COVER STORY

# The Case Against The IQA

*With its vague terms that were never debated in Congress — but that have been interpreted expansively by the Office of Management and Budget — the Information Quality Act is neither a necessary nor an appropriate measure to ensure that federal agencies disseminate accurate data. Nonetheless, industry has used it to obstruct, to avoid, and to challenge environmental, health, and safety regulations — just as the law's designers hoped*

SIDNEY SHAPIRO

At the time it was passed in 2000, the Information Quality Act was a solution in search of a problem, layered on top of time-tested and well-regarded mechanisms for ensuring the quality of the data on which the government relies. However, the Office of Management and Budget quickly used these few provisions as an opportunity to establish overarching, all-encompassing government-wide data quality guidelines. Since then, taking advantage of the guidelines, industry and trade associations have used the IQA as an open-ended remedy to contest government information that they find bothersome. Because of the agency logjam that has resulted, the IQA may well turn out to be the most destructive half-page of law that most people do not even know is on the books.

That Congress did not intend the IQA to serve as a kind of uber-act providing OMB with the overarching authority to deflect EPA or any other agency from its statutory responsibilities is overwhelmingly evident from the terse statutory language; the absence of any legislative history; the lack of any hearings; the location of the act, an appropriations rider, sandwiched between two unrelated provisions in a huge appropriations bill; and from the fact that no one referred to the IQA (also called the Data Quality Act) during the debate on the larger spending measure.

Nonetheless, as the pace and scope of IQA petitions challenging critical environmental, health, and safety information and policies steadily grew, OMB's John Graham continued — and still continues — to defend the broadest possible interpretation of these provisions. Graham, who as director of OMB's regulatory oversight unit, the Office of Information and Regulatory Affairs, also presides over government wide IQA implementation, is a strong proponent of the act precisely because of its potential to enhance OMB's bureaucratic power and to serve as an effective tool for the Bush administration's deregulatory agenda.

A serious look at the statute, and the ways it has been used since its enactment, reveals that the IQA provides a resource-intensive layer of redundant review, one that is heavily tilted toward use (and misuse) by regulated industry. Agencies routinely need months to respond to requests. They end up ultimately turning down most petitions as without merit.

Specific requests filed under the law illustrate the ways the IQA has been misused by industry petitioners. Petitions are routinely filed in attempts at

*Censorship.* Industry petitioners have tried to exclude or withdraw inconvenient information entirely rather than correct incorrect information;

*"Correcting" policy.* Many IQA petitions challenge agency policy decisions and precautionary policies rather than technical or scientific information;

*End running regulations* by challenging decisions, not information, bypassing traditional remedies in those laws;

*Delaying* already overdue regulatory actions that have already complied with extensive opportunities for public participation;

*Preventing agency action in the face of incomplete information* — as is frequently the case in environmental law — not poor quality information, as the law is designed to address;

*Conducting fishing expeditions* by seeking underlying data without complying with Freedom of Information Act procedures, even though the act gives no access to those data;

*Creating substantive conditions or standards* for rulemaking, implementation, or dissemination not contemplated by Congress; and

*Sidestepping the courts* by attempting to discredit information that corporate defendants have either been unable to successfully exclude at trial, or would prefer not to encounter in future litigation.

In an administration where economic efficiency ranks as a top regulatory priority, the allocation of scarce agency resources to respond to repetitive and extra procedural petitions in the name of good "information" is especially duplicitous. In order to put an end to the extra-legal behavior outlined above while saving the resources currently diverted from urgent priorities, the IQA must be repealed.

After its passage, the IQA required OMB to promulgate "policy and procedural guidance to federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information . . . disseminated by federal agencies." The agencies were in turn required to promulgate their own guidelines and establish procedures under which affected persons could "seek and obtain correction of information . . . that does not comply with the guidelines." Even though the only explicit congressional directive was a mandate to issue guidelines on agency implementation of data correction procedures, OMB read these ministerial responsibilities extremely broadly, creating out of whole cloth a lengthy set of guidelines (issued in 2002) defining terms, mandating that agencies adopt or adapt the non-precautionary, less-protective standards for risk information used for the purposes of the 1996 Safe Drinking Water Act for all health, safety, and environmental information, providing assumptions about peer review, providing criteria for handling information deemed "influential," and creating an agency appeals procedure that is nowhere mandated in the statute. After seeking public input, agencies adopted their own guidelines to implement the rider.

***The administration touts economic efficiency in regulation, but the IQA wastes agency resources. It's a law that needs to be repealed***

The IQA was sponsored by Representative Jo Ann Emerson (R. Missouri), but was the brainchild of Jim Tozzi. Tozzi began his public career as a senior official at OMB, departing government in 1983 to form a variety of consulting firms and trade groups, including the Center for Regulatory Effectiveness. Over the last two decades, his clients have included a broad spectrum of industries that share a combined interest in reigning in regulatory agencies, including tire and auto manufacturers, the lead industry, plastics, pharmaceuticals, pollution equipment manufacturers, and, most lucrative of all, tobacco.

Tozzi's career was given a huge boost with the passage of the 1995 Paperwork Reduction Act, which included language relevant to data quality. One of its purposes was to "improve the quality and use of federal information." The act required OIRA to "develop and oversee the implementation of policies, principles, standards, and guidelines to . . . apply to federal agency dissemination of public information," including "statistical information." Each federal agency had a responsibility for managing information resources in a way that would, among other things, "improve the integrity, quality, and utility of information to all users within and outside the agency." Agencies were required to "regularly solicit and consider public input on the agency's information dissemination activities."

Tozzi apparently interpreted the injunction to "consider public input" as a requirement for agencies to establish procedures for public challenges to the quality of agency disseminated information. His problem was that the statute did not require OMB or any individual agency to take any particular implementing action within any given time frame.

In 1997, CRE prepared a "Draft Outline for Legislation on Integrity and Dissemination of Federal Information" for distribution to its members. It was Tozzi's vision for what would become the Information Quality Act. Tozzi and his industry clients pushed for data quality legislation mostly because of what they perceived as a worrisome move-

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ment toward "regulation by information," absent congressional or administrative review, whereby government agencies provide access to information on the activities of regulated entities through the Internet and other media.

Tozzi also saw the IQA as means to attack new or cutting edge science, assumptions about uncertainty, and policy judgments that are unfavorable to industry. Directives to agencies regarding how to regulate in the face of uncertain or incomplete information are contained in our health, safety, and environmental laws, but direct attempts to weaken these statutes as well as efforts to pass legislation requiring peer review of regulatory information and mandating other procedural requirements for agency decisionmaking have failed in recent years.

There is really no evidence that there was a serious problem with data quality in the federal government prior to the legislation. When Mark Greenwood wrote an article in the *Environmental Law Reporter* prior to the passage of the IQA which advocated a data correction process, he was hard pressed to come up with examples of poor quality information used by agencies. OMB's justification for its IQA guidelines contains no examples.

This failure is not surprising. EPA and other agencies had in place elaborate and time tested procedures for data verification and correction prior to the IQA. Professor Wendy Wagner of the University of Texas School of Law has found that "after more than [30] years of vigorous public health and safety regulation . . . there are surprisingly few instances where unreliable science has been used." She continues, "If one subtracts from the studies where industry or independent contractors fabricated data in order to support their application for a license . . . then the examples of regulatory bad science is winnowed down to a few, virtually all of which are contested."

Despite the lack of need for the IQA, its defenders claim that it is a modest and useful effort to vet information on which the government relies. A recent report by the Center for Progressive Reform (available at *www.progressivereform.org*), which analyzes the IQA complaints filed so far, finds otherwise. This article, based on the study, describes the problems created by the IQA and indicates why these problems justify the conclusion that the act does more harm than good.

The first two years of implementation illustrate the act's ability to stall decisionmaking and consume resources. While OMB states in its first Report to Congress on the IQA that the number of "substantive correction requests that were responded to was relatively small," a look at the numbers by OMB Watch reveals a different picture. OMB reported that the agencies had only received 35 correction requests "that appear to be stimulated by the Information Quality Act," but there were actually 98 petitions filed in fiscal year 2003, and at least 15 have been filed with EPA alone since then (through April 2005). In addition, there have been at least 20 Requests for Reconsideration — the appeals process — filed just with Health and Human Services and EPA.

This number of requests might appear manageable if it were divided evenly among the agencies and if the requests merely involved the correction of information on an agency website. However, the bulk of these petitions have been aimed at a few agencies with regulatory powers, particularly EPA. Furthermore, most are lengthy, substantive complaints about policy and scientific judgments that have taken the agency months to answer. For example, it took EPA nearly nine months to reject a complaint that it was inaccurate to characterize bromate as a likely human carcinogen. That petitioner then filed a Request for Reconsideration, which remains unanswered more than eight months later. There have been at least 10 such appeals submitted to EPA. Two of these petitions took well over a year to resolve from filing of the request through resolution of the appeal, one took over seven months, and the other six remain to be answered.

OMB suggested in its first report to Congress that the IQA has not affected the pace or length of rulemakings without referencing any data to support this conclusion. It also acknowledged, however, that it is taking agencies longer than expected to respond to requests and appeals, taking longer to find the right personnel to handle the request, and ensuring that personnel have sufficient time to give "priority" to the request has been difficult — all of which suggest that agencies are hard pressed to address IQA complaints and do the other business of the agency. In light of the tradeoff, it is difficult to see how the IQA will not delay rulemaking.

OMB further recommended in its report and directly to agencies that scientific and

# A Statute For All Of Us

The Information Quality Act is a good-government law, in the tradition of the Freedom of Information Act. It encourages transparency and accountability. It imposes a simply stated, but profound obligation on federal agencies: tell the public what you know and don't know in an understandable way. It does not inherently favor one policy perspective over another. The IQA is a statute for everyone.


Mark Greenwood

Enacted as part of the Fiscal Year 2001 Consolidated Appropriations Act, the IQA required the Office of Management and Budget to issue "policy and procedural guidance to federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity" of information that is "disseminated" to the public. This guidance was to require agencies to issue their own guidelines on this subject, establish administrative mechanisms for affected persons to request correction of information, and report periodically to OMB.

OMB's guidelines, which were issued in 2002, provided important definitions of the key terms in the statute and called for agency practices, such as the use of "best available peer-reviewed" data in conducting scientific assessments, that are likely to improve the substantive quality of information provided to the public. The guidelines give particular emphasis to transparency in how information is assembled, interpreted, and used. The guidelines also established a structured correction request and review process, including an appeal right within an agency and deadlines for agency decisions.

What has emerged from the IQA is a rational set of expectations for government. Agencies are expected to disseminate information that is factually accurate and that offers a balanced explanation of events, conditions, or circumstances. Both the "objectivity" and "utility" standards call on agencies to provide understandable communications with the audiences for governmental information, including the general public. This duty requires agencies to provide "context" for complex data, including the inherent limits of the available information.

The ultimate test of whether agencies are meeting these expectations is the relative transparency and coherence of government information to parties outside the government. This concept of transparency is not measured solely by access to government documents. The IQA focuses additionally on presentation of the rationale for a particular conclusion embodied in the information in question. For example, the OMB guidelines stipulate that scientific and technical analysis should be "reproducible," in the sense that there is a sufficient explanation of a methodology to allow another scientist to replicate the analysis.

Ultimately, agency success under the IQA is measured by public understanding of the information that is conveyed. This central role of the public is one of the distinguishing features of the IQA. When the customers for government information are dissatisfied, a procedural solution is provided to address these concerns. The statute and existing agency guidelines allow interested parties to file requests for correction of specific information. By this mechanism, the IQA recognizes a public right to good quality information and defines a clear role that interested parties can play in the implementation of the law.

Surprisingly and unfortunately, the IQA has come under attack from some NGO groups that might otherwise benefit from its provisions. These criticisms have tended to focus on the motives of industry groups that have supported the law's enactment and implementation. These critics have expressed great alarm because some of the correction requests that have been filed delve into issues beyond correction of information (e.g., regulatory decisions) and seek Draconian remedies (e.g., withdrawal of regulations or websites.) Yet the experience to date shows that agencies have deftly denied the over-reaching aspects of these requests without any great difficulty or adverse consequences.

The IQA critics have also expressed concern that the IQA will be a tool for further "ossification" of the rulemaking process and will have a chilling effect on information dissemination by federal agencies. The record shows that the number of correction requests has been modest. The IQA has not changed the fact that debates about the costs and benefits of individual regulations, as well as the politics surrounding those debates, remain the significant drivers of regulatory outcomes. Certainly the large information enterprise of the federal government continues to pump out information for public consumption on a daily basis. In short, implementation of the IQA over the last three years has not realized some of the fears of its critics.

Hopefully the IQA will pass beyond its current turbulent shakedown period and find its proper niche in the framework of federal laws on information management. To that end, IQA proponents must understand that the law does not right every wrong, while IQA critics must understand that the law does not wrong every right.

Those who want to raise IQA concerns must focus on questions of scope and remedy. The IQA is a tool to correct information, which usually involves the addition, not subtraction, of information in a document or website. The remedy for an IQA problem is not the withdrawal of a regulation. Likewise, public interest groups should set aside their professed boycott against the statute and use its principles to advance environmental protection. Here, the signs are encouraging, as groups like Public Employees for Environmental Responsibility and Environmental Working Group have filed important IQA correction requests. In the end, the IQA will reach its true potential when it "belongs" to everybody.

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technical staff be increasingly engaged in the IQA process, which will undoubtedly come at the expense of their involvement in other necessary projects. For example, OMB told the National Institutes of Health in 2004 that it should add three time-consuming steps to its process for responding to IQA complaints about the National Toxicology Program after NIH had received six complaints. OMB requested these steps even though it conceded in its letter to NIH that "NTP already has a rigorous process of scientific deliberation."

There is very little information available to help the public determine how many agency resources are consumed responding to IQA requests. Direct requests by the Center for Progressive Reform to obtain such information from EPA failed to illicit any. In July 2004, a member of EPA's Office of Environmental Information's Quality Staff responded to a request for resource information by explaining that "at this time, I am not able to provide you with a report on the financial resources or personnel hours dedicated to responding to the public's request and overall management of the EPA's Information Quality Guidelines program." The fact that the costs associated with implementing the IQA are unknown means that the IQA's opportunity costs are also unknown — that is the extent to which other agency programs and initiatives are languishing while resources are diverted to respond to IQA petitions.

*Our review of petitions filed in the IQA's first two years shows that the act has little to do with correcting information ...*

A review of the petitions filed in the first two years of the IQA shows that, as predicted, the act has very little to with correcting government information and very much to do with creating new opportunities to oppose and weaken existing and new regulatory controls. CPR's review of IQA petitions indicates a number of ways in which the act has become a deregulatory tool in the hands of industry petitioners.

The Competitive Enterprise Institute, for example, filed petitions with EPA and other agencies challenging climate change models used in the National Assessment on Climate Change notwithstanding the fact that the final report had been the subject of hundreds of public comments and exhaustive peer review. CEI sought the models' withdrawal or change — to censor their results. It obtained instead a strategic victory.

That is, after CEI sought judicial review, the government agreed to put a disclosure on the NACC that it had not been reviewed according to the standards of the IQA. CEI then claimed in a press release that the disclaimer established that "the National Assessment is propaganda, not science," a statement which is consistent with the "sound science" campaign used by industry to attack scientific information used by the government. As readers may know, this campaign seeks to convince the public that incomplete information is the same thing as poor quality information — that "sound science" is lacking, thus more study is needed, etc. — thereby undermining public support for regulation of hazards about which there is reasonable, but incomplete information. By filing and publicizing their IQA complaints, even ones that have no merit, opponents of government regulation are thus also engaging in a strategy that support the nostrums of sound science.

Some petitioners have filed complaints seeking interpretations of the IQA which are clearly not authorized by Congress but would bog down agencies if adopted. For example, petitioners have asserted the failure of EPA (and other agencies) to comply with the risk principles set forth in the Safe Water Drinking Act despite the fact that OMB's guidelines direct agencies to "adopt or adapt" the SDWA principles and that EPA (and other agencies) have adapted rather than adopted, except for when the SDWA directly applies. SDWA risk standards, which attempt to look at the average or median risk, are simply incompatible with standards such as the Clean Air Act's mandate by Congress to "protect public health with an adequate margin of safety." Agencies' decisions to adapt are not surprising, therefore, since it would violate the law to do otherwise. Other petitions have gone fishing for information, seeking to obtain underlying data without using the Freedom of Information Act. The IQA explicitly provides that agencies issue guidelines that establish administrative

mechanisms allowing affected persons to seek and obtain correction of information, but the act says nothing about providing access to the underlying data. Although these are clearly erroneous interpretations, the award for interpretive chutzpah probably goes to BMW Manufacturing Corporation. After the company was found to be in violation of the Resource Conservation and Recovery Act and subsequently came into compliance, it sought to have its historical record of violations erased using the IQA, setting forth 17 "legal questions" for EPA regarding the company's compliance status.

To date, neither EPA nor other agencies have yielded to these expansive interpretative claims, but there is still a danger that pro-industry agency officials will agree with the petitions. While the courts should reject such efforts, this result depends on whether environmental groups are able to mount legal challenges and on whether judges with a pro-business outlook will rule against EPA or other agencies. Even if legal challenges by the environmental groups are successful, they will have been diverted from pursuing other actions in support of regulatory protection.

Still other petitioners have used the IQA to raise claims that were previously made in prior proceedings or that the petitioner can make in the normal course of agency proceedings — to make an end run around them. Consider, for example, the petitions filed with the U.S. Forest Service that challenged management decisions made to benefit the Northern goshawk. The challenged documents were part of the ongoing documentation required under the National Environmental Policy Act, which means the petitioners had ample opportunities to participate in this well-established process. Such petitions may simply be an effort to make the same argument in multiple venues, which slows down the effort to regulate or disseminate information while contributing no useful new information or arguments. Alternatively, as discussed next, petitioners file IQA complaints, rather than make arguments in the normal course of agency business, because they want to assert that the IQA establishes independent, substantive conditions that an agency must meet before it can regulate or disseminate.

*... Rather, the IQA has been used to create new opportunities to oppose existing and new regulations*

While there is no indication that Congress intended that the IQA established substantive criteria that augments or amends existing regulatory statutes, this has not stopped industry petitioners from making such claims. For example, a petition filed by CRE, the Kansas Corn Growers Association and the Triazene network sought to exclude studies on the hormonal effects of the herbicide Atrazine in frogs from EPA's decision regarding its reregistration because those studies were not subject to EPA-approved testing protocols. There is, however, no such requirement in the Federal Insecticide, Fungicide, and Rodenticide Act that EPA is barred from considering studies that precede an approved protocol. In this case, the tactic appears to have succeeded, since EPA apparently intends to seek additional data concerning whether Atrazine, the most widely used herbicide in the United States, causes the hormonal effects. So CRE was able to use the IQA to change not information, but agency policy.

The IQA has also been used in an effort to undermine the long used and universally employed "weight of the evidence" approach to evaluating environmental problems. This approach necessarily acknowledges that some studies may be more reliable than others, but considers the totality of the information in making judgments rather than eliminating certain studies or pieces of information entirely to the point that there is nothing left upon which to make a decision. By using the IQA to break apart this information into small parts rather than allowing it to be analyzed collectively, petitioners seek to undermine a fundamental approach to determining risks to the environment.

A petition filed by the National Paint and Coatings Association and the Sherwin-Williams Company on the weight of the evidence issue illustrates several of the problems raised in this article simultaneously. NPCA's request involved a model rule drafted by the Ozone Transport Commission — a consortium of Mid-Atlantic states — concerning the emission of volatile organic compounds released during the application of thousands of architectural and industrial maintenance paints

and coatings. VOCs contribute to ground level ozone. As part of their efforts to meet Clean Air Act standards, several Mid-Atlantic states adopted versions of the model rule, tailored to their specific circumstances, after a full rulemaking process. The states then submitted their paint rules to EPA, asking that the agency approve the revisions to their CAA implementation plans.

The industry petition complained about a single spreadsheet among the rather voluminous materials relied on by the states to justify their rules. Its complaint was that some cells of the spreadsheet, which projected the reductions in VOC emissions under the states' rule, were erroneous. In some of the states under review by EPA, the paint industry had raised the identical claim in the rulemaking process and had received thorough responses from the states — albeit not the responses they would have liked — explaining the alleged errors in the spreadsheet, and further explaining that the spreadsheet was by no means the sole basis for adopting the rule. In some of these states, the industry challenged adoption of the paint rule in state court, and each time the court had ruled that the state had sufficient reliable evidence to support the state's rule. In other states, the paint industry failed to raise this objection before the state agency, although there appears to be no reason why it could not have done so.

*Petitioners have used the IQA for business strategic purposes or to end run normal regulatory procedures*

The industry was using the IQA as an attack on the weight of the evidence approach used by the states. Although the spreadsheet was neither the sole nor even the primary source used by the states to calculate emission reductions, the industry nevertheless argued that EPA must reject outright any state plan revision that included a paint rule on the ground that the spreadsheet failed the IQA. In the same manner, the industry was arguing that the act provides substantive standards that limit EPA's authority to act under the CAA. Whether these efforts will succeed is still uncertain. Although EPA ultimately denied NPCA's petition, the industry has filed a Request for Reconsideration with the agency, and is challenging EPA's approval of the paint rule in federal court on IQA grounds.

A petition filed by NPC Services, Inc., likewise illustrates the problems with the IQA. NPC was formed by 11 petrochemical companies identified by EPA in the mid 1980 as the parties responsible for contaminating the Petro Processors Superfund site in Devil's Swamp, just north of Baton Rouge, Louisiana. Although the man-made lake located inside the larger swamp has become a veritable toxic soup, contaminated by PCBs, lead, mercury, hexachlorobenzene, and hexachlorobutadiene, NPC's petition demanded that EPA withdraw its proposed addition of a new Superfund site, Devil's Swamp Lake, to the Superfund National Priorities List

NPC filed its complaint for strategic purposes. The complaint was filed even though EPA had repeatedly stated NPC's members would not be liable for the cleanup because it would focus on PCBs, dangerous toxics not generated through petrochemical processes such as those engaged in by NPC's members. But NPC was simultaneously seeking to challenge a regulation that it was time barred from appealing in court under the Superfund law. NPC was also using the complaint as an attack on the weight of the evidence approach used by EPA.

The petition demanded that EPA withdraw its proposed listing on the ground that the agency had failed to include a more recent risk assessment in its calculation of the lake's Hazard Ranking System score. However, the site inspection that EPA relied upon to calculate the lake's HRS score was the appropriate one, according to HRS regulations. More importantly, the risk assessment came to the same conclusion as the study used to calculate the HRS score: the lake's contamination poses unacceptable risks to human health.

Moreover, NPC's petition sought interpretations of the IQA that are clearly beyond its scope. The petition argued that both EPA's site inspection and its risk assessment failed the IQA because neither comported with the SDWA standards, although EPA had not adopted those principles, nor was it required to do so. In addition, NPC's petition demanded that EPA provide information underlying the calculation of the HRS score, so that NPC could evaluate whether it complies with the IQA, but, again, the act does not provide a

mechanism for the public to obtain information — it's the Freedom of Information Act that performs that role.

Finally, but hardly least of all, NPC was seeking to challenge a regulation that it previously had ample opportunity to contest in EPA rulemaking. NPC's petition suggests that the HRS itself does not, in NPC's estimation, satisfy IQA standards. Indeed, an attorney for the company characterized NPC's petition as an "attempt to look at the science that underlies the HRS site scoring process." Any challenge to the HRS regulations, however, would be time barred if brought in court. Thus, NPC used the IQA both in an attempt to further delay a long overdue and urgently necessary regulatory action, and as a means of attacking an established regulatory process that can no longer be challenged in court. Ultimately, EPA opted to include the petition as an additional comment on the proposed listing. More than a year later, the listing of Devil's Swamp Lake has yet to be finalized.

The defenders of the IQA see nothing wrong with OMB's expansive interpretation because additional protections are warranted and appropriate, in their view. Since regulations, or even the dissemination of information about risks to people and the environment, can cost corporations millions of dollars, they argue that additional procedures to vet information are a good idea. This claim, however, ignores the lack of evidence that the government previously relied on poor information. It also ignores the tradeoff between additional procedures and the impact of delay on the government's statutory responsibilities to protect people and the environment.

The defenders attempt to deny that the IQA is antiregulatory by noting that environmental and other public interest groups can and have filed data quality complaints. While it is technically accurate that environmental groups have filed petitions, industry, trade organizations, and conservative groups have filed the large majority. A July 2004 report by OMB Watch, *The Reality of Information Quality Act's First Year: A Correction of OMB's Report to Congress,* concluded that 72 percent of all requests for correction were filed by industry, and a majority of those requests challenged information relating to safety and the environment. The industry petitions, moreover, were far more substantive and required much longer response times than petitions filed by individuals. Finally, as noted earlier, the IQA provides industry the opportunity to make collateral attacks on regulatory and informational efforts by EPA and other agencies. These tactics force public interest groups to use scarce resources monitoring agencies and ensuring that they do not succumb to extravagant industry claims concerning the scope of the IQA.

We have now had enough experience with the IQA to know that it results in significant time and resource burdens for agencies, which are difficult to justify in light of the fact that existing procedures haven proven adequate to vet such information. A review of the petitions filed to date also indicates that industry petitioners are aggressively using the act to further their own strategic goals, not to correct bad data.

Unfortunately, the disruptive and antiregulatory impacts of the IQA are about to get worse. In February 2002, OMB issued guidelines mandating government-wide peer review procedures. OMB used the IQA to justify its authority to require the extensive use of peer review although the act makes no mention of it. Indeed, since Congress has explicitly rejected attempts to pass legislation mandating government wide peer review, it seems unlikely that it meant to authorize this requirement.

*Unfortunately, the anti-regulatory impacts of the IQA are about to get worse, as agencies begin to implement peer review of data*

It is important that the government adequately vet the information that it uses. Agencies did this before the IQA. Proof that the procedures that were used then (and are still used) were inadequate for this purpose cannot be found. The IQA therefore appeared from the time of its passage as an industry effort to slow regulation and bypass or amend existing statutory standards. For this conclusion, however, the experience to date with the act offers substantial proof. •