

FEDERAL MARITIME COMMISSION

Draft Information Quality Guidelines

Introduction

Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554, 114 Stat. 2763)("Appropriations Act") directed the Office of Management and Budget ("OMB") to issue guidance to federal agencies on: (i) publishing their own guidelines for ensuring and maximizing the quality of information disseminated by federal agencies; and (ii) establishing administrative mechanisms whereby affected persons may seek and obtain, where appropriate, correction of information that does not comply with the agencies' information quality guidelines. Under OMB's guidelines,⁽¹⁾ all federal agencies subject to the Paperwork Reduction Act of 1995 are required to publish draft information quality guidelines on their websites for public comment. Agencies are also required to Report to the OMB's Director the number and nature of complaints received by the agency regarding agency compliance with the guidelines and how such complaints were resolved.

In accordance with OMB's guidelines, the Federal Maritime Commission ("Commission") has developed the following draft guidelines for public review and comment. These guidelines do not create a new mechanism for addressing policy decisions made by the Commission. Rather, they address internal procedures for ensuring and maximizing the quality of certain types of information it disseminates. In addition, they provide an administrative mechanism for correcting, when appropriate, information that does not comply with the guidelines.

Please note that the Commission's information quality guidelines:

- are not a regulation and do not change any existing regulatory requirements or trigger any regulatory obligations;
- do not affect any otherwise available judicial review of agency action;
- may be revised periodically; and
- may be superseded by alternative methods in particular circumstances as appropriate to assure and correct information quality.

Please send us your comments on any aspect of these draft guidelines by June 13, 2002. Comments should be in the form of an original and 15 copies (paper), or, if e-mailed,, as an attachment in WordPerfect 8, Microsoft Word 97, or earlier versions of these applications. Comments should be sent to:

Bryant L. VanBrakle
Secretary
Federal Maritime Commission
Washington, D.C. 20573-001

Comments may also be mailed to: secretary@fmc.gov.

II. Agency Background

The Federal Maritime Commission is a small (approximately 130 full-time equivalent employees)

independent government agency responsible for regulating ocean shipping in the foreign trades of the United States and ensuring the financial responsibility of certain passenger vessel operators ("PVOs").

The principal statutes or statutory provisions administered by the Commission are the Shipping Act of 1984 ("Shipping Act"), the Foreign Shipping Practices Act of 1988 ("FSPA"), section 19 of the Merchant Marine Act, 1920 ("1920 Act"), and Pub. L. No. 89-777. All of these statutes were amended and modified by the Ocean Shipping Reform Act of 1998, which took effect on May 1, 1999.

The Commission is authorized by the FSPA, section 19 of the 1920 Act, and section 13(b)(6) of the Shipping Act to act to ensure that U.S. foreign commerce is not burdened by non-market barriers to ocean shipping. The Commission may take countervailing action to correct unfavorable shipping conditions in U.S. foreign commerce and may impose penalties to address actions by carriers or foreign governments that adversely affect shipping in the U.S. foreign oceanborne trades or that impair access of U.S.-flag vessels to ocean trade between foreign ports.

The Shipping Act applies to the operations of common carriers and other persons engaged in U.S. foreign ocean commerce. It exempts agreements between these entities that have become effective under the Shipping Act from the U.S. antitrust laws. The Commission reviews and evaluates these agreements to ensure that they do not exploit the grant of antitrust immunity, and to ensure that they do not otherwise violate the Shipping Act or result in an unreasonable increase in transportation cost or unreasonable reduction in service.

In addition to monitoring relationships among carriers, between carriers and marine terminal operators ("MTOs"), and among MTOs, the Commission is also responsible for ensuring that individual carriers and MTOs, as well as those permitted by agreement to act concertedly, treat shippers and other members of the shipping public fairly.

Pub. L. No. 89-777 requires the operators of passenger vessels with 50 or more berths, who embark passengers at U.S. ports, to establish financial coverage to indemnify passengers in cases of death, injury, or nonperformance of transportation. The Commission certifies such operators upon the submission of satisfactory evidence of financial responsibility.

The Commission carries out its regulatory responsibilities by conducting informal and formal investigations and administering regulatory processes. It holds hearings, considers evidence and renders decisions, and issues appropriate orders and implementing regulations. The Commission also adjudicates disputes involving the regulated community, the general shipping public, and other affected individuals or interest groups. The Commission also offers alternative dispute resolution services to the entities it regulates, as well as to the members of the public who use entities subject to the Commission's jurisdiction.

III. Information Disseminated by the Commission

The Commission disseminates a variety of information about the agency's jurisdiction, programs, and operations. The primary recipients of this information are representatives of ocean common carriers; non-vessel-operating common carrier and freight forwarder ocean transportation intermediaries; MTOs; PVOs; shippers; trade associations representing these interests; and the press. This information includes notices of agency actions published in the Federal Register; rules and regulations promulgated in the Code of Federal Regulations; adjudicatory decisions of agency Administrative Law Judges and the

Commission; the agency web site (at <http://www.fmc.gov>); staff reports on the industry; press releases; and speeches by the agency's Chairman, Commissioners or employees.

The information disseminated by the Commission primarily consists of adjudicatory decisions and press releases, but these types of documents, as well as certain other documents defined below, are excluded from coverage under the OMB guidelines. Other information is available to the public, primarily by means of the agency web site, but usually as a by-product of dissemination of that information to target audiences, transmittal of reports to Congress and other agencies, transmittal of a variety of rules, regulations and regulatory notices to the Federal Register, filing of pleadings in litigation, and Congressional testimony. Nevertheless, to the extent that the Commission disseminates covered information to the public, agency guidelines will be in place pursuant to Public Law 106-554 and OMB's implementing guidelines. It should also be noted that most Commission regulatory issuances, such as rules, already afford opportunities for interested parties to comment pursuant to the Administrative Procedure Act, 5 U.S.C. 511 et seq. ("APA").

IV. Definitions

For purposes of the Commission's information quality guidelines, the following terms will have the meanings defined below, which follow or are derived from OMB's guidelines. Consistent with OMB's guidance, we have adapted OMB's definitions in ways appropriate to the Commission's particular practices and programs:

(a) "**Dissemination**" means a Commission-initiated or sponsored distribution of information to the public. Dissemination does not include: (i) distributions limited to government employees or agency contractors or grantees; (ii) intra- or inter-agency use or sharing of government information; (iii) responses to requests for agency records under the Freedom of Information Act, the Sunshine Act, the Privacy Act, the Federal Advisory Committee Act or other similar law; or (iv) distributions limited to correspondence with individuals or persons, press releases, archival records, public filings, subpoenas or adjudicative processes.

(b) "**Information**" means any communication or representation of knowledge, such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms. "Information" includes data posted on the Commission's website, but does not include the provision of hyperlinks to information that others disseminate. "Information" also does not include opinions, where the Commission or the author makes clear that what is being offered is the author's opinion rather than either fact or the Commission's views.

(c) "**Influential**" is a specialized term that means certain scientific, financial or statistical information with respect to one or more critical issues in a "major rule," as such term is defined in the Small Business Regulatory Enforcement Fairness Act of 1996, that the agency can reasonably determine will have or does have a clear and substantial impact on important public policies or important private sector decisions.

(d) "**Integrity**" refers to the security of the Commission's information, i.e., protection of the information from unauthorized access or revision, to ensure that the information is not compromised through corruption or falsification.

(e) "**Objectivity**" refers both to: (i) presenting information in a proper context to set out that information in a clear, complete and unbiased manner; and (ii) ensuring that the substance of the information is accurate, reliable and unbiased.

(f) "**Quality**" is an encompassing term comprising utility, objectivity and integrity.

(g) "**Reproducibility**" means that "influential" information is capable of being substantially reproduced, subject to an acceptable degree of imprecision. With respect to analytic results, "capable of being substantially reproduced" means that independent analysis of the original or supporting data using identical methods would generate similar analytic results, subject to an acceptable degree of imprecision or error.

(h) "**Utility**" refers to the relative usefulness of the information to its intended users.

V. Information Quality Guidelines

The Commission has always maintained high standards of quality in the production of information disseminated outside the agency. In this regard, it should be noted that although the pre-dissemination review procedures outlined below will formally apply to information first disseminated by the Commission on or after October 1, 2002, the public should be assured that all information disseminated by the Commission will continue to be held to the highest qualitative standards up to the date that the below pre-dissemination review procedures become formally effective.

In accordance with OMB's guidelines, the level of quality assurance appropriate for information will vary according to the information's relative importance and the costs and benefits of requiring additional assurances for the particular information. The following guidelines describe the Commission's quality standards and formalize a correction mechanism.

A. Basic Principles

(1) Quality

The Commission takes pride in the quality of its information and is committed to disseminating information that meets the Commission's already rigorous standards for objectivity, integrity and utility. Before the Commission disseminates any information to the public, all aspects are thoroughly reviewed by expert staff and appropriate levels of management. The Commission's current internal review and approval policies and procedures ensure, to the Commission's best ability, that the information and data disseminated by the Commission are accurate and timely, appropriate for external consumption, uncompromised and useful to the public.

(2) Integrity

The Commission has established policies for carrying out its information security program pursuant to the Computer Security Act of 1987, the Government Information Security Reform Act of 2000 and the Security of Federal Automated Information Resources, OMB Circular A-130 (February 8, 1996). The Commission's information security program encompasses those measures necessary to protect the Commission's information resources. These measures include providing, for each IT project: (i) the appropriate technical, personnel, physical, administrative, environmental and telecommunications

safeguards; and (ii) continuity of operations through contingency or disaster recovery plans. The Commission's protective measures cover the following information resources: data, applications, software, hardware, physical facilities and telecommunications. The Commission's information security program assures that each automated information system has a level of security that is commensurate with the risk and magnitude of the harm that could result from the loss, misuse, unauthorized disclosure or improper modification of the information contained in the system.

(3) Utility

The Commission is committed to maximizing the utility of the information it disseminates to the public. To this end, information and the appropriate form and vehicle for its dissemination are evaluated and reviewed by the relevant subject matter experts on a given project, along with appropriate levels of management within the Commission, before it is disseminated to ensure its usefulness to the intended audience. This includes ensuring that it is organized and written in a manner that facilitates its understanding and use by the intended audience. The information also is reviewed to ensure its timeliness and continuing relevance for the intended audience.

(4) Objectivity

The Commission is committed to disseminating information that is accurate, clear, complete and unbiased both in its content and in its presentation. The relevant subject matter experts and appropriate levels of management review information before it is disseminated to, among other things, ensure that it is accurate, reliable and unbiased. As appropriate, this review includes an assessment of the collection, generation, and analysis of relevant information and data. The review also considers the information's presentation to ensure that it is put in the proper context and presented in a clear, complete and unbiased manner. Where appropriate, in the context of regulatory studies for example, the Commission also identifies the sources of supporting data so that the public can assess for itself the objectivity of those sources.

(5) Influential Information

Any information deemed to be "influential" as defined in these guidelines will be reviewed by subject matter experts within the Commission and appropriate levels of management to ensure adequate disclosure about underlying data and methods of analysis to facilitate reproducibility of the information by qualified third parties.

B. General Categories of Information Subject to the Guidelines

(1) Information Disseminated through the Regulatory Process -- With Notice and Comment

Before the Commission disseminates a proposed or final rule, expert staff prepare drafts of the rule, which, where appropriate, are circulated to other staff members having direct or complementary subject matter expertise. The drafts are also generally reviewed by the Office of the General Counsel, and finally are reviewed and approved by the Commission. Proposed rulemakings generally include a public comment process pursuant to the APA. These procedural safeguards assure a response to comments on the quality of the proposed rule's information and provide affected parties an opportunity to contest the final decision. The Commission will review any correction request about a pending rulemaking solely through the notice and comment process and not through the correction request procedures described below.

(2) Information Disseminated through the Regulatory Process -- No Notice and Comment

On occasion, the Commission disseminates information through its regulatory process that is not subject to APA's notice and comment requirements, including Commission interpretations of its statutory authority, circular letters to the industry and policy statements. These types of issuances memorialize the Commission's opinions on particular issues. They could also provide clarification of previous Commission issuances, or indicate a direction the Commission contemplates taking in the future with respect to various topics, including items that were the subject of prior rulemakings, once the Commission has had the opportunity to monitor a rule's actual effect. In instances of Commission interpretations of authority or policy statements, supporting information is gathered and analyzed, and then the interpretative statements are drafted, reviewed and revised by relevant Commission staff experts. In addition, further review is provided by appropriate levels of management and by complementary subject matter experts in other Commission bureaus or offices, as appropriate, and, finally, approval is required by the Commission before dissemination to the public.

(3) Statistical and Other Numerical Information Disseminated Outside of the Regulatory Process

From time to time, the Commission's staff prepares information that displays or relies on statistics and other data gathered by the staff. Sometimes the Commission staff gathers its own data and stores the data in databases that it controls and maintains. Data is also gathered by the staff from filings made with the Commission, some of which are confidential. The staff may also rely on data gathered from independent third parties and vendors who supply data that the staff, and when appropriate, the Commission, reviews, analyzes and disseminates. These data include maritime traffic and rate summaries; studies of maritime service contracts; information on carrier or marine terminal rates, charges and practices obtained from tariffs or schedules published by these entities, and various special studies and research reports pertinent to the matter under analysis. Both internally generated and externally obtained data are subjected to internal review and are reviewed by the appropriate levels of management in the Bureau responsible for preparing the reports. In addition, this information may be reviewed by other Commission bureaus and offices that may have complementary subject matter expertise. When appropriate, the data or the reports are also submitted to the Commission for review or approval.

(4) Non-Statistical Information Disseminated Outside of the Regulatory Process

Some information disseminated by the Commission does not rely on statistical analyses and quantitative foundations. This information includes matters such as consumer advisories to cruise passengers, outlines of the Commission's jurisdiction, and the role of its staff components, all of which are maintained on the Commission's website. Each document is drafted by the responsible staff member(s), reviewed by appropriate supervisory levels and, when necessary or appropriate, reviewed and approved by the Commission before dissemination. Because of the varied nature of these materials, the Commission and its staff use that level of quality assurance commensurate with the information's importance and the likelihood that it will be relied on by the public.

(5) Information Outside the Guidelines' Scope

Based on OMB's definitions of "dissemination" and "information," several types of information disseminated by the Commission and its staff do not formally fall under these guidelines. However, it should be emphasized that the Commission and its staff apply rigorous standards to all information disseminated, whether or not it formally falls under these guidelines.

Excluded categories include:

- (a) Distributions limited to Commission employees or contractors, such as internal operating procedures, training manuals and requests for proposals.
- (b) Intra- or inter-agency distributions or sharing of government information, such as the Commission's Annual Report, the Commission's annual budget and the Commission's plans and reports pursuant to the Government Performance and Results Act of 1993.
- (c) Opinions of individual Commissioners and staff members, where the author's presentation states that the information is that person's opinion rather than fact or the Commission's views. These include articles, speeches, panel presentations, special studies and academic papers authored by staff members that state that the views expressed in their work are their own views and do not necessarily reflect the Commission's views.
- (d) Responses to requests for agency records under the Freedom of Information Act, the Sunshine Act, the Privacy Act, the Federal Advisory Committee Act or other similar law.
- (e) Correspondence with individual entities or persons, including staff comment letters and staff interpretive letters.
- (f) Commission and staff press releases, including litigation releases.
- (g) Archival records maintained by the Commission docket activity room and library.
- (h) Information from third parties, for which the Commission is merely a conduit, such as agreements filed by carriers and MTOs subject to the Commission's jurisdiction, and the locations of tariffs and schedules published by carriers and MTOs subject to the Commission's jurisdiction.
- (i) Subpoenas or adjudicative processes, including Commission orders, opinions, amicus and other briefs. Adjudicative processes also include factual allegations by the staff during the investigative and litigation phases of cases brought by the Commission's Bureau of Enforcement. Because there are well-established procedural safeguards and rights to address the quality of factual allegations and adjudicatory decisions, and to provide persons with an opportunity to contest decisions, these guidelines do not impose any additional requirements on the Commission during adjudicative proceedings and do not provide parties to such adjudicative proceedings any additional rights of challenge or appeal.

VI. Requests for Correction

The Commission has always stood ready to assist affected members of the public to obtain appropriate correction of information maintained and disseminated by the Commission. Accordingly, the Commission Information Quality Guidelines announced by this Notice formalize an administrative mechanism whereby affected members of the public may seek and obtain appropriate correction of information maintained and disseminated by the Commission if the information does not comply with OMB or agency guidelines.

The correction process is designed to provide a mechanism for affected persons to seek correction of information disseminated by the Commission that does not comply with these guidelines. Information

correction requests should be sent only after October 1, 2002. However, the Commission is always concerned about the quality of the information it disseminates, and requests that any information that may appear to be erroneous be brought to its attention at the earliest practicable date, even if that precedes the formal effectiveness of this mechanism.

This process does not necessarily guarantee a correction in every instance. Rather, the decision of whether a correction is appropriate, and what degree of correction is appropriate, will be determined by the nature, completeness and timeliness of the information involved and such factors as the significance of the correction on the users of the information and the magnitude of the correction. Responses may be in the form of personal contacts by letter or telephone, form letters, press releases or mass mailings that correct widely disseminated errors or address a frequently raised request.

With respect to proposed rules, the thorough consideration required by the APA process provides an adequate complaint and appeal process. A separate complaint and appeal process for information that is already subject to such a public comment process would be duplicative, burdensome, disruptive to the orderly conduct of the action and unfair to other public commenters who submitted comments during the applicable comment period. Accordingly, the notice and comment process is the exclusive means by which an affected person may address the quality of information in a proposed rulemaking.

In most instances, matters will be resolved at the appropriate bureau or office level within the Commission. Novel or highly complex matters may be sent to the Commission for review, at the staff's discretion. If the matter is resolved at the staff level, the staff will use reasonable efforts to send its response to the requestor within 30 days of filing. If the matter's resolution is particularly complicated or would benefit from consultation with other Commission offices, bureaus or other agencies, the staff will use reasonable efforts to send a response to the requestor within 45 days of filing.

(A) Information Correction Request

(1) Format

To be treated as an information correction request under these guidelines, any affected person seeking correction of Commission-disseminated information should submit a request in writing (on paper or by email) including the following:

- (a) a description of the facts or data the requestor seeks to have corrected;
- (b) an explanation of how the requestor is an affected person with regard to those facts or data;
- (c) the factual basis for believing the facts or data need to be corrected;
- (d) a proposed resolution, including the factual basis for believing the facts or data in the requestor's proposed resolution are correct;
- (e) the consequences of not implementing the proposed resolution; and
- (f) the requestor's contact information, including name, address, daytime telephone number and email address.

Requests should be marked "Information Correction Request" on the first line of the envelope directly

above the mailing address and on the correspondence itself, in the case of letters, or in the "Subject" line, in the case of email correspondence. Emails should be sent to the following address: secretary@fmc.gov. Letters should be addressed to:

Federal Maritime Commission
Office of the Secretary
Attn: Information Correction
Washington, DC 20573-0001

(2) Processing Information Correction Requests

The Office of the Secretary will route the request to the head of the appropriate bureau or office within the Commission who will ensure that: (i) the request is reviewed; (ii) any appropriate corrective action is taken; and (iii) a response to the request is made.

(B) Requests for Staff Reconsideration

(1) Format

If the requestor does not agree with the response, the requestor may request reconsideration of the staff's original response. Such a reconsideration request should be postmarked (or, in the case of email, date-stamped) within 20 days of the date of the initial response. The request for staff reconsideration should include a copy of the original request, a copy of the original response and the following:

- (a) A statement describing why the response to the original complaint did not comply with the information quality guidelines or why the requestor disagrees with the original response; and
- (b) The requestor's contact information, including name, address, daytime telephone number and email address.

Requests for staff reconsideration should be marked "Request for Reconsideration of Information Correction" on the first line of the envelope directly above the mailing address and on the correspondence itself, in the case of letters, or in the "Subject" line, in the case of email correspondence. Emails should be sent to the following address: secretary@fmc.gov. Letters should be addressed to:

Federal Maritime Commission
Office of the Secretary
Attn: Information Correction
Washington, DC 20573-0001

(2) Processing Staff Reconsideration Requests

The Office of the Secretary will route the reconsideration request to the appropriate staff official. The designated official may seek the advice and counsel of other appropriate officials in rendering the decision. The designated official will review the original response, determine if additional action is appropriate, and use reasonable efforts to send the staff's response to the reconsideration request within 30 days of receipt of the filing of the request for reconsideration.

VII. Reporting Procedures

The Commission will send an annual report to OMB describing the number and type of complaints received about its compliance with OMB guidelines, and how such complaints were resolved. The Commission will submit its initial report by January 1, 2004.

VIII. Conclusion

These agency guidelines are not intended to create any right or benefit, substantive or procedural, enforceable in any court by a party against the Commission, the federal government, or any individual, beyond any that may be established by section 515 of Public Law 106-554 or by implementing OMB guidelines. In particular, these agency guidelines do not impose any additional requirements on the Commission during adjudicative, rulemaking or other proceedings initiated under the Commission's statutory authority and conducted under the Commission's Rules of Practice and Procedure, and do not provide parties to such proceedings any additional rights of challenge or appeal.

IX. Privacy Act Statement

The Commission is authorized to collect the information provided by a requestor for information correction or for staff reconsideration under the Appropriations Act. The information is needed to process each request and to allow the Commission to reply appropriately. The requestor is not required to furnish the information, but failure to do so may prevent the request from being processed. The principal use is to process and respond to the request, but the Commission may disclose information to a Congressional office in response to an inquiry made on the requestor's behalf, to the Department of Justice, a court or other tribunal when the information is relevant and necessary to litigation, or to a contractor or another federal agency to help accomplish a function related to these guidelines.

By the Commission

Bryant L. VanBrakle
Secretary

ENDNOTES

1. See 66 FR 49718 (September 28, 2001) (Final Guidelines, with Request for Comments) and 67 FR 369 (January 3, 2002) (Final Guidelines), as corrected and/or amended at 67 FR 5365 (February 5, 2002), 67 FR 8452 (February 22, 2002), and 67 FR 9797 (March 4, 2002).