Dear Mr. Stevenson:

The Section of Administrative Law and Regulatory Practice of the American Bar Association is pleased to submit comments on the proposed guidance for Data Quality that your agency has proposed under Section 515 of Public Law 106-554. The views expressed herein are presented on behalf of the Section of Administrative Law and Regulatory Practice. They have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the position of the Association.

These comments are focused on the mechanisms proposed for implementation of section 515’s “correction of information that does not comply with (OMB guidance)” . They speak to the process and procedural aspects of the proposed guidelines, not the substantive mission of the Commission.

1. We found it confusing that CPSC exempts from these Guidelines information disseminated that states that it “was not subjected to CPSC’s information quality guidelines.” This sounds circular; OMB listed what information can be exempted, 67 F.R. 8460 col. 2 item 5, but this seems to assert that CPSC will avoid the guidelines whenever CPSC says it is avoiding the guidelines. If criteria exist under which data is not subject to an otherwise generally applicable norm, sound administrative practice would be to describe those criteria. The current language is not sufficiently coordinated with the OMB norms.

2. Clarity in the mechanisms to be used for review of complaints would be very beneficial. The Draft says each request is to go
to the Secretary; presumably the Secretary will select the program office to which to transmit the request, and if the staff office determines that an error was made, “it will determine the appropriate level of concern.” (Draft Guidelines at 7). This is quite vague. The OMB final Guidelines, which Section 515 sets as the benchmark for agency rules, describes the function that the complaint process is to perform; this includes a timely response and notice of what steps the Commission has taken for correction. (67 FR 8459, col. 1 item III(3)(i)) It would be best to follow the mechanism in the OMB document.

3. The appeal process described in the Draft does not suggest where final authority for denial of corrections would rest, and as an independent statutory agency, it would appear that final agency action requires either a vote of the three Commissioners or a delegation by them of final authority. An appeal to the office of Executive Director may be fully appropriate, but it would be optimal if the final guidance would state the title(s) of the official(s) where final agency action will occur. If the CPSC regards finality as essential for any judicial review, the CPSC should state how finality can be achieved.

4. The final sentence of the “Information Not Subject” paragraph at page 6 states “…CPSC did not apply the specifics set forth in these Guidelines to information initially disseminated…prior to October 1, 2002.” Use of the past tense “did not” is very appropriate, but the paragraph should also go further to state that those disseminations which are still extant, e.g. on the website or in pamphlets distributed to the public, are subject to the OMB standards “regardless of when the agency first disseminated the information”, 67 F.R. 8459 col. 1 item III(4).

5. At page 6 line 3 the Draft states that “CPSC places great emphasis on its review process to ensure the quality of information disseminated.” We recommend clarifying that the review process is specific to the acquisition of reports and data and that the review occurs as a routine matter, separate from the review that the staff would do in the event of a complaint. In its past judicial review experiences the CPSC has had some issues with data reproducibility on swimming pool standards
and on other matters. To the extent the CPSC has an internal
data quality review on its own motion, before a complaint is
received, the dimensions of this existing internal quality review
should be described in this portion of the guidance document.

6. “Influential” information deserves special care, and page 5
“Transparency” paragraph 2 line 3 suggests that any technical
report within the broad categories listed will be treated with the
highest level of protection accorded to “influential” matters. We
note that other agencies do not similarly treat all of these types
of reports as influential, but of course the CPSC may choose to
do so.

7. Because CPS Act section 6(b)(7) is one of the few federal
statutes that expressly provides for a retraction of data
disseminated by the agency that was “inaccurate or
misleading”, and it requires the identical means of
dissemination to be used, e.g. corrective press releases, CPSC
should modify its guidelines at p. 4 in the last paragraph to
expressly cross-reference the statutory duty of correction upon
retraction. This omission needs to be rectified so that the
person adversely affected can use both the data quality and the
6(b)(7) remedies.

8. A recurring issue for other agencies is their duty to apply the
section 515 data quality norms to reports submitted to the
agency by outside entities. OMB covers that issue in 67 F.R.
8454 col. 1, saying the outside party submitted data is subject
to data quality if the recipient agency then disseminated that
data “in a manner that reasonably suggests that the agency
agrees with the information”. Yet at p. 3 para. 3 CPSC says the
data quality norms “cannot be applied” to such external data.
This seems inconsistent with the OMB Guidelines, and should
be changed to conform.

Of the agency data quality notices reviewed to date, the CPSC
guidelines appear to be the least conforming to the OMB Guidelines,
and it may be appropriate to consider a second round of public
comments as the present draft is reconsidered.
Thank you for considering these comments. If you wish clarification of any portions, please contact Professor James O’Reilly, Chair of the Committee on Government Information & Privacy, at (513) 556-0062.

Sincerely,

C. Boyden Gray
Section Chair