

Raids on Regulations Expected

Law to Let Businesses Attack Data Underlying Rules, Studies

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Washington

THE FEDERAL Data Quality Act slipped quietly into existence 18 months ago, a drab-sounding directive that went largely unnoticed amid the pages of a massive Treasury and government-appropriations bill.

But come Oct. 1, when the act's final rules are put in place, the door will be open to a potentially huge shift in the way regulations are written: The law, signed by President Clinton, will require government agencies to ensure the quality of the data they use when issuing new rules, regulations and studies. For the first time, anyone—businesses are likely to be the most eager—will be able to challenge the data used in formulating government regulations, instead of just challenging the rules themselves.

Many companies, believing some costly federal regulations are based on worthless data, are cheering. Liberal activists, who think the act strikes a blow to public access to information, are jeering.

"The whole purpose is to suppress information from government dissemination," said Joan Claybrook, president of Public Citizen, the Ralph Nader group. Ms. Claybrook said she is worried the act puts too much power into the hands of industries that may seek to challenge data backing up regulations affecting them.

Indeed, business groups already are lining up to fire off their guns at the rules they plan to challenge under the newly enacted law. Top on the list are some associated with clean-air regulations and climate change. For instance, businesses may again target the Clean Air Act of 1997, which Corporate America fought all the way to the Supreme Court before losing last year because the court ruled U.S. industry didn't have legal grounds to challenge the law. With the new data act, companies could challenge the studies and data behind the Clean Air Act, some business officials said.

"The data-quality issue is so basic," said William Kovacs, vice president of environment and technology at the U.S. Chamber of Commerce. "You've got to use good data and make sure the assumptions they use are correct."

Another study on the hit list is a climate-change study which the Bush administration submitted to the United Nations in late May. The study blames human actions—and actions by businesses—for recent global warming. Some business leaders say they are taking a hard look at whether to challenge the climate-change study under the new law. The study states that global warming is largely the result of human actions and the main culprit is the burning of fossil fuels that produce greenhouse gases. Agencies could potentially use the study to create regulations that would affect industry since a lot of their actions result in the burning of fossil fuels.

Jim Tozzi, co-founder of the pro-business Center for Regulatory Effectiveness, and a proponent of the act, says the ramifications are broader than he imagined. "It's turning out to be a lot more significant than we thought it would be," he said.



"It set standards for which you can now judge whatever the government issues."

The act charged the Office of Management and Budget with the job of creating the guidelines for data quality that agencies would use as a pattern for crafting ones that tailor-fit their organization. Agency guidelines must be approved by OMB and will be in place by Oct. 1.

Groups could always challenge federal regulations, but prior to the Data Quality Act, they couldn't challenge information or data that might be used to make them.

Agencies do sometimes use flawed data. In the spring, a study used by the Environmental Protection Agency to set Clean Air Act standards and regulate industries was found to have a software glitch that altered its results, exaggerating the reported effects of air pollution on human health. The Health Effects Institute of Boston, a nonprofit group supported jointly by the EPA and industry, tipped off the EPA to the study's faults, saying its figures might be off by as much as 23%. The EPA had used the flawed study to set air-pollution regulations governing industries and cities, affecting hundreds of businesses. The study was two years old when the glitch was detected.

This is exactly the sort of situation Mr. Kovacs hopes the new guidelines will prevent. He said members of the Chamber of Commerce spent more than \$800 billion last year complying with federal regulations, such as those on air pollution set out by the EPA. "So much of what comes out can't be substantiated," Mr. Kovacs said.

But "if human health is potentially at risk, you can't wait for all the facts to come in," says Sean Moulton, senior policy analyst for OMB Watch, a liberal political watchdog group.

Elaine Stanley, spokeswoman for the EPA, said it already has data-quality and error-correction procedures in place. She said the new guidelines "placed an increased importance on how information is presented to the public." The act will expand the EPA's focus from just correcting data to also correcting the analysis of the data.

The law also states that agencies must provide a way for groups affected by the data to contest it if they believe it to be unsound. In order to ask for a correction, the person or group must be identified as one who is affected by the information. If the agency refuses to correct the information, the affected party can sue. Before, parties could only sue agencies seeking retraction of regulations, but they couldn't sue seeking the retraction of allegedly faulty information. The chamber's Mr. Kovacs said industries now can fight against regulations they believe to be flawed by attacking the information that supports them.

Opponents of the act are concerned that this change will allow previously disseminated information to be removed. If it is deemed incorrect, agencies can't use it to make decisions and can't publish it.

Others worry that agencies might become wary of putting out new information and making decisions for fear they will be questioned. "It could ultimately lead to less action by government," Mr. Moulton of OMB Watch said.

OMB Watch, along with Public Citizen, is a part of Citizens for Sensible Safeguards, a loose coalition of organizations that oppose the act. It is a large and diverse group made up of environmental groups, government watchdogs, labor organizations and libraries.

"A lot of people in the public-interest community are very concerned about attempts to limit how government uses the information it gets," said Patrice McDermott, a spokeswoman for the American Library Association, a member of the coalition. They argue that it is the agencies themselves that ought to be able to determine what data they use. Mr. Moulton said he thinks agencies don't need the Data Quality Act because they have their own standards in place, and if a concern is legitimate they will work to correct it. And he hopes agencies will be able to review a complaint and "disregard it if someone's complaining because they don't like the results."