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Office of Science and Technology Policy  
Attention: Open Government Recommendations  
725 17th Street, N.W.  
Washington, DC 20502

To Whom It May Concern:

On behalf of the Coalition for Effective Environmental Information ("CEEI"), we are providing comments concerning an Open Government Directive ("Directive") as discussed in a January 21, 2009 Presidential Memorandum to Heads of Executive Departments and Agencies. We are responding to the request for comment on this topic issued May 21, 2009 (74 Fed. Reg. 23901).

CEEI is a group of major companies and business organizations that share a common interest in improving how government collects, manages, uses and disseminates environmental information.<sup>1</sup> CEEI supports public policies that encourage development and use of high-quality data, governmental accountability, efficient data collection, alignment of data with strategic goals and consistent management of environmental information resources.

CEEI supports the idea of a Presidential Directive that would articulate the policies and initiatives that the new Administration will pursue government-wide to promote open government. Since a term like "open government" can have so many different meanings, it is useful to translate this general goal into concrete actions that can be implemented by government agencies and understood by the public. The Directive would also be an opportunity to align some of its other new initiatives that have articulated similar themes on transparency and public engagement, including the anticipated Executive Order on Regulatory Review and policy actions to implement the Presidential Memorandum on Scientific Integrity.<sup>2</sup>

In this spirit, CEEI is providing comments that are intended to focus on specific steps that the federal government can take to translate broadly supported goals of open government into tangible action:

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<sup>1</sup> CEEI includes representatives from the aerospace, chemical, petroleum, energy, electronics and consumer products industries.

<sup>2</sup> Public comment was requested on this Memorandum on April 23, 2009 (74 Fed. Reg. 18596).

## **I. The Directive Should Require Agencies to Adopt Specific Open Government Good Practices**

Currently there are good examples of open government practices across the federal government. What is needed is a consistent set of policies and practices across all agencies that reflect those good practices. The following subjects should be addressed in the Directive:

### *A. Identification of Key Personnel*

Currently it is often difficult to identify and contact agency officials who are responsible for the principal issues and programs in agencies. These individuals need to be accessible to the public, both to explain the government's perspective on issues and to obtain valuable information from stakeholders and the general public as appropriate. The following actions are needed:

- Each agency should publish on its Website organizational charts that show the various offices, divisions, bureaus, branches and other operational sub-units that conduct the agency's business.
- The names of the people who manage these organizational units should be identified, and kept up to date on a timely basis. The phone number and email address for these managers should be available from the organizational charts.
- There may be national security situations where disclosure of the names of specific individuals would not be appropriate. In that case, alternative contact points may be needed. In the vast majority of domestic agencies, however, there is no compelling reason for making key decisionmakers inaccessible to the public.

### *B. Explanation of Agency Expenditures*

The public should have ready access to information about how federal funds are being spent. In the last several years, there have been some effective efforts to disclose information on aspects of federal spending.<sup>3</sup> Despite these efforts, the public and even members of Congress have great difficulty obtaining information about how much money is being spent at particular agencies on specific programs and projects. The following actions are needed:

- Each agency should publish online how much money and how much staffing (expressed as full-time equivalents or "FTE") is allocated to specific offices and operational units within the agency and to specific programs and projects within each office. This accounting would

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<sup>3</sup> See data on federal contract expenditures at <http://www.usaspending.gov>. In addition, the Administration has set up <http://www.Recovery.gov> to provide information on how the recently enacted economic stimulus programs will be implemented.

identify those situations where the funding for a particular program or project supports work across multiple units within the agency.

- This information should be drawn from the final "operating plan" for the agency reflecting the funds that were actually appropriated for the fiscal year. This is distinct from budget proposals and other documents that are submitted to Congress as part of the formal budget submission. The public needs to see what the final resource allocation is, by agency, office, program and project, after the appropriation process is complete. This would include any funding earmarked for particular projects.
- In supplying this information, agencies should clarify the form of its resource commitment to programs and projects, distinguishing among financial support for FTE, extramural support (e.g., contractors), grants to non-federal entities such as states and non-governmental organizations, and funds managed in statutorily created trust funds.

### *C. Information Resource Pedigree*

Through online resources, agencies provide public access to a wide array of reports, databases, analytic tools and other documents. To understand what these resources represent, the public wants to understand the history, strengths, weaknesses and appropriate use of the information. As noted by the U.S. Environmental Protection Agency ("EPA") in a recent survey of public needs for environmental information, the public wants to obtain better "information on information" that provides a guide on how to use and interpret information that is offered.<sup>4</sup> In essence, information users want to have ready access to the "pedigree" of an information resource. The following actions are needed:

- Each agency should attach an online "pedigree" to its major databases, reports and other documents that explains the history, strengths, weaknesses and appropriate use of the information. This pedigree should include the following information:
  - The purpose and intent of the original information collection;
  - The legal context for the information collection (e.g., mandatory vs. voluntary);
  - Whether data in the resource are measured or estimated;
  - The time period for the data collection;
  - Relevant sampling and analytical methods, approach to validation, statistical approach, precision and accuracy of the data, to the extent known;
  - The overall strengths and weaknesses of the data; and

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<sup>4</sup> U.S. EPA, *Information Access Strategy*, EPA 240-R-09-001 (January 2009) ("EPA Access Strategy"), at 13.

- The appropriate use of the information, including clarification of questions that cannot be answered adequately by the information resource.<sup>5</sup>
- The description of each element of the pedigree should be expressed in easily understood terms that are understandable to a general audience. The explanations should not be presented in a “metadata” format designed primarily for an audience of information technology professionals.
- The information in the pedigree should be permanently embedded in the information resource so that it will carry with the database when it is downloaded or transferred to other parties, both inside and outside the government.
- When agencies become aware of inappropriate or misleading use of their reports or other information resources, they should provide public explanations of the errors in such third party presentations of the agencies' information. These explanations should be presented in a form and venue likely to reach audiences that may rely upon the incorrect information.

*D. Information Correction Mechanism*

While much of the information posted on government Websites is accurate, there are situations where inaccuracies occur due to breakdowns in data entry; new, updated or corrected information; and misunderstandings of information previously submitted. The public expects that the information provided by government agencies is reliable and accurate. The following actions are needed:

- Agencies should establish mechanisms that allow members of the public, including the business community, to correct information in public files that is inaccurate. This is particularly necessary for information that characterizes the performance of companies, facilities and products. Widespread dissemination of inaccurate information of this nature can cause tangible, substantial financial and reputational harm to individuals and companies.
- The correction mechanism established needs to be easy to use and must be publicized so that the public knows it is available.
- Agencies should make resource commitments and establish management systems that assure prompt responses to correction requests. These management systems should establish strong coordinating mechanisms with state agencies, where there are shared program

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<sup>5</sup> As an example, the U.S. Center for Disease Control and Prevention has provided a useful explanation about appropriate use of its NHANES database at [http://www.cdc.gov/nchs/data/nhanes/nhanes\\_03\\_04/nhanes\\_analytic\\_guidelines\\_dec\\_2005.pdf](http://www.cdc.gov/nchs/data/nhanes/nhanes_03_04/nhanes_analytic_guidelines_dec_2005.pdf).

responsibilities, to assure that the relevant agencies needing to participate in corrections are able to do so promptly. The system should include a feature that promptly "flags" information that is the subject of a correction request so that users of the information understand that a question about the data is being examined. The "flag" should be dated so that users know when the correction request was submitted to the agency.

*E. Need for Assistance on Availability of Agency Information*

Many federal agencies maintain Websites holding vast amounts of data. These sites have evolved over time and thus are not always organized in a way that allows the public to find information of interest to them.<sup>6</sup> In addition, the document browsers that agencies typically maintain on their sites do not have the functionality and effective search logic to provide great value in locating documents of interest. The following actions are needed:

- Agencies should recognize that most site users will use commercial browsers, such as Google or Yahoo, to search for relevant documents on their Websites. Currently agencies have a variety of software-based obstacles to effective searches of public agency files by commercial browsers. This results in large bodies of information that are publicly available in theory but not publicly accessible in practice. Thus, it is important for agencies to adopt updated software standards and protocols for their public information files that will allow for searches by commercial browser services.
- In addition, the public wants access to knowledgeable people who can help them find online agency information that will address their needs. Agencies with large online information holdings need professional librarians who can help members of the public navigate the online environment and find relevant documents and data.

*F. Agencies Should Evaluate and Improve Information Resources on an Ongoing Basis*

Open government necessarily includes a need to address public questions and concerns, not just provide access to data. To do this effectively, agencies must stay in touch with their stakeholders and the general public. They should systematically obtain insights into public information needs as well as the effectiveness of current information resources to meet those needs. The following actions are needed:

- Agencies with major online resources should make the assessment of their online effectiveness a core program function for their information management programs, with a systematic and sustained effort on this topic. The program should include "active"

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<sup>6</sup> EPA's recently summarized the results of a multi-faceted survey of the needs of people using its Website. One of the key findings of the survey was that many site users could not find information addressing their questions, even though such information was actually on the site. *EPA Access Strategy*, at 6.

components to obtain input from stakeholders and the public as well as "passive" mechanisms, such as online comment pages, usage monitoring software, and statistics.

- Agencies with responsibilities for communicating complex technical and risk information, including scientific, public health or financial information, should develop an institutional expertise on how to communicate such technical and risk information to the general public. They should call upon available social science research about how people understand and interpret such information to help them in effectively addressing citizen questions. Such agencies will need to establish and maintain staff expertise on these subjects to maintain sustained effectiveness in such communications.
- When providing information to the public on complex topics, it is important for agencies to present information in "layers", providing an overview of the core points about a topic for a general audience while allowing for a deeper look at particular issues or underlying data through online links. Such an approach is effective for addressing the needs of multiple audiences.
- For major new online resources, agencies should "beta-test" their Web presentations to determine whether the appropriate uses of the resource and the intended messages to the public are well understood by stakeholders and broader audiences. This testing should occur before the site is posted officially.

#### *G. Agencies Should Establish Standard Practices for Web 2.0 Resources*

Many agencies are beginning to develop online resources that involve collaborative mechanisms (e.g., blogs, wikis) that fall under the general rubric of "Web 2.0 resources." This evolution of government information resources is understandable in light of broader trends in public Internet usage and the influx of younger, technology-literate staff in government agencies. The federal government will need to establish specific policies on its use of these collaborative mechanisms that reflect the government's unique role and power in public communications. The following actions are needed:

- When sponsoring a collaborative online resource, agencies must clarify what documents, data and other online content reflect the official views of the U.S. government. Agencies need to distinguish its official content from both the views of other collaborators on the site and any content that is offered by federal employees speaking in their individual capacity. Agencies can use disclaimers, visual differentiation or other mechanisms to achieve this objective.
- Collaborative online resources sponsored by agencies should include, in a prominent position, an explanation of the site that addresses the following issues:
  - Who is responsible for site management and the selection of content for the site;

- What criteria are used for the selection of content for the site;
- What ground rules apply to the content of postings, such as the identification of contributors and inappropriate forms of communication; and
- How the site addresses copyright issues.
- Where possible, government agencies should distinguish between factual and opinion content in collaborative online resources. As an example, agencies should post original source information on a topic, in contrast to third party reports of the information, if that is feasible. Agencies should separate more factual content (e.g., "reports", "news", "research") from content that is necessarily intended to reflect expressions of opinion or perspective, such as personal blogs.
- When specific reports or databases are posted on a collaborative site, the site should offer an opportunity for online commentary (specifically identified as a comment section) in close proximity to the report. This assures effective use of the tools for collaboration offered by the Web 2.0 environment.

#### *H. Establish an Effective Dialogue on Protecting Confidential Business Information*

Some stakeholder groups have suggested that the existing laws and practices for protecting trade secrets have been an obstacle to sharing valuable information with the public. The existing laws protecting "confidential business information" (CBI) have been in place for many years and are grounded in fundamental principles for the protection of intellectual property. There has been a long history of practice at federal agencies for protecting CBI while still meeting public information needs. The following actions are needed:

- An inter-agency task force should be established to review current laws and policies on CBI protection, including those contained in the Freedom of Information Act ("FOIA") and various agency-specific statutes. The purpose would be to assess the effectiveness of historical agency strategies to meet public information needs while preserving CBI protection.
- In parallel to the efforts of the task force, agencies should independently assess the policies and practices that they follow for CBI protection under FOIA to assure that they are following current legal precedent concerning the scope of the relevant exemption.

## **II. Open Government Principles Should Be Incorporated into Regulatory Policy**

One of the most important functions of federal agencies is the issuance of regulations that define and implement statutes. It is thus essential that the Obama Administration consider how its open government principles will be translated into the rulemaking processes that establish federal

regulations. This is an area where the Administration should align the Directive with its work on a new Executive Order ("EO") on Federal Regulatory Review to replace or modify existing EO 12866.

Creating greater transparency and public engagement in the rulemaking process is a core aspect of improving the quality and credibility of federal regulations. Improvements in the openness of the rulemaking process will serve many of the goals underlying the Presidential Memorandum on Regulatory Review, including (1) assuring that "best reasonably obtainable information" is utilized in rulemaking; (2) facilitating more effective public comment and peer review; (3) improving the understanding of scientific, economic, social and other relevant factors in decisionmaking; (4) increasing agency accountability for its decisions; and (5) assisting public communications about the content of, and rationale for, particular regulations.

The Administration should address the following matters, either through the Directive or through the new EO on Regulatory Review:

*A. Regulations.gov Needs Several Improvements to Facilitate More Open Rulemakings*

Over the last several years, most agencies have adopted the online version of Regulations.gov as the official public docket for their rulemakings. This Website, which was limited in its functionality when it was first created, has seen several improvements over the last several years. Further improvements are needed to make Regulations.gov the robust and effective support for federal rulemaking that is needed, and is possible, in the 21st Century. The following actions are needed:

- Dockets for rules should be opened at an earlier stage. In many agencies, public dockets are created in Regulations.gov at the time that a rule is proposed for comment. In many of these cases, however, the agency has been working on a rule for a considerable amount of time prior to the proposal of the rule. This prior work will have yielded considerable written documentation, including data, analyses and various forms of comment from stakeholders. These documents should be available as early as possible to facilitate public understanding about the information and considerations that are shaping the agency's regulatory strategy and to allow for effective participation in the rulemaking process. Thus, Regulations.gov should open a docket in its system when an agency initiates a rulemaking process, under the internal procedures for making such decisions at each agency.
- The Administration needs to implement fully the specific reforms that it has suggested in its Regulations.gov/Exchange Website. Most specifically, the site should allow for full text searches within all documents in a single docket. This feature, which has been requested by stakeholders for several years, would be a valuable, efficiency-enhancing tool for the public and should be feasible with modern technology.



- The Administration should, either in Regulations.gov or in a parallel site, establish an electronic archive of the rulemaking records for past regulations. These files continue to be of use for companies seeking to understand existing regulations and to address interpretive questions that arise in the implementation phase of regulatory programs. The features for this archive should be consistent with what is offered for current dockets in Regulations.gov.
- The dockets for rulemakings in Regulations.gov should have links to other agency dockets that hold related information. For example, a regulatory docket may include a hazard or risk assessment, which has its own separate docket, that was prepared prior to the rulemaking. Another example might include a correction request under the Information Quality Act addressing a key study that became part of a rulemaking record. Where such related dockets exist, it would not be difficult to establish links to such dockets from Regulations.gov.

#### *B. Agencies Should Implement Open Government Good Practices in Their Rulemakings*

While centralized resources such as Regulations.gov can provide a consistent framework for more transparent rulemakings, the key to achieving open government in rulemaking is the behavior of the individual regulatory agencies and their respective staff. Many agency rulemakings have reflected good transparency and active engagement of the public to obtain information and perspectives. At the same time, examples remain where agencies did not provide timely access to key documents, an adequate opportunity for public comment or substantive responses to major public comments received. The following actions are needed:

- Consistent with the recommended reforms for Regulations.gov mentioned above, regulatory agencies should take steps to establish public dockets for their regulations at the time that they initiate a rulemaking. Agencies should begin posting documents in this docket as soon as they receive them, beginning in the period before the rule is proposed.
- Posted documents should include all studies, surveys, technical assessments and other documents that are likely to guide an agency's deliberations on a rule. Where possible, agencies should post internal decision documents or drafts of the proposed rule that help the public understand the considerations that shaped the rule's design. All comments from outside parties about the rule, whenever submitted, should be posted promptly after their receipt. These submissions from outside parties should be included in the rulemaking docket regardless of whether they support or dispute a regulatory strategy ultimately preferred by the agency.
- Once a rulemaking docket is established, agencies should provide public notice about the creation of the docket. This notice should explain how the public can gain access to the docket.
- Agencies should establish comment periods that are commensurate with the complexity of the issues raised in the rulemaking and with the size of the rulemaking record. This needs to

be decided on a case by case, but it is reasonable to assume that comment periods should extend for at least 60 days.

- When issuing final rules, agencies should respond fully to public comments. Agencies should also explain what data and analysis they relied on for decisions and what weight they gave to such data. Agencies should also explain their rationale for rejecting any data or analyses that were not considered in the decisionmaking process.
- Agencies should express regulatory requirements in understandable terms that are appropriate for the relevant audience. In addition, agencies should provide understandable explanations of the rationales for the rules they issue and the expected benefits the rules will provide to the public.

### **III. Open Government Principles Should Be Adopted in Scientific Deliberations**

Many of the decisions made by federal agencies rely heavily on scientific analysis. The Obama Administration is currently developing recommendations for Presidential action concerning scientific integrity.<sup>7</sup> The Directive should be aligned with these recommendations concerning scientific integrity because these two objectives are closely interrelated. Transparency of the data and analysis underlying a scientific document provides one of the best strategies for assuring the integrity of agency deliberations on scientific matters. Similarly, an open peer review process and public comment period, coupled with clear obligations for agencies to address comments received in both venues, will greatly reduce the likelihood that agency decisions will be tarnished by bias or misunderstanding. To promote this objective, the following actions are needed:

- Agencies should establish publicly accessible dockets containing the studies, reports, comments and other documents that are relevant to major scientific analyses. These dockets should be kept up to date on an ongoing basis as scientific assessments proceed. The docket for a scientific analysis should include all the documents submitted to an agency for consideration, whether or not the agency agrees with the content of the submission. Where possible, preliminary assessments or draft portions of an assessment should be posted in the docket throughout the process.
- When comment opportunities are provided, agencies should allow enough time for effective comment, taking into consideration the complexity of the issues in the assessment and the size of the docket supporting the assessment. Where possible, processes for public comment and peer review should be aligned so that peer reviewers are aware of the issues and concerns raised during the public comment period.
- When a major scientific analysis is completed, the final assessment document made available publicly should explain how the agency addressed the major comments from the

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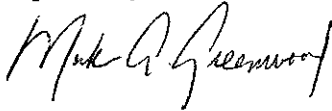
<sup>7</sup> See 74 Fed. Reg. 18596 (April 23, 2009).

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public and peer reviewers. The final assessment document should also explain the data and analyses it relied upon and the weight given to such information. The document should also explain the rationale for rejecting particular data or analyses that were not used in reaching scientific conclusions.

Thank you for the opportunity to provide recommendations for the content of an Directive. If you have any questions about these ideas, CEEI would be happy to discuss them in greater detail.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mark A. Greenwood". The signature is written in a cursive style with a large initial "M".

Mark A. Greenwood