

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

<p>AMERICAN SOCIETY FOR TESTING AND MATERIALS d/b/a/ ASTM INTERNATIONAL;</p> <p>NATIONAL FIRE PROTECTION ASSOCIATION, INC.; and</p> <p>AMERICAN SOCIETY OF HEATING, REFRIGERATING, AND AIR CONDITIONING ENGINEERS,</p> <p style="text-align: center;">Plaintiffs/ Counter-Defendants,</p> <p>v.</p> <p>PUBLIC.RESOURCE.ORG, INC.,</p> <p style="text-align: center;">Defendant/ Counter-Plaintiff.</p>	<p>Case No. 1:13-cv-01215-TSC</p>
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**PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE**

Pursuant to Federal Rule of Evidence 201(b), Plaintiffs/Counter-Defendants American Society for Testing and Materials (“ASTM”), National Fire Protection Association, Inc. (“NFPA”), American Society of Heating, Refrigerating, and Air Conditioning Engineers (“ASHRAE”) (collectively, “Plaintiffs”) respectfully request that the Court take judicial notice of the following document in connection with Plaintiffs’ Motion for Summary Judgment and Opposition to Defendants’ Motion for Summary Judgment: Executive Office of the President, Office of Management and Budget, *Revision of OMG Circular A-119: Federal Participation in*

*the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities* (“Revised OMB Circular”).<sup>1</sup> A true and correct copy is attached hereto as Exhibit 1.

Federal Rule of Evidence 201(b) provides that this Court may take judicial notice of facts that are “not subject to reasonable dispute” because they are either “generally known within the trial court’s territorial jurisdiction” or “can [] accurately and readily [be] determined from sources whose accuracy cannot reasonably be questioned.” Specifically, courts may “take judicial notice of materials published in the Federal Register.” *Banner Health v. Sebelius*, 797 F. Supp. 2d 97, 112 (D.D.C. 2011); 44 U.S.C. § 1507 (“The contents of the Federal Register shall be judicially noticed.”). Courts may also take judicial notice of “government documents available from reliable sources.” *Hamilton v. Paulson*, 542 F. Supp. 2d 37, 52 n.15 (D.D.C. 2008) (taking judicial notice of a document from the website of the United States Office of Personnel Management), *rev’d on other grounds sub. nom. Hamilton v. Geithner*, 666 F.3d 1344 (D.C. Cir. 2012).

The Revised OMB Circular is properly the subject of judicial notice. It is published on a government website, announced in the Federal Register, and not subject to reasonable dispute. Plaintiffs seek judicial notice now because the Revised OMB Circular was only recently issued and updates the 1998 OMB Circular that Plaintiffs cite in their Motion for Summary Judgment. *See* Pls.’ Mot. Summary Judgment at 9, 21. In particular, the Revised OMB Circular provides additional guidance to federal agencies considering incorporating standards by reference and instructions on how to work with standard development organizations to ensure incorporated standards are reasonably available. Exhibit 1 at 21.

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<sup>1</sup> The Revision was made effective on January 27, 2016 and announced in the Federal Register. 81 Fed. Reg. 4673 (Jan. 27, 2016). The revised Circular is available at [https://www.whitehouse.gov/sites/default/files/omb/inforeg/revised\\_circular\\_a-119\\_as\\_of\\_1\\_22.pdf](https://www.whitehouse.gov/sites/default/files/omb/inforeg/revised_circular_a-119_as_of_1_22.pdf).

For these reasons, Plaintiffs respectfully request that the Court take judicial notice of the Revised OMB Circular.

Dated: February 8, 2016

Respectfully submitted,

/s/ J. Kevin Fee

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