

April 30, 2012

VIA Webportal

Jasmeet Seehra
Office of Information and Regulatory Affairs at
The Office of Management and Budget
725 17th Street, NW
Washington, D.C. 20503

RE: Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities

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Dear Ms. Seehra,

The International Association of Plumbing and Mechanical Officials (IAPMO) appreciates the opportunity to submit comments and provide input on the Office of Management and Budget (OMB) notice titled: *"Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities."*

Founded in 1926, IAPMO remains the pre-eminent code development association for plumbing, mechanical, swimming pool and solar codes. With approximately 7,300 members, IAPMO remains the only standards body where plumbing and mechanical codes are developed employing a true voluntary consensus process accredited by the American National Standards Institute (ANSI).

IAPMO R&T is a plumbing and mechanical product certification agency also accredited by the American National Standards Institute (ANSI). Far and away the preferred certification agency for manufacturers of plumbing and mechanical systems and products, IAPMO R&T is proud to provide certification services to these vital industries. Due to the extreme potential for transmission of disease through waterborne pathogens, and in recognition of the fact that safety is a primary concern for products found in public and private bathrooms and kitchens across the country, we recognize the need for a strong and vibrant certification process for these products.

IAPMO's membership is comprised of apprentice and journeymen plumbers, plumbing inspectors, engineers and code officials, plumbing and mechanical contractors, mechanical HVAC installers, water and energy efficiency experts, and manufacturers of plumbing, mechanical and building products – all areas that have the potential to be affected by this rulemaking.

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Due to our extensive experience and expertise utilizing open voluntary consensus procedures toward the development of our codes and standards, please accept our comments as follows:

Are Federal agencies generally following the guidance set out in the Circular and providing an adequate explanation of how they considered standards and conformity assessment-related issues in the preambles to rulemakings?

IAPMO appreciates that federal agencies generally go to great lengths to ensure that the guidance requirements in the Circular are followed. Further, IAPMO lauds the federal government's intent via OMB Circular A-119 to adopt and utilize open, transparent and voluntary consensus-based codes and standards in its regulatory efforts. We agree that periodic review of these requirements is critical to achieving ongoing improvements toward conflict-free regulations. However, we recognize that confusion exists among federal agencies' interpretations as to which standards development processes are acceptable and truly comply with OMB Circular OMB A-119. To this end, we feel further clarification and/or defining is needed to ensure that all codes and standards referenced in government regulations promulgated by federal agencies are, in fact, developed using the criteria currently required within the Circular. Specifically, IAPMO recommends that OMB include, within its definition of voluntary consensus bodies, ANSI's criteria defining balance of interest as *a) no single interest category constitutes more than one-third of the membership of a consensus body dealing with safety-related standards or b) no single interest category constitutes a majority of the membership of a consensus body dealing with other than safety-related standards* (See Section 2.3 of the ANSI Essential Requirements). Sadly, not all U.S. construction codes incorporated within federal regulations are developed in this manner today.

All stakeholder groups involved in code and standard development have a vested interest. From IAPMO's perspective, we feel that it is critical to ensure that construction codes referenced in federal regulation are developed utilizing an ANSI-like process that does not permit domination by any single interest group at any time during the development process. Doing so will ensure that all of our nation's construction codes are developed with a common platform toward achieving true voluntary consensus.

What factors should agencies use in evaluating whether to use voluntary non-consensus standards in regulation, procurement solicitations, or other nonregulatory uses?

Often, new technologies and consumer products are developed that have great potential and merit. Manufacturers and entrepreneurs often experience unintentional roadblocks and delays to market because there are no existing standards that reference these technologies or products. In these instances, the critical mass in terms of stakeholder identification that is required to support the establishment of a balanced standards developing committee is simply not yet available, and hence, the development of a voluntary consensus standard is not possible. As a result, the use of non-consensus standards is often the only remedy that manufacturers that find themselves in this position have available to them as a means of bringing their products to market. IAPMO recommends that government agencies should have the flexibility to use voluntary non-consensus standards for regulatory, nonregulatory and procurement solicitations under these circumstances.

Is lack of access to standards incorporated by reference in regulation an issue for commenters responding to a request for public comment in rulemaking or for stakeholders that require access to such standards?

What are the best practices for providing access to standards incorporated by reference in regulation during rulemaking and during the effective period of the regulation while respecting the copyright associated with the standard?

Lack of access to standards incorporated by reference can be a critical issue. IAPMO concurs with ANSI that an evaluation of best practices for providing access to standards should begin with a focus on “reasonable availability.” IAPMO adopts the comments submitted by ANSI in response to the Federal Register Notice issued on Feb. 27, 2012, relating to standards Incorporated By Reference (IBR) into legislation. In pertinent part, those comments are:

ANSI believes that the text of standards and associated documents should be available to all interested parties on a reasonable basis, which includes appropriate compensation as determined by the SDO/copyright holder.

“Reasonably available” should not be strictly defined using terms such as “for free” and “to anyone online;” rather, the definition should encompass a broad spectrum of access options. For example, some SDOs make certain standards available online on a read-only basis. And many SDOs make standards available at discounts or without charge to consumers, policymakers, and small businesses.

“Reasonably available” means that the public and private sectors should work together to make standards available on a timely basis and readily accessible – either for free or at reasonable prices – to anyone who wants them. This approach is already working in the marketplace, and ANSI has not been made aware of any instances where access was denied to an individual or organization. While SDOs continue to actively consider further efforts that can be made to make their documents available, this is a dynamic environment with no one-size-fits-all solution.

The internet has certainly expanded the public’s access to information. However, it has not changed the underlying protections of intellectual property, nor has it changed the need and the ability of standards developers to cover the significant costs of creating the documents that are used to further public policy goals in law and rulemaking.

The above commentary dovetails with commentary of the Administrative Conference of the United States (ACUS) at its Plenary Session on Dec. 8, 2011, which was cited within the body of Document Number: 2012-7602 as one of three recent developments on this topic.

IAPMO would not condone best practices that incorporate placing the full financial burden of standard development upon federal agencies. IAPMO concurs with ANSI: “If agencies subsidize the costs of standards, then budgets will need to be substantially increased in order to pay such costs, either through taxes or additional interest on the national debt. Rather, agencies should continue on the path that has already proven successful – working with the individual SDOs whose standards are incorporated by reference in order to determine the best mechanism for making those documents reasonably available.”

In conclusion, IAPMO recommends that OMB further define balance of interest so as to clarify the intent of OMB Circular A-119 to prevent confusion within the industry as well as uniformity within federal agencies' regulations as to maintaining private-sector driven, consensus-based codes. ANSI's definition and practice, as previously mentioned, in this area is widely considered the premiere threshold in determining truly consensus-based codes and standards that are void of any conflict of interest. Using a widely accepted, industry-based definition will benefit all affected industries, the agencies, businesses and the general public.

IAPMO sincerely appreciates your time and effort in this critical area. Please contact Dain Hansen, IAPMO's director of Government Affairs, at (202) 414-6177 with any questions or comments regarding items discussed in this document heretofore.

Respectfully Submitted,



GP Russ Chaney
Chief Executive Officer
IAPMO Group