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10/27/2003 04:02:41 PM

Record Type: Record

To: Mabel E. Echols OMB_Peer_Review/OMB/EOP

cc:

Subject: Comments on Proposed Peer Review and Information Quality Guidelines and Procedures

Letter from the California Avocado Commission is as follows and is also enclosed as an attachment. If you have any questions, please contact me.

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- WDC99_832476_1.DOC



October 27, 2003

VIA E-MAIL AND FACSIMILE

Dr. Margo Schwab
Office of Information and Regulatory
Affairs (OIRA)
Office of Management and Budget
725 – 17th Street, N. W.
New Executive Office Building
Room 10201
Washington, D. C. 20503
E-mail: OMB_peer_review@omb.eop.gov

Re: Proposed Peer Review and Information Quality Guidelines and Procedures

Dear Dr. Schwab:

These comments are submitted on behalf of the California Avocado Commission (the "Commission") in response to the August 29, 2003, request of the Office of Management and Budget ("OMB") regarding establishing peer review guidelines and a process for significant peer review of important government rules. The Commission strongly endorses OMB's proposed guidelines and offers these additional comments.

The Commission represents California avocado growers and shippers involved in the marketing of California avocados. Over the past several years, the Commission and other interested persons have strongly encouraged the U.S. Department of Agriculture to include independent scientific experts in the review of science associated with a variety of regulatory decisions. To date, the Commission has not been completely successful in convincing the Department that objective peer review can significantly improve the quality of the federal government's regulatory decisions. Too often, many agencies or departments decide to proceed with important regulatory policy decisions without exposing the underlying scientific or technical basis to scrutiny by a competent and independent peer review panel. Consequently, there have been a number of instances when "weak" or "non-credible" science has been the underpinning of the government's regulatory action.

The Commission is pleased that OMB is taking on this issue, thereby helping to assure better regulatory decisions. In the opinion of the Commission, any effective policy must address the following areas:

- * A peer review panel needs to have significant relevant expertise, particularly expertise provided by those outside the agency proposing the particular regulatory action. It goes without saying that having the underlying science or technology “blessed” by a non-qualified peer panel is almost worse than not having a panel in the first instance. This simply serves to reinforce a poor regulatory decision and makes it much more difficult to appropriately change the poor policy decision.
- * In addition to assuring the competency of the peer review panel, the panel must also be objective and independent. There is a significant appearance of lack of impartiality if a peer review panel consists solely of representatives of the very same agency that will be making the regulatory decision. If a potential panel member is beholden to an agency for either funding or advancement in the agency, there is some doubt regarding the objectivity of such panel members’ review of the underlying science. Having such a cloud can impact the public’s ultimate acceptance of the regulatory decision. The regulatory agency should actively solicit experts from outside the agency who might be willing to sit on an expert peer review panel. It can then assemble an appropriate panel in the particular circumstance.
- * A peer review panel’s charge should be fairly wide in scope. It should not feel compelled simply to address very narrow questions created by the regulatory agency. The panel members must have enough flexibility in their charge to assure a rigorous scientific review of the underlying basis for an agency’s potential action.
- * The actions of the peer review panel must be transparent. Interested persons, including members of the public, must be able to review a report of the peer review panel and be able to ascertain the thought process of the panel, identify the salient facts the panel considered, and understand the important considerations that led to the panel’s recommendation or report. Consequently, there should be a final report issued by any peer review panel addressing its charge.
- * The public should be provided an opportunity to comment on the peer review report prior to the initiation of the rule-making processes by the regulatory agency. Providing an opportunity for the public to be engaged at this stage will help assure the adoption of a sound regulatory decision.

The Commission recognizes that some agency representatives will not see any advantages associated with the OMB proposal. Rather, they will view it in a negative light, believing that it simply provides an opportunity for the “amateur” public to second guess the “professional” regulator. Such a view is misguided. Effective peer review of underlying science presents the best opportunity for assuring that a regulatory decision is well grounded in fact.

Dr. Margo Schwab

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The Commission appreciates the opportunity to provide these comments. It looks forward to OMB's consideration of them and finalizing these guidelines for the agencies.

Very truly yours,

A handwritten signature in black ink, reading "Tom Bellamore". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Tom Bellamore
Senior Vice President and Corporate Counsel

cc: Edward M. Ruckert

TB/ms

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