



# **Risk Assessment and Information Quality**

## **An Empirical Study of Federal Agency Performance**

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**Regulatory Checkbook**  
**Mt. Vernon, VA**

Statute, Guidance, and Procedures



# **BACKGROUND**



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- Statute
  - Treasury and General Government Appropriations Act, FY 2001, § 515 (Pub. L. 106–554, 114 Stat. 2763, December 2000)
- Directive to OMB
  - Issue government-wide guidance or rule
  - Define critical terms
  - Direct all agencies to issue conforming directives
    - Establish pre-dissemination review procedures
    - Establish error correction procedures

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# Critical Content

- Substance
  - Utility
  - Integrity
  - Objectivity
    - Substantive
    - Presentational
- Process
  - Transparency
  - Reproducibility
  - Post on website
- Procedures
  - Pre-dissemination review
  - Post-dissemination error correction
  - Independent appeal
- Judicial review?

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# This Paper

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# This Paper

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- How do 'affected parties' challenge information?
- Who is challenging?
- What are they challenging?
- How do agencies respond?
- Judicial review?

- Process

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- Pre-dissemination review

- Post-dissemination error correction
- Independent appeal

Judicial review?





# Conventional Wisdom

- Advocates are regulated entities
  - ‘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’

All models are wrong; some models are useful, especially when data do not get in the way

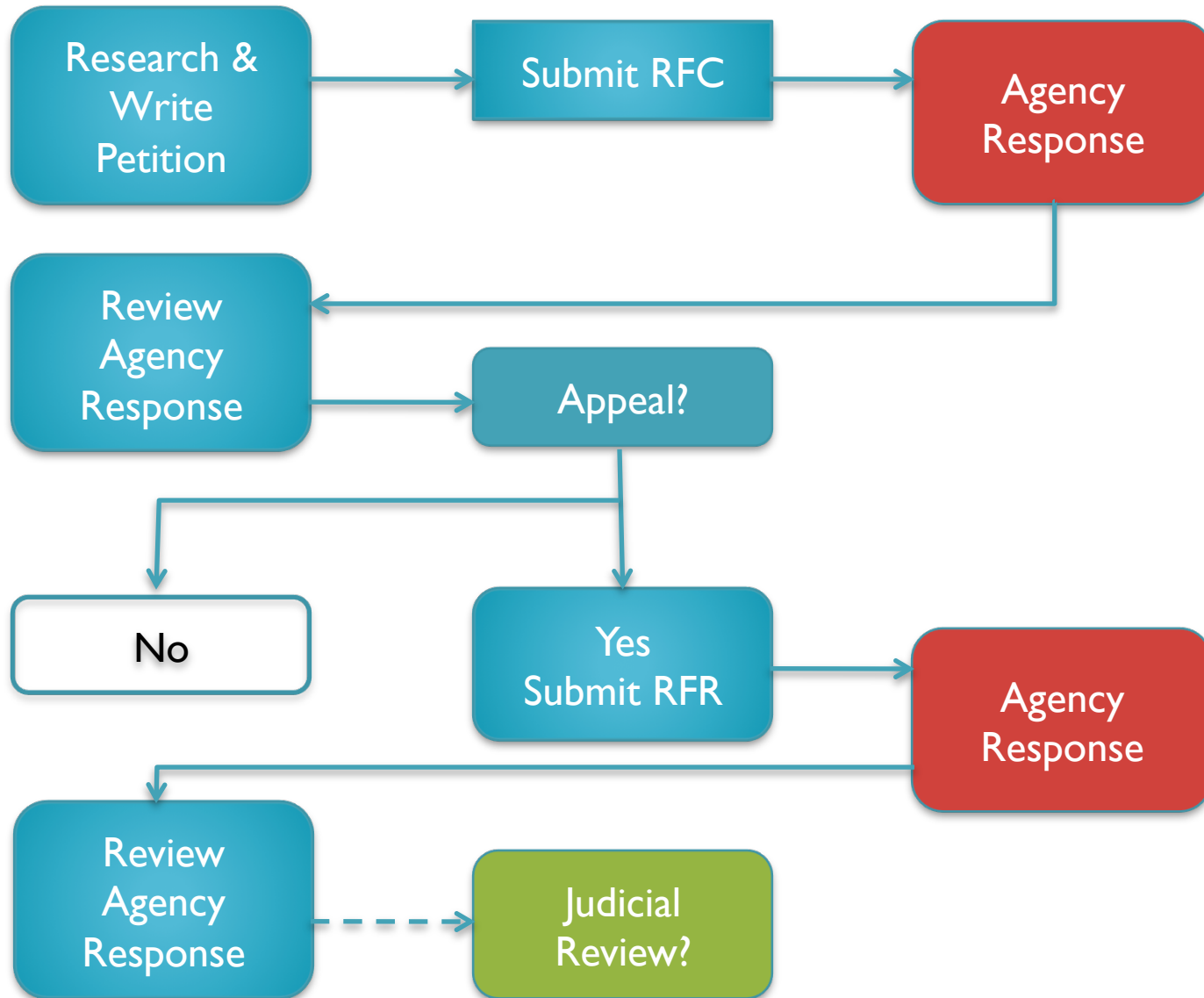


# THE DATA SPEAK

# The Data

- Census, not sample
  - All federal agencies that post RFCs/RFRs
  - FY2002 – FY 2007 (6 years)
  - Requests for Correction (RFC) N = 158
  - Requests for Reconsideration (RFR) N = 48
- Fancy statistical methods inappropriate
  - All agencies are not equally ‘important’
  - Some departments delegate to components, increasing apparent number of ‘agencies’
    - EPA: 1
    - Department of Labor: 20
  - The Inspectors General problem

# The Process



# The Process



## 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 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
- National Association of Home Builders
- Natural Resources Defense Council
- Public Employees for Env't'l Responsibility
- Sierra Club
- Trustees for Alaska

# Who Is Challenging What?

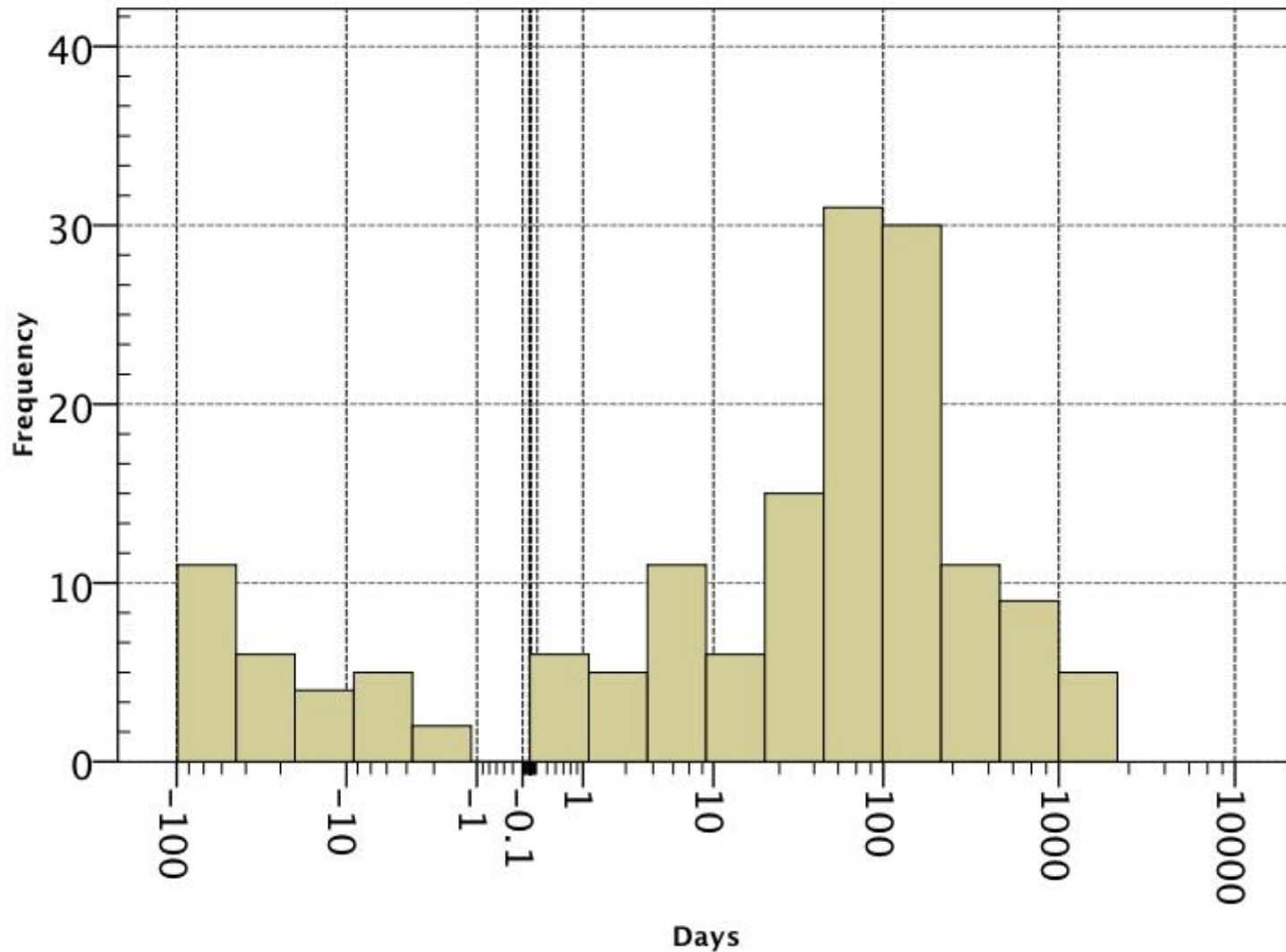
# Descriptive Statistics

	Completed Petitions Only		Appeal Time	All Petitions	
	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
Kurtosis <sup>a</sup>	12	8.7	.88	13	.88
Skewness <sup>b</sup>	2.8	2.7	1.2	3.4	3.6

<sup>a</sup> Normal (0), log (1.2), Laplace (3).

<sup>b</sup> Normal (0).

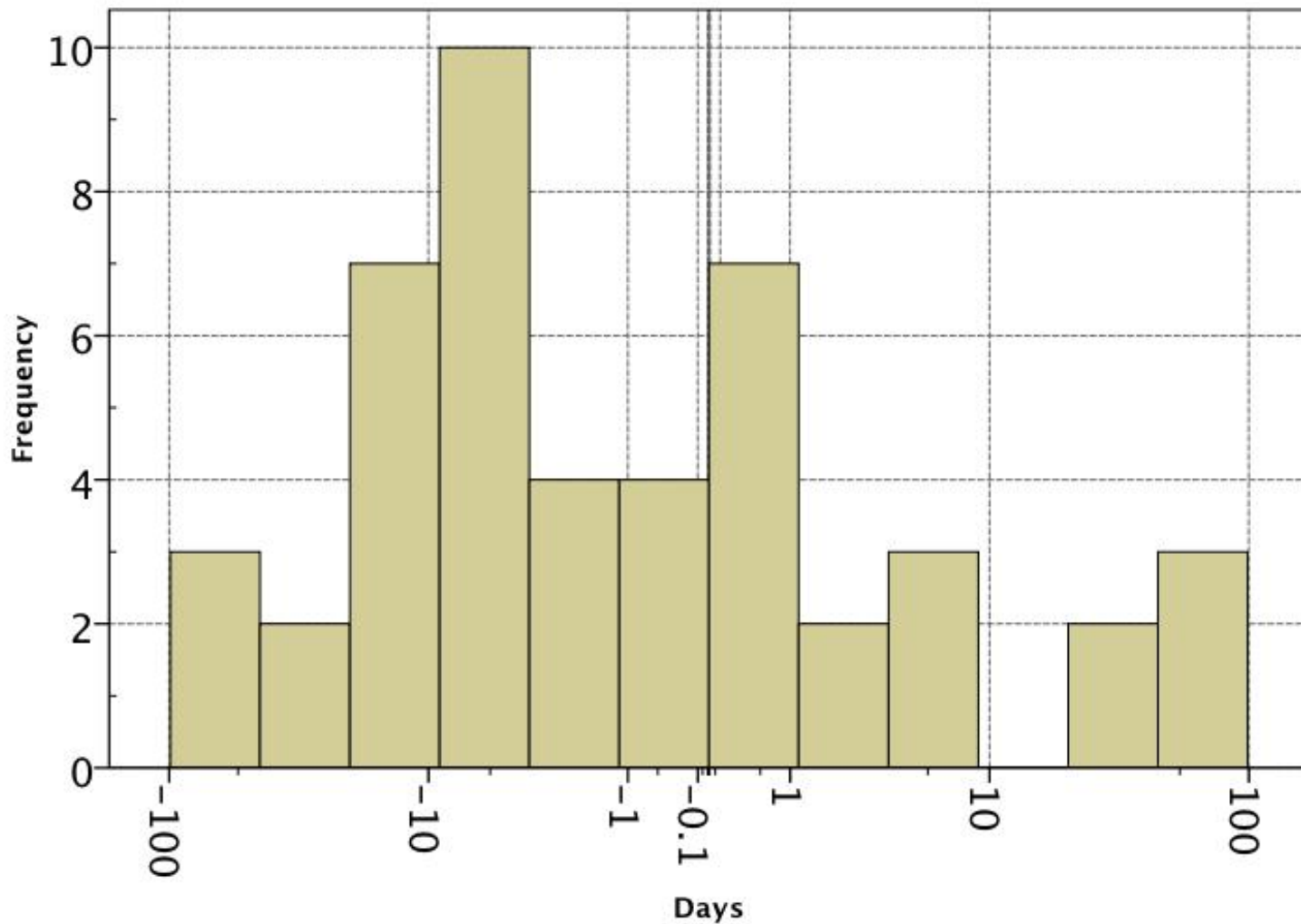
# Agency Performance: RFC Review Times Are Not 'Timely'



Mean = 151; SD = 311; N = 157

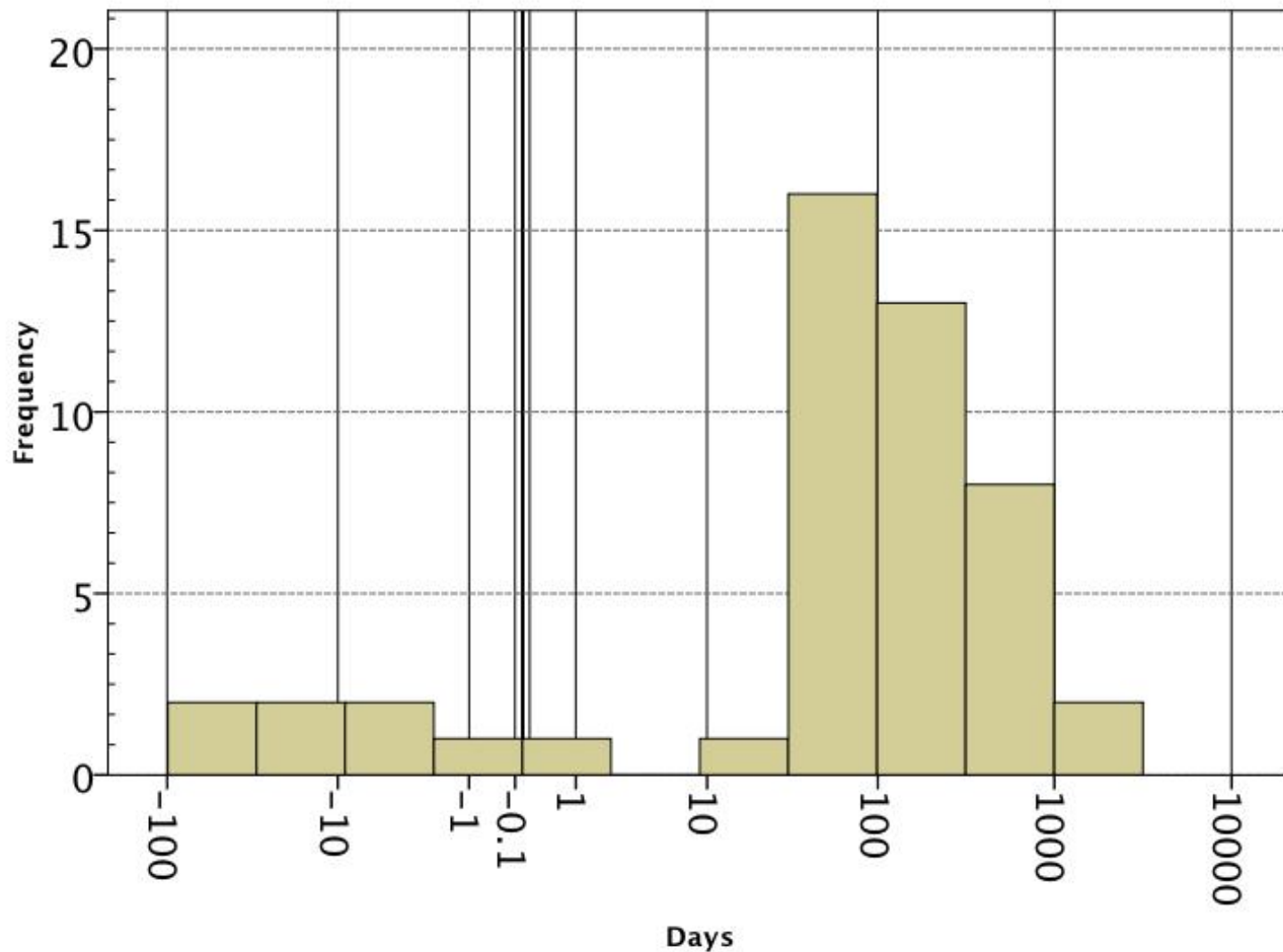


# Petitioner Appeals: 'Timely'



Mean = 3.6; SD = 23; N = 47

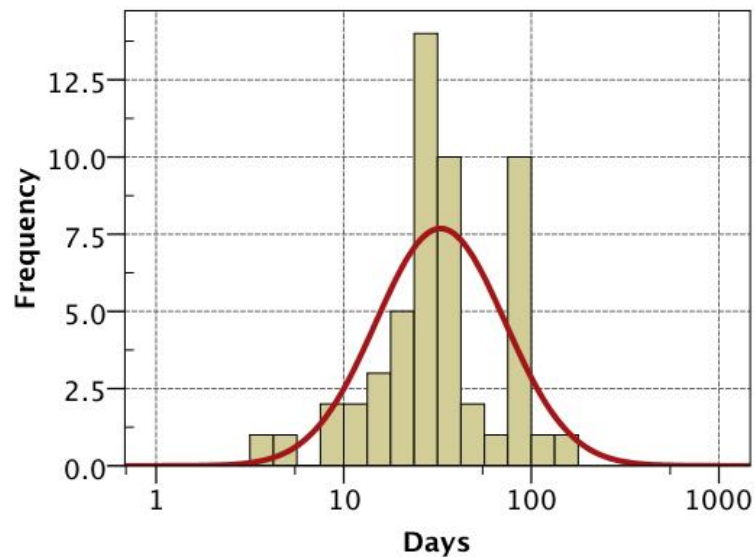
# Agency Performance: RFR Review Times Are Not 'Timely'



Mean = 221; SD = 365; N = 48

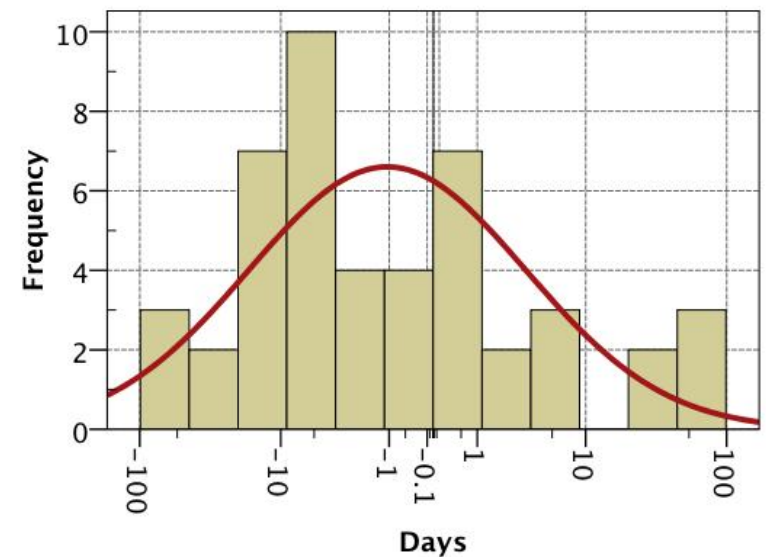
# Petitioners Have Little Time to Appeal but Mostly Meet Deadlines

Petitioners Are Allowed Little Time to Appeal...



Mean = 43  
SD = 33  
N = 48.

... and They Fear Being Deemed "Late"



Mean = 3.6  
SD = 23  
N = 48.

# 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  $N \geq 2$ .

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0 protons or electrons,  
1 neutron, 75 deputy neutrons, 150 assistant neutrons, and  
375 deputy assistant neutrons.



# ADMINISTRATIUM



# Entropic File Quality

- Electronic requests for correction
- Printed, scanned (often poorly), and uploaded
- Reduced resolution
- Color charts & graphs not readable
- TIFF images not searchable



# If It's Not Worth Doing, It's Not Worth Doing Well

- Delegation to components
  - DOC, DoD, DOL, DOI, HUD, Treasury





# Inattentiveness to Detail

- Justice Dept OIG
  - ‘RFRs must be filed ... within 35 calendar days of the date of decision on the RFC. RFRs that are received after the 45-calendar day deadline may be denied as untimely.’
- Federal Housing Finance Board
  - Announced the IQG in the *Federal Register*
  - No sign of it on the Board’s website
- Army
  - Published IQG as an internal memorandum
  - Memorandum expired by design October 28, 2005



# Some Agencies Have Not Issued IQGs 6 Years After the Deadline

- Most of the Homeland Security Dept
  - Department proper, plus TSA, CIS, ICE, FEMA
  - All agencies but TSA existed prior to DHS' establishment
- Labor-related agencies
  - Multiple Labor Dept components
  - FLRA, NLRB, NMCS, FMSHRC
- Military and national security-related agencies
  - Navy, Air Force
  - CIA, DNI, NSA
- Executive Office of the President
  - CEA, NSC, USTR, OA, WH, OVP
- *Late-breaker: US Commission on Civil Rights (12/2007)*

Exemptions not authorized by law or OMB's guidance.



# **AGENCY GAMESMANSHIP**

# Ease of Public Access

- IQG Link on home page
  - USDA & its components
  - Farm Credit Admin
  - Surface Transportation Board
  - Selective Service
  - Small Business Admin
  - EOP/CEQ
  - EOP/ONDCRP
- Difficult to find IQG even by searching
  - Army, State Dept, some Labor Dept components
  - FTC, CPSC
  - Ofc Govt Ethics
  - NASA, IRS
  - EOP/OMB
- Hidden procedures
  - DoD (except ACE)
  - DOI
  - NASA



# Ease of Submission

- Snail mail &/or fax
  - Commerce Dept
  - Labor Dept
  - Veterans Affairs Dept
  - IRS
  - NTSB
  - NSF
  - OPM
  - USITC
  - OPIC
- Online form
  - HUD
  - CFTC
  - Federal Reserve
  - State Dept
  - GSA
  - NRC
  - Selective Service
  - Social Security Admin
  - TVA



# A Dismissive Attitude

- No response to ‘frivolous’ RFCs
- Interior Dept IOG
  - ‘All requests for correction of OIG information must be submitted by letter, fax, or e-mail to the OIG's OGC.’
- US Secret Service
  - ‘If the information disseminated by SSS ... was previously disseminated by another Federal agency in virtually identical form, then the complaint should be directed to the originating agency.’



# A Not-So Level Playing Field

- Agency IQGs assert the authority to decide
  - Is petitioner an ‘affected person’?
  - Is RFCs ‘frivolous’ or submitted in ‘bad faith’?
  - What is a ‘timely’ response?
  - How ‘responsive’ is responsive?
  - What is a ‘reasonable’ appeal process?
  - When is an ‘error’ an error?
  - Is it worth the agency’s time to correct an error?

# Our Time is Extremely Valuable Yours? Not So Much

- Short appeal deadlines
  - 20 days
    - SEC
  - 30 days
    - DOC, DoD, HHS, **OMB**
    - Dozens more
- Long appeal deadlines
  - Hardest ('must', 'shall')
    - Almost all agencies
    - **Including OMB!**
  - Hard ('may', 'can')
    - EdD, HHS, SSA, CEQ
  - Soft ('should', 'recom')
    - 90 days (EPA)
    - 30 days (FCA, FMC, FRD)
  - No stated deadline
    - DOI





# Fringlish

- US Secret Service
  - ‘After the petitioner receives a response or decision from the agency on complaint, the incumbent must send their appeal of the ruling within 30 calendar days of the decision date.’



# The 'Agency Staff' Exemption

- Consumer Product Safety Commission
  - Staff report not 'disseminated' because views belong to agency staff, not the Commission.



# The 'Stale' Information Exemption

- Customs and Border Protection
  - 'Request for correction of information must be submitted within a reasonable time, not to exceed one year from the initial data dissemination, or October 1, 2002, whichever is later.'
- Similar language
  - NPS, DOT, HUD, SBA, USDA

# Planned Unresponsiveness

- Deadline for RFC resp
  - US Secret Service (60)
  - Interior Dept (60)
- Deadline for RFR resp
  - OPIC (42)
  - NARA, SBA (45)
  - Justice Dept (45)
    - Except BJS (60, no limit)
    - Except ARB (no limit)
- EOP/CEQ, USCCR (60)
- No firm deadline for RFC response
  - All other agencies
- No deadline for RFR response
  - Interior Dept, USCG
  - FMC, FTC, NRC, PBGC
- Unilateral authority to delay responding
  - All other agencies

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The “bad faith” exemption and other amusements



# **IRONIES**



# U.S Air Force

- Petitioned Fish & Wildlife Service regarding information related to a threatened/endangered determination concerning Slickspot Pepper Grass
- USAF has not issued its own IQG, and thus has no error correction procedure for information it disseminates



## EPA

- RFC: 'Document B' is not reproducible
- RFR Response: 'Document A' is reproducible and is not covered because it has a 'peer review disclaimer'
- RFR: 'Document B' isn't 'Document A' and does not have a 'peer review disclaimer'



# DOT/Fed Hwy Admin

- 'White Paper' on Information Quality
  - Posted May 19, 2008
  - Promotes IQ principles, contests “seven myths”
  - Posting implies FHWA endorsement under IQA
  - Paper promotes some principles that violate IQA
- FHWA does not comply with IQA
  - Difficult to locate the IQG
  - Nonfunctioning links
  - No submission mechanism
  - Petitions not posted



# Executive Office of the President

- IQGs published
  - Office of Management and Budget
  - Office of Environmental Quality
  - Office of Science and Technology Policy
  - Office of Nat'l Drug Control Policy
- No IQGs published
  - Office of Administration
  - Council of Economic Advisors
  - US Trade Representative
  - White House Office
  - Office of the Vice President



# NSF

- Requests for Correction must be submitted by snail mail or fax

Reality can be stranger than fiction



**BIZARRO**



## US Mint

- RFC: ‘You have a web page that claims that there are 294 ways to make change for a dollar. There are 293 combinations to make change for a dollar. Combination 16 and 31 are identical giving you one extra combination.’
- Substantive, symbolic or frivolous?

The administrative procedure exemption.



**FUTURE**



# Alternative Administrative Procedures

- OMB IQG encourages use of existing mechanisms for correcting errors
- Most regulatory agencies require petitioners to use public comment process
- Does this obligate adherence to IQA standards in rulemaking?



# Whither Judicial Review?

- Statutory: Law is silent
- Implementation by guidance, not rule
- Litigation thus far says ‘no’ but only weak cases have been filed
- What would a strong case look like?
  - Information crucial to rulemaking
  - Agency directed public to file RFCs as public comments and petitioner did so
  - Response was unresponsive



A user friendly database, public accountability.



# **FUTURE WORK**



# Improving Public Access to Data

- Put data on the Internet
- Grade and publicize agency performance
- Examine substance of individual petitions



# Acknowledgements, Caveat

- Acknowledgements
  - Thanks to donors for unrestricted grants
- Caveats
  - All remaining information quality errors are mine