

Executive Summary

Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (PL 106-554) requires the Office of Management and Budget (OMB) to issue government-wide guidelines to use as a standard for enhancing the quality of disseminated information. OMB published these guidelines on February 22, 2002. Each cabinet department and covered federal agency was directed to use these guidelines as the basis for implementing its own guidelines. In these comments, the National Association of Manufacturers makes observations on the draft Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by the Federal Trade Commission (FTC).

Overall, the NAM commends the FTC for its effort to promulgate good information-quality standards.

The FTC (and all agencies) should make the information-quality guidelines easily accessible on its Web site. The FTC has done this for the draft, but it should also provide links to the government-wide guidelines.

The guidelines do not discuss information submitted by third-parties.

The FTC needs to clarify that the guidelines apply to information disseminated on or after October 1, 2002, including information released prior to October 1 but re-disseminated.

The FTC needs to clarify that the guidelines do not apply to press releases, but only if the information they contain has been previously subject to the guidelines.

The FTC has done an admirable job in adopting and adapting the government-wide standards for objectivity standards.

The definition of “affected person” should be broadened so that a complainant can explain how or why they are affected.

**COMMENTS OF THE
NATIONAL ASSOCIATION OF MANUFACTURERS
to the
FEDERAL TRADE COMMISSION
Regarding
GUIDELINES FOR ENSURING AND MAXIMIZING THE QUALITY,
OBJECTIVITY, UTILITY AND INTEGRITY OF INFORMATION
DISSEMINATED**

The National Association of Manufacturers (NAM), submits these comments regarding the Draft Information Quality Guidelines for the Federal Trade Commission. The NAM is the nation's largest industrial trade association. The NAM represents 14,000 members (including 10,000 small and mid-sized companies) and 350 member associations serving manufacturers and employees in every industrial sector and all 50 states.

The NAM understands that the published deadline has passed, but requests that the Federal Trade Commission (FTC or "the commission") consider these comments. Even if the NAM's comments cannot be incorporated into the draft final guidelines that are due to the Office of Information and Regulatory Affairs (OIRA) by August 1, the NAM hopes that the commission will take them into account during discussions with OIRA about possible changes.

Unlike other agencies, the NAM was pleased that the draft guidelines were relatively easy to find on the FTC's Web site – as long as one knows to type in the

correct search term. The NAM will suggest, nonetheless, to the Office of Management and Budget (OMB) that it require agencies and departments to post their final guidelines in a fashion similar to privacy statements or, at a minimum, provide links with every *Federal Register* notice. Easy accessibility is especially important since the information-quality standards are applicable to third-party – even casual – commenters, although the FTC’s draft guidelines do not make this explicit (see discussion below).

Voluntary compliance should be the goal of regulatory agencies and agencies are far more likely to achieve this through the use of reliable information. Thus, since the FTC is an independent agency not subject to Executive Order 12866 and with an ability to override OIRA decisions under the PRA, it is all the more important that the Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by the Federal Trade Commission meet high standards and are easily accessible.

Overall, the NAM commends the FTC for issuing draft guidelines that closely adhere to the government-wide guidelines as released by OMB on February 22. There are, however, some areas where the commission can improve them further. Given the reliance on – and the number of citations referring to – the government-wide guidelines, the NAM suggests that the commission provide a link on its Web site to the final government-wide guidelines in order to make it easier for interested parties to make the cross-references.

Scope

The NAM is pleased that the FTC does not contain any statement regarding the judicial effect of the draft information-quality guidelines. As OIRA Administrator John

Graham noted in a June 10, 2002, memorandum to all agencies, such “statements regarding judicial enforceability might not be controlling in the event of litigation.” The NAM appreciates the clarification in the draft guidelines that some information that the commission disseminates is bound by statutory or judicial restrictions.

As a trade association, and frequent participant in the notice-and-comment process, the NAM is particularly interested in the application of the information-quality standards to external parties. The NAM is therefore concerned that the FTC does not address the issue of the dissemination of information provided by third-parties. The statement in part III applying the guidelines to “all information disseminated by the FTC” should be broadened to make clear that the government-wide guidelines pertain to third parties, especially when the agency relies on the submitted data for an action.

Since the quality of rules and other disseminated information is dependent on the quality of the material used by the FTC to generate the information, then the NAM urges the commission to give greater deference to submissions that meet the FTC’s stated standards. As a multi-industry trade association (*i.e.*, one that does not hold itself out as expert in narrow, technical matters), however, the NAM hopes that if the FTC applies its guidelines to third parties in its final publication, it also will take into consideration the need by many parties to provide uncited albeit generally accepted information or assertions.

INFORMATION NOT SUBJECT TO THE STANDARDS

Prior to final publication the FTC needs to better clarify that the guidelines apply to information disseminated as of October 1, 2002, including to information previously disseminated but relied on after the effective date. The language of Part XII.D.2.,

“regardless of when the agency first disseminated the information,” should be incorporated more extensively when discussing applicability.

The NAM generally agrees with the draft’s proposals for information not subject to the guidelines. In particular, the NAM is pleased to see that the guidelines apply to congressional testimony. For some reason, many other agencies tried to exempt congressional communications. The exemption of this information by other agencies has been a concern for the NAM since testimony and other communications with Congress may result in the enactment of a statute and thus such information provided by any agency should be of the highest caliber rather than completely exempt from the guidelines (see below, however).

The NAM is disappointed that the applicability of the guidelines to press releases should not be held to the guidelines’ standards. The public relies on FTC pronouncements and expects them to be accurate. This exemption should be clarified so that if what the commission is trying to avoid is duplication of efforts then the exemption in this case (which should include congressional communications) applies only to information that has been disseminated previously and that was subject to the standards in the guidelines.

The commission should also review the June 10 memorandum from Administrator Graham regarding the exemption for public filings. The NAM understands that the FTC probably wants to encourage as many interested parties as possible to participate in the rulemaking process; there needs to be a differentiation, however, that if the commission will disseminate or otherwise rely on information submitted by third parties then the information-quality guidelines continue to apply.

OVERSIGHT/MANAGEMENT RESPONSIBILITY

The NAM appreciates that the FTC explicitly states that the Chief Information Officer will be responsible for agency compliance with the guidelines. Unfortunately, many other agencies were extremely vague in this regard.

STANDARDS

The NAM is pleased that the FTC carefully adopts and adapts the standards and definitions contained in the government-wide guidelines. The NAM further commends the commission for its extensive discussion of the pre-dissemination, development and transparency processes and standards and, in general, where and why the draft FTC guidelines deviate from the government-wide guidelines. For rulemakings and other agency matters incorporating public comment (Part VI.B.), however, the commission should revisit its proposal that “Where corrections are necessary and appropriate, such corrections *may* be made before the information or data become the basis for final agency action or dissemination.” (Emphasis added.) One is left to wonder why – if it has already been determined that “corrections are necessary and appropriate” – the commission does not substitute the word “will” for “may.” To leave the sentence as it is implies that the commission intends to violate its own information-quality guidelines when it decides to.

CORRECTION OF INFORMATION

The definition of “affected person” needs to be broadened beyond simply “one who may benefit from or be harmed by the disseminated information.” As Administrator Graham’s June 10 memorandum suggests, the FTC should consult the draft guidelines for the Department of Health and Human Services (HHS). The HHS draft guidelines on this

point, which Administrator Graham says he prefers over those that OMB originally issued, invite the complainant to describe how he, she or the entity is affected.

In its final guidelines, the FTC needs to explain who will make the decision with respect to a request for correction. This is vitally important since this person will make the initial determination as to whether the correction request is meritorious or frivolous. The NAM does not believe that the original decision with respect to an information-correction request should lie within the FTC organization that originally disseminated the data. There needs to be a more objective office to make the original determination. The NAM appreciates that there are time limits within which the decision for a correction request is to be made.

The FTC also needs to explicitly state that the burden of proof for a correction request is on the requester. Any person challenging information should be aware of this burden of proof.

APPEAL OF A CORRECTION REJECTION

The draft guidelines are vague regarding who makes the decision of an appeal of an information-correction request. The FTC needs to make this clear in its final guidelines. The NAM suggests that this decision be made by the commissioners. The final guidelines should also elaborate on the standards that the commissioners will use in considering an appeal.

DISSEMINATION

The FTC needs to explicitly differentiate material that was disseminated prior to October 1, 2002, and not re-used from information that was disseminated prior to the

effective date and then was relied on for a commission action. The latter is rightly subject to the guidelines.

CONCLUSION

Good, quality information will lead to a more informed public and contribute to voluntary compliance with regulations. The NAM therefore appreciates your consideration of these comments and looks forward to the publication of the final guidelines.