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To: Lorraine D. Hunt OIRA ECON GUIDE/OMB/EOP@EOP
cc: "R. Craig Silvertooth" <csilvertooth@nrca.net>
Subject: Comments on Draft Guidelines

Please find attached NRCA's comments on OMB's Draft 2003 Report to Congress on the Costs and Benefits of Regulations.

Thank you,

Craig Silvertooth
- Risk Assessment Comments.doc



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May 5, 2003

Lorraine Hunt
Office of Information and Regulatory Affairs
Office of Management and Budget
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Room 10202
725 17th Street, N.W.
Washington, D.C. 20503

Re: Draft 2003 Report to Congress on the Costs and Benefits of Federal Regulations

Dear Ms. Hunt:

On behalf of the National Roofing Contractors Association (“NRCA”), I appreciate the opportunity to provide comments on the Office of Management and Budget (“OMB”) “Draft 2003 Report to Congress on the Costs and Benefits of Federal Regulations,” prepared pursuant to the Regulatory Right-to-Know Act. Established in 1886, NRCA is one of the construction industry’s oldest trade associations and the voice of professional roofing contractors worldwide. NRCA is an association of roofing, roof deck, and waterproofing contractors; industry-related associate members, including manufacturers, distributors, architects, consultants, engineers, and city, state, and government agencies; and international members. NRCA has more than 5,000 members from all 50 states and 54 countries and is affiliated with 105 local, state, regional and international roofing contractor associations.

General Concerns

Recent studies estimate the annual compliance costs of federal regulations at more than \$850 billion, and this figure is projected to grow dramatically in coming years. These

costs are manifested in the form of higher prices for goods and services, reduced wages and benefits for workers, job losses, lost productivity, slower technological innovation, and diminished economic growth. Alarmed by the enormous and growing volume of federal regulations, and concerned that much of the underlying data and assumptions are of poor or questionable quality, NRCA believes it is imperative that the data, methodology, and analytical assumptions used by agencies in the federal rulemaking process conform with the most stringent and demanding rigors of sound scientific and statistical standards.

Before proceeding to specific concerns with the draft guidelines, it is important to highlight that NRCA is encouraged by OMB's demonstrated appreciation of the impact of regulatory action. In particular, we are pleased to note OMB's recommendation to agencies to strive for greater transparency in their analysis. We were equally delighted by OMB's attention to the importance of evaluating distributional effects. Many of NRCA's member companies are properly classified as small businesses, and they know all too well that the costs of regulatory compliance fall disproportionately and most heavily on small businesses.

Data Quality

Though OMB saw fit to address the issue of data quality last year, NRCA believes it appropriate to highlight again the absolute necessity for only data of the highest quality and integrity to be used in the federal rulemaking process. The data itself informs and is inextricably linked to the methodology and analytical assumptions, and as such will necessarily drive the variables entertained in sound regulatory analysis. As you are aware, the Data Quality Act was passed as part of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554). Included as an amendment without great fanfare, the Data Quality Act required the Director of OMB to issue guidelines that provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information disseminated by agencies. Pursuant to this Congressional mandate, OMB issued on February 22, 2002, a notice of standards to improve the quality of various types of information disseminated by governmental agencies (67 Fed. Reg. 8452-60). Specifically, OMB directed agencies "with regard to analysis of risks to human health, safety, and the environment...to either adopt or adapt the quality principles applied by Congress to risk information used and disseminated pursuant to the Safe Drinking Water Act Amendments of 1996 ("SDWA")." The Department of Labor ("DOL"), one of the agencies subject to OMB's notice, then sought to implement this directive with its own agency-specific guidelines, which it issued on May 1, 2002. NRCA submitted comments to the DOL on OMB's data quality guidelines last June and commends OMB's effort to ensure data conform to the highest standards.

That said, NRCA believes OMB's effort raises numerous questions and poses difficult challenges for regulating agencies and the stakeholder community. Questions that need to be addressed include the following:

- Is there any such thing as too little data?
- How are data of different quality to be treated?
- What is the threshold of reliability?
- What if further research would yield additional information?

These questions must be answered because federal agencies possess a finite amount of resources and will limit and tailor their actions accordingly. Alternatively, the regulated audience has an interest in ensuring that only the best data be incorporated into the rulemaking process. And yet, even the notion of relying on the “best available data” is fraught with risk. For instance, if there is only one study on an endangered species, or the health effects of asphalt fumes on humans, the particular regulating agency could move forward while claiming that it is proceeding with the “best available data.” And though a tautology, the statement would be true because it’s the only data available. At a minimum, OMB should encourage further debate on the issue of data quality.

Concerns with the OMB Draft Guidelines

Despite the admirable qualities of the February 3 draft, NRCA believes the draft guidelines include a number of opportunities for improvement and further consideration. NRCA is aware that OMB will be receiving numerous and extensive comments from a broad spectrum of interested parties, many of whom are industry allies of NRCA and with whom NRCA is in agreement on many of the objections that will be raised in their comments. As such, NRCA will limit its discussion to Appendix C of the draft report and will focus on the following three points:

- **Contingent Valuation**

OMB’s draft expresses qualified support for a controversial value-estimation methodology known as contingent valuation. NRCA is in full agreement with OMB’s acknowledgment that “value estimates derived from contingent-valuation studies require greater analytical care than studies based on observable behavior.” Despite such limitations, OMB suggests that the technique should be available to regulating agencies because contingent-valuation methods “may provide the only analytical approaches” for estimating “nonuse” values. NRCA does not disagree that the method may be the only tool available for estimating nonuse values, but we do believe that the standard is so fundamentally flawed as to warrant exclusion altogether. The central problem with contingent valuation is that it relies on stated-preference methods, as revealed-preference estimates are unavailable. And the underlying assumption of the method is that values, or preferences, are non-relative and static. In truth though, values are relative and dynamic. When confronted with decisions that will have a discernible

impact on an individual's welfare, that individual will make choices informed by anticipated costs and benefits.

As such, contingent valuation is inappropriate because it attempts to graft an unsuitable, subjective paradigm onto the federal rulemaking process. In other words, contingent valuation imposes a normative notion, uninformed by revealed preferences. NRCA believes federal agencies should not be placed in the position of having to render, or be given the opportunity to make, such political decisions. These decisions reflect societal attitudes at a particular point in time – they are normative judgments, properly reside within the province of politics, and should be made by elected officials. In short, our political system is not designed for regulators to craft policy. To illustrate this point, one need only consider the fact that attitudes tend to change over time, and in today's culture, media plays a growing role in shaping and altering those attitudes. It's probably no small coincidence that as public awareness about the environment grows through greater exposure to mass media, environmental regulation has become more prominent in the public debate.

- **Avoided Costs as a Surrogate for Benefits**

Put simply, this is flawed logic. The assumption is that the costs of a particular action will equal the benefits of such action. But this assumption fails to stand up to reason. Take wetlands restoration for example. It is easy to imagine a scenario in which a wetland of poor ecological quality (perhaps the wetland is in a remote or inaccessible area, but has never served as critical habitat) would require significant funds to restore it to its original state. In this case, the wetland would be restored at great cost while yielding little environmental or ecological benefit. NRCA believes OMB should instruct agencies to avoid such substitutive reasoning.

- **Assumptions about Technical Change and Innovation**

OMB's proposed guidance appears to rely on the belief that technical change and innovation will provide future solutions and remedies to regulated targets. NRCA strongly believes that under no circumstances should federal agencies assume facts not in evidence. In other words, agencies should make no assumptions regarding the appearance of future technologies capable of providing the means to achieve particular regulatory goals. Though it is certainly reasonable to believe that the wheels of progress will continue to move forward, that faith in innovation must remain grounded in the realm of technologies that have been shown to be both economically practical and physically possible.

III. Conclusion

Again, on behalf of NRCA, I want to thank you for providing the public the opportunity to comment on OMB's draft guidelines. NRCA applauds efforts by OMB to assess the costs and benefits of regulatory action, and we are hopeful that federal agencies will embrace OMB's initiative, as such risk assessment marks a tangible improvement over the status quo. NRCA is convinced that adherence to sound methodological techniques and analytical assumptions will improve upon the existing rulemaking process and better enable OMB to fulfill its commitment to high quality risk assessment and to provide federal agencies strong direction in answering OMB's challenge. Therefore, NRCA encourages OMB to give careful consideration to the concerns outlined above as well to those comments offered by other informed and well-intentioned parties.

Sincerely,

R. Craig Silvertooth
Director of Federal Affairs