



An Empirical Analysis of EPA Compliance with the Information Quality Act

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Conventional Wisdom about IQA

- **Advocates are regulated entities seeking weaker regulation**
 - ‘The most far-reaching reform since the Administrative Procedure Act of 1946’
 - ‘If only scientific errors were corrected, policy disputes would evaporate’
- **Opponents are environmental, health and safety NGOs**
 - ‘Agencies will be paralyzed by mountains of petitions filed by industry lobbyists’
 - ‘Stealth tool for undermining environmental, health and safety protections guaranteed by law’
 - ‘Could be misused to delay, manipulate, and unfairly affect the outcome of federal agencies’ activities’

Terminology

- ‘Request for Correction’ (‘RFC’)
 - Any petition for correction of information believed to violate IQA principles
- ‘Request for Reconsideration’ (‘RFR’)
 - Any administrative appeal of a partial or complete denial

The Process



The Data

- Census, not sample
 - All federal agencies' posted RFCs/RFRs
 - Now: FY 2003–2008 (6 years; Bush 43 only)
 - $N_{RFC} = 157$; $N_{RFR} = 54$
 - Dec: FY 2003-10 (8 years Bush 43 v. Obama)
- Fancy statistical methods are inappropriate for interagency comparisons
 - Some agencies centralize (e.g., EPA [1])
 - Some agencies delegate (e.g., DOL [20])
 - The inspectors general problem

Chemical Risk Assessments

- American Chemistry Council
- Center for Regulatory Effectiveness
- Chemical Products Corp
- Dow Chemical Co
- Kansas Corn Growers Assn
- MAA Research Task Force
- Metam Sodium Alliance
- National Association of Home Builders
- National Association of Manufacturers
- National Paint & Coatings Assn
- Perchlorate Study Group
- Styrene Info & Research Center
- US Chamber of Commerce
- Washington Legal Foundation/ACSH
- Wood Preservative Science Council

Environmental/ Public Health Risk Assessments

- Advocates for the West
- Advocates for Youth Sexuality Information
- Alliance for the Wild Rockies
- Americans for Safe Access
- Arkansas Wildlife Federation
- Earthjustice
- Earth Island Institute
- Greater Yellowstone Coalition
- MO Coalition for the Environment Found'n
- Natural Resources Defense Council
- Public Employees for Env't'l Responsibility
- Sierra Club
- Trustees for Alaska

Who Is Challenging What?

Agency Response Times

	Completed Actions Only		Appeal Time	All Petitions ^a	
	RFC	RFR		RFC	RFR
Mean (days)	148	186	43	217	272
SD (days)	134	165	33	308	349
N	143	46	54	157	54
Max (days)	979	1,896	148	847	2,143

^a Includes RFCs/RFRs unresponded to as of December 8, 2008. True mean, SD, and maximum are greater.

How Agencies Compare

Worst Performers Average Days to Respond

Agency	RFC Avg/IQG	RFR Avg/IQG
ACE	860 [60]	--- [60]
DOE	247 [60]	--- [60]
DOC	240 [60]	162 [60]
USDA	239 [60]	147 [60]
EPA	184 [90]	340 [90]
HHS	177 [60]	386 [60]
CPSC	100 [60]	--- [60]

Best Performers Average Days to Respond

Agency	RFC Avg/IQG	RFR Avg/IQG
TREAS	12 [60]	--- [60]
DOL	78 [60]	106 [60]

Includes all agencies where $N \geq 2$.

Problematic Practices

- EPA
 - Gerrymandering definitions
 - ‘Stale data’ exception
 - Science/policy shell game
 - Litigation exception
 - Useless annual reports
- Petitioners
 - 2nd ‘bite at the apple’ without new evidence
 - Using process to contest policy decisions

A game-changing legal opinion?



PRIME TIME V. VILSACK

Court of Appeals for the District of Columbia Circuit,
No. 09-5099, Decided March 26, 2010

Case Synopsis [I]

- Fair and Equitable Tobacco Reform Act levies assessments on manufacturers and importers based on market share
- Prime Time used IQA to petition to correct factual inaccuracies in the assessment procedure
- USDA did not respond to the petition

Case Synopsis [2]

- Prime Time sued on multiple grounds including IQA violations
- District Court granted summary judgment to the government
- CADC reversed, ruling that
 - OMB's guidelines deserved *Chevron* deference.
 - Prime Time's IQA claim was barred by OMB's exclusion of adjudications from the definition of information 'dissemination' (§ V.8)

Case Implications

- Material agency noncompliance with (or its own IQG (or OMB's IQG) *may be* arbitrary and capricious conduct under the Administrative Procedure Act
- High-quality cases of material agency noncompliance are pending
- IQA compliance *may* become mandatory

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- Caveat
 - All information quality errors in this presentation are mine

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