

IME

institute of makers of explosives

The safety and security institute of the commercial explosives industry since 1913

May 23, 2012

U.S. Office of Management & Budget
725 17th Street NW
Washington, DC 20503

Via Electronic Delivery

Re: Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities; 77 Fed. Reg. 19357 (2012)

The Institute of Makers of Explosives (“IME”) appreciates the opportunity to file comments on the above-captioned Notice and Request for Comment.

Interest of IME

IME is a nonprofit association founded in 1913 to provide accurate information and comprehensive recommendations concerning the safety and security of commercial explosive materials. Our mission is to promote safety and the protection of employees, users, the public and the environment; and to encourage the adoption of uniform rules and regulations in the manufacture, transportation, storage, handling, use and disposal of explosive materials used in blasting and other essential operations.

IME represents U.S. manufacturers and distributors of commercial explosive materials and oxidizers as well as other companies that provide related services. Over 2.5 million metric tons of high explosives, blasting agents, and oxidizers are consumed annually in the U.S. Of this, IME member companies produce over 95 percent of the high explosives and a great majority of the blasting agents and oxidizers. These products are used in every state and are distributed worldwide.

IME has developed a comprehensive set of 15 Safety Library Publications (“SLP’s”). In addition, IME publishes various guidance documents designed to assist manufacturers and users of explosives products. IME’s publications are authored by professional mining and explosives engineers and other explosives and technical specialists employed by our member companies. These professionals have extensive theoretical and practical knowledge and experience in the explosives field. Accordingly, our publications are highly valued across the U.S. and by international commercial explosives industries. In addition, IME recommendations and guidance have been incorporated into multiple U.S. federal and state statutes and regulations. Our publications are reviewed and updated on a regular basis and serve as a reliable source for state-of-the-art information and best practices for the manufacture, storage, transportation, use and disposal of commercial explosives.

Accordingly, the above-captioned Notice is of great interest to IME. Our comments are as follows:

OMB Circular A-119 Should Continue to Recognize Both Voluntary Consensus and Non-Consensus Standards.

At page 19359 of the Notice, OMB states that Circular A-119 “does not establish a preference between consensus and non-consensus standards developed by the private sector . . . It may also be important to recognize the contributions of standardization activities that take place outside of the voluntary consensus process”

We agree with this statement. IME is a voluntary non-consensus standard-setting organization. Relative to other industry associations, IME represents a discrete, highly specialized, and fairly small industry that is appropriately served by a non-consensus organization. Membership in IME and the attendant opportunity to participate in the development of SLPs is open to all companies actively involved in the commercial explosives industry. Currently, our member companies make up approximately 95 percent of the explosives manufacturing capacity in the U.S. All member companies participate in the SLP development process. IME also consults with non-members such as regulators when appropriate. In addition, SLPs are available free of charge to non-IME members, governmental organizations, international organizations, and members of the public via download from our website. Printed copies of the standards are also available at a nominal cost.

As noted above, IME SLPs are developed and maintained by professional engineers and technical experts with intimate and extensive knowledge of the manufacture, transportation, storage, use and disposal of commercial explosives products. Use of a voluntary consensus standard-setting process with its associated public participation component would not add value to the SLP standards and could potentially detract from the quality of the publications and slow the process of development and revision. These standards are appropriately developed and maintained by experts in the field.

Accordingly, we recommend that OMB continue to recognize the value of voluntary non-consensus standards and encourage their incorporation by reference (“IBR”) into federal regulations where appropriate.

Federal Agencies Should Use Objective Criteria to Evaluate the Potential IBR of Voluntary Non-Consensus Standards.

OMB has requested comment on the types of factors that federal agencies could use to evaluate whether to use voluntary non-consensus standards in regulations, procurement solicitations, and other non-regulatory applications. We suggest that OMB consider the following factors:

- The expertise of the organization in the area to be covered by the potential regulation;
- The extent to which the subject of the regulation is highly specialized and/or technical such that significant experience and expertise is needed to develop appropriate standards;
- The extent to which the organization represents the industry as a whole or a significant portion thereof;
- Industry recognition and use of the standards produced by the organization;
- The frequency with which the standards are reviewed and/or revised by the organization;
- The lack of or limited availability of specialized expertise w/in the agency itself in the area to be regulated;
- The acceptance and use of the standards of the organization by other government entities (states, international);
- Where appropriate, consistency of the standards with standards adopted by U.S. trading partners;
- Whether the standard-setting organization is willing to allow agency officials to participate in or observe the development of the standards; and

- The potential cost savings to the agency in not having to develop the standards independently.

We are not suggesting that the above factors should be exclusive. Nor are we suggesting that each factor will be relevant or appropriate to every evaluation. Nevertheless, we feel that an objective evaluation using these or similar criteria would help ensure that standards incorporated by federal agencies are informed, technically accurate, and representative of accepted industry best practices.

OMB Should Adopt the ACUS Recommendation on Using and Updating Standards in Regulation

Lastly, OMB requests comment on whether a “supplement to the Circular [should] set out best practices for updating standards referenced in the regulation as standards are revised?”

As OMB is aware, the Administrative Conference of the United States (“ACUS”) recently issued a Recommendation on IBR. [77 FR 2257](#) (January 17, 2012). We support the ACUS recommendations on updating obsolete or superseded standards. We hope that adoption and implementation of the ACUS recommendations will aid agencies in updating IBR standards pertaining to explosives that are seriously and potentially dangerously outdated.

*

*

*

Thank you for the opportunity to participate in OMB’s consideration of this important issue. If you have any questions concerning these comments, please feel free to contact us.

Respectfully Submitted,

Susan JP Flanagan

Susan JP Flanagan
Counsel, Environment, Safety & Health
Institute of Makers of Explosives
202.674.7123
www.ime.org