is contrary to the weight of data and to the opinion of the agency's own specialists. Frankly, that is what most environmental litigation is about, is the agency overruling its own environmental specialists. So we took those internal objections, lodged them with the agency. The agency demurred. We appealed. The agency put together a three-scientist panel who agreed with us. That panel recommendation sat on the then-director's desk from November, from before Thanksgiving, until I think it was March, and he issued a one paragraph letter denying the appeal, offering no rationale except his inherent authority as the director.

We understand today—this is the first time we have heard—they have completed the peer review. We haven't seen it. But we viewed that as an indication of just how weak it is. Notwithstanding what the other witnesses said, generally speaking, it is our perception that the Data Quality Act is used as the basis for obstruction only when the agency chooses to use it as a pretext, not as the cause.

Mrs. MILLER. So, in your circumstance, you are going to find out what their peer review actually—whatever their results are, whatever their conclusion is. Now, what do you think about judicial review, the possibility of having judicial review if you were not satisfied?

Mr. RUCH. We have described the law—and I think the same can be said with respect to judicial review, which is this is slightly better than nothing, but only slightly. And the issue on judicial review is—and the reason that the courts have not found it justiciable yet is that the standards are so vague—utility, integrity, those kinds of things—that they don't qualify as sort of mandatory duties that can be forced through the regular mechanisms of administrative law. So if Congress wants to basically say, well, we are not going to define these terms, we are just going to let the courts define them, that is what judicial review would give you. If Congress, in-

stead, returned to this law and basically started making policy decisions about it, it would prescribe the limits of judicial review.

However, the reason I think that we are not as disturbed as some of the other people in kind of, I guess, the world of public interest groups is we see the problem with agencies, science, particularly in the environmental area, as so bad and so polluted by politics that it is difficult to imagine how it is going to get worse.

Mrs. MILLER. You know, it would have seemed the easiest thing was just to tell the trumpeter swans they couldn't fly over Utah. We wouldn't have had that problem, right? [Laughter.]

Do you have any further questions, Mr. Clay?

Mr. CLAY. I have one more, Madam Chair, for Mr. Ruch.

The surveys of Federal agency scientists that you discussed are very disturbing. I don't believe that there is a problem with the quality of science at Federal agencies. Scientists just want to do their jobs and maintain the integrity of their work. The problem is that this administration keeps interfering with the work scientists are doing. Do you agree that the problem isn't that there is a lack of sound science in agencies, but the problem is really the political interference with agency scientists? I would like to hear your thoughts on it.

Mr. RUCH. We do concur. It has been our experience that this administration didn't invent political intervention into science, but what used to be kind of an extraordinary or unusual circumstance is becoming routine. So what we have reported in the surveys that we have done of scientists in agencies like the Fish and Wildlife Service and NOAA Fisheries calls coming down even to the field level—not just the regional office, but to the field level—and high percentages of the scientists reporting scientific documents are changed for non-scientific reasons.

One of the things we find most disturbing are high percentages of scientists who are unclear what they are allowed to say not only inside the agency, but outside the agency at scientific conferences.

So the larger point I was making about transparency, in our mind, this goes to the agency specialists are very fearful—we think they are scared to death—in that they feel that in issues particularly where there is any kind of controversy, they cannot tell the truth.

Mr. CLAY. I thank you for that response.

Thank you, Madam Chair. That is all I have.

Mrs. MILLER. I want to thank all of our witnesses, our panelists, for participating today in our hearing. I think it has been very, very informative. Any other information that you might want to submit for the record, we certainly will take that as well. And is there anything that any of you have to add before we adjourn? Is there a particular part of this act that you think we, again, haven't asked the right question that Congress should be aware of?

And I would start with you, Mr. Greenwood.

Mr. GREENWOOD. I guess I would only add one point. A lot of the discussion in the hearing today has been about correction requests, and I think that is appropriate in certainly the beginning of the statute. That is probably the right thing to focus on. However, one of the points I tried to make in my testimony, which I think is very important, is thinking longer term about how you build quality into

agencies at the get-go. How do we make sure that things are right the first time, so we don't have to spend a lot of time going through these correction requests and transaction costs associated with those?

So I think over time it will be important. I hope that the committee can look at that issue and ask agencies how they are building it into their way of doing business.

Mrs. MILLER. Thank you.

Mr. Ruch.

Mr. RUCH. We think the key issue is Congress spending more time on oversight, on sort of the substance of these matters because, regardless of the rules, the agencies can easily come up with ways to circumvent the rules. Let me give you an example. One of the standards that is kicked around in the context of IQAs is whether or not something is peer reviewed. We are dealing with a matter in EPA where they have accepted an industry finance study that says natural wetlands are a source of pollution in Florida, and that the way to increase water quality is to replace them with golf courses, because of water flow issues.

This study has been very controversial and EPA scientists resigned over it. The agency put it out for peer review and the peer review came back largely negative. But the agency has taken the position because it has been peer reviewed, regardless of the results, they can continue to use it. It is almost like form triumphs over substance. And we think there is no substitute for just basic oversight.

Mrs. MILLER. I appreciate that.

Mr. Kovacs.

Mr. KOVACS. I guess my final comment would be to really clear up a mischaracterization. So often the Data Quality Act is just described as some rider on an appropriations bill. This is something that Congress has struggled with since 1995. If you look at the Paperwork Reduction Act in that year, it said that the purpose of the Paperwork Reduction Act is to ensure the greatest possible public benefit and maximize the utility of information, created, collected, maintained, used, shared, and disseminated for or by the Federal Government.

And then when they weren't getting any action out of OMB, in 1998, the House put in its Appropriations Committee report it urged OMB to take this provision and develop rules. Again, in 1999, again in an appropriations report, it urged it again. And then finally in 2000, Congress got tired of urging and it actually just put in another statute.

So it wasn't something that Congress just thought up overnight. This has been a subject since 1995. And I think Congress got to the point where they said, look, we are serious.

Mrs. MILLER. Mr. Shapiro.

Mr. SHAPIRO. Thank you. The IQA relates to many different processes through the Government, many different agencies in very complicated and interrelated ways. And with all due respect, and contrary to the last statement, I don't think an appropriations rider that was not the subject of hearings—and, frankly, I doubt that most Members of Congress even knew about—is the appropriate way to address such complexity.

Worse, by passing an act with such broad and vague language, the legislature handed OMB essentially a blank check to write the legislation itself, which, to me, raises important separation of powers questions. So, I really do think it is time for Congress to revisit the statute, and our preference would be just to repeal it. Thank you.

Mrs. MILLER. Well, again I want to thank you all so very, very much for coming.

Mr. Kovacs, just one thing. You were talking about the Paperwork Reduction Act. That is also part of our purview here under this committee. We will be doing some different things. But later today the Congress is going to be reauthorizing NASA. My dad was an aeronautical engineer; he worked on Redstone with Werner von Braun. And I was talking to him last night about this bill coming up, and he said, you know, Candice, it is all about paperwork. I said, what do you mean, Dad? He said, well, when I was originally a rocket scientist, it was very exciting times; we were able to just shoot all kinds of things out into space. But once the Government got involved, they would not allow us to shoot a missile until the weight of the paperwork equaled the weight of the rocket. So I appreciate that with the paperwork reduction.

But, again, all of your testimony has been very interesting, and we appreciate your attendance here today. Thank you so much.

[Whereupon, at 11:46 a.m., the subcommittee was adjourned.]

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