

V. EFFECT OF THE NEW SECTION 515 NORMS

In late 2002, under legislation adopted in 2000, a broader set of requirements for accuracy of data were implemented by each federal agency. Data gathering in recent years has been overseen by the Office of Information & Regulatory Affairs at the Office of Management & Budget (OMB) as part of the Paperwork Reduction Act.¹⁵¹ In fiscal 2000 appropriations legislation, the OMB was given new powers under Section 515¹⁵² to compel agencies to be attentive to data quality issues. Prior to 2002, statutes did not require systematic approaches to data verification or quality, and no law required agencies to reexamine existing databases and to clean up errors and obsolescent statements. Under Section 515, the new OMB guidelines for accuracy of data may be relevant to the ways in which an agency will handle complaints or concerns.¹⁵³ Each agency is compelled to issue guidelines "ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated" by the agency.¹⁵⁴ Final rules are expected in October 2002, after public comments from April to May 2002. The new Section 515 accuracy provisions can be expected to increase attention to these issues in 2003 and beyond.

Because the dissemination of agency data across the Internet "increases the potential harm that can result from the dissemination of information that does not meet basic information quality guidelines,"¹⁵⁵ the new law focused on accuracy. The OMB, however, excused agencies from the requirements, except for the "essence of the guidelines," where states, contractors, private submitters, and so forth, had supplied the data to the agency.¹⁵⁶ This escape clause is a major loophole in the corrective action

151. See 44 U.S.C. §§ 3501, 3503 (2000) (establishing Office of Information and Regulatory Affairs within OMB, in the Paperwork Reduction Act).

152. See Consolidated Appropriations Act of 2001, Pub. L. No. 106-554, § 515, 114 Stat. 2763, 2763A-153-154 (2000) (requiring the OMB to issue guidelines for federal agencies to follow regarding data "quality, objectivity, utility, and integrity").

153. See Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, 66 Fed. Reg. 49718, 49720 (Sept. 28, 2001) (mandating agencies to create mechanisms allowing for "correction of information disseminated by the agency that does not comply with the OMB or agency guidelines").

154. See Consolidated Appropriations Act of 2001 § 515.

155. See Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, 67 Fed. Reg. 369, 370 (Jan. 3, 2002).

156. See *id.* at 370 (acknowledging that "the guidelines . . . cannot be implemented in the same way by each agency").

that Section 515's sponsors had apparently intended, although the future challengers of agencies are likely to disdain an agency claim that website dissemination met the mere essence of 515. Further loopholes in Section 515 coverage announced in January 2002, included press releases, public filings, and charges made by agencies in their adjudicative processes. The situation of the agency press conference announcing that a property developer is being charged with polluting the local river is excluded from 515 by this OMB guidance.¹⁵⁷

In January 2002, OMB related how it planned to integrate the data quality provisions with special earlier legislation dealing with risk assessments for adverse health effects.¹⁵⁸ These elements of risk assessment and risk communication have been incorporated by OMB into the 515 process with the intriguing limitation that an agency could either adopt or adapt those norms allowing agencies to do less if they opt to adapt these risk norms.¹⁵⁹

A. Hard Copy Document Disputes

Until implementation of the new statutory Section 515 requirements, there does not appear to be any current method for the resolution of disagreements regarding inaccuracies in hard copy documents and published statements of the agencies. No regulation or published procedure exists that address this topic for all agencies. Presumably, however, an affected person could petition for retraction or correction under general administrative petition processes, using whatever format the agency would accept.¹⁶⁰ The entity to which the complaint is directed would be the authoring or publishing entity whose name is on the report or document. No central entity exists for corrections of hard copy published data within agencies, as is the case with the error correction team. The distributed organization structure of many agencies does not provide a central point of complaint for print and hard copy records, reports, or documents.

After the Section 515 rules are published in late 2002, the EPA will

157. See *id.* at 371 (clarifying OMB guidelines do not apply to "correspondence with individuals or persons, press releases, archival records, public filings, and subpoenas of adjudicative processes").

158. See *id.* at 375 (explaining that "the Safe Drinking Water Act . . . adopted a basic standard of quality for the use of science in agency decision-making").

159. See *id.* (allowing agencies to "adopt or adapt the quality principles applied by Congress to risk information used and disseminated pursuant to the Safe Drinking Water Act Amendments of 1996"). OMB explains "[t]he word 'adapt' is intended to provide agencies [with] flexibility." See *id.*

160. See 5 U.S.C. § 555(b) (2000) (providing interested persons "may appear before an agency . . . for the presentation, adjustment, or determination of an issue, request, or controversy").

provide by regulation a set of "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" for accuracy.¹⁶¹ Therefore, the printed or electronic materials will be subject to complaints that will be channeled through the new correction mechanisms. The challenge will be acknowledged, and after reaching an agreement on a correction, the change will be made.

The ability of an entity to seek remedies is decreased when it is concerned with accuracy of future hard copy publications by agencies. At the EPA, persons affected by regulatory programs can use the EPA's Information Products Bulletin to learn how it can provide input to the design team at the appropriate EPA program office. The data quality measures used by program offices and by the states will vary, and comments about the design of the new information product may assist the program office's design. Once the actual product is published, the internal remedies available under Section 515 may be utilized to obtain corrections.

VI. REASONS NOT TO ADOPT NEW REMEDIES

A. Abuse of the Process for Delay

A primary concern for regulators is to reduce the ability of an affected entity to prevent, remove, or mitigate the appearance of a piece of accurate data on the agency website or other information product concerning that entity. If the suggested changes were adopted, there could be abuse of the new process by affected entities seeking delay or agency silence about the violated conditions. If the piece of data is alleged to be inaccurate or misleading, then the affected entity could potentially utilize the new mechanism to delay its appearance on the website or to compel its removal from the website.

Under what scenarios could there be abuse of this new mechanism by the affected entities? Assume a trade association of seventy-five members resists an agency's regulatory program, which features detailed website data on the members' facilities. If the multiple owners of multiple pieces

161. See Consolidated Appropriations Act of 2001, Pub. L. No. 106-554, § 515(b)(2)(B) (2000) (explaining future EPA rules promulgated pursuant to § 515 rules will conform to the OMB Guidance); see also Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, 66 Fed. Reg. 49720 (Sept. 28, 2001) (requiring agencies to establish mechanisms whereby "affected persons" can appropriately obtain "correction of information disseminated by the agency that does not comply with OMB or agency guidelines").