



April 30, 2012

Aerospace Industries Association/Strategic Standardization Forum for Aerospace

RESPONSE TO FEDERAL REGISTER REQUEST FOR INFORMATION

“Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities”

The Aerospace Industries Association (AIA) appreciates the opportunity to respond to the Office of Management and Budget (OMB) request for information published in the Federal Register on March 30, 2012 (77 FR 19357) and seeking input concerning whether and how OMB might supplement Circular A-119 (Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities).

The aerospace industry's long partnership with government agencies (both civil and military) for the development of standards is one of the key reasons for the US's dominance in aerospace. Ensuring strong, responsive and flexible standards systems is critical to the success of aerospace products and programs. This response was developed by the industry members of the Strategic Standardization Forum for Aerospace (SSFA) and represents the collective input of the many companies that constitute this large and nationally important industry sector.

The SSFA welcomes the opportunity to discuss these issues and others with OMB, NIST or any government entity seeking input on policies or processes related to standards.

Responses to Questions from the *Federal Register* notice

Agency Implementation of Circular A-119 in Rulemakings:

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?

The US aerospace industry has a long history of working closely with the relevant government agencies, customers, and regulatory bodies in our existing standards setting structures. The aerospace industry welcomed and supports the National Technology Transfer and Advancement Act of 1995, Public Law 104-113. Codification

of the NTTAA through OMB Circular A-119; Federal Participation in the Development and Use of Voluntary Consensus Standards in Conformity Assessment Activities has served the aerospace industry and its government partners well. And we believe that the Circular is generally being followed by Federal agencies.

Standardization Activities:

What factors should agencies use in evaluating whether to use voluntary non-consensus standards in regulation, procurement solicitations, or other non-regulatory uses? OMB also invites comments on the respective roles of voluntary consensus standards vs. voluntary non-consensus standards for agency responsibilities in rulemaking, procurement, and other activities.

We support the Circular's guidance regarding consideration of standards as it applies to any voluntary standard -- consensus or non-consensus. Given the critical safety aspects of our industry, as well as the global nature of our business, we advocate that consideration of standards should be based on suitability to meet performance, safety, and quality as well as national and international regulation and certification needs appropriate to the product and the intended use of the standard. Additional guidance on selection of standards developed in accordance with the principles established by the World Trade Organization (WTO) Technical Barriers to Trade¹, would be helpful.

Conformity Assessment:

In conjunction with NIST's efforts to update its conformity assessment guidance, should a supplement to Circular A-119 be issued to set out relevant principles on conformity assessment? If so, what issues should be addressed in such a supplement?

15 CFR Part 287 provides the basic necessary guidance to both the aerospace industry and our partner Federal agencies on the use of conformity assessment. We would like to emphasize that the need for conformity assessment activities and the appropriate level of assessment (supplier's declaration, second party or third party) is unique to each industry and agency and that any additional guidance or best practice should respect the need for flexibility and the necessity to determine assessment requirements on a case-by-case basis.

We support the guidance in 15 CFR 287 which directs federal agencies to select conformity assessment activities which facilitate trade, provide regulatory confidence and protect safety and we would hope that they would continue to do so in consultation

¹ World Trade Organization, Agreement on Technical Barriers to Trade (TBT) Agreement Principles for the Development of International Standards, http://www.wto.org/english/tratop_e/tbt_e/tbt_e.htm

with industry. In addition, the US aerospace industry notes that we have worked hard to develop strong accreditation, certification, conformity assessment, and inspection processes, bodies, and institutions which are being used and recognized by our partner Federal Agencies as a positive alternative to the development of government activities. As one example, many DoD QPLs which listed DoD qualified producers or parts transitioned to industry-managed assessment activities when the Mil-Specs they accompanied were transitioned to voluntary consensus standards organizations to be maintained as industry standards. We encourage continued government support for these activities and welcome input for their continual improvement.

As a final observation on conformity assessment, the US aerospace industry notes that the variety of assessment activities used by our industry and accepted by the Federal Agencies involved with both civil and military products, supports the certification and customer acceptance of these products which have a life span of many decades. We would caution against any change in policy guidance which would result in unintended negative impacts to our products' certification.

Protection of Copyright Associated with Standards:

Is lack of access to standards incorporated by reference (IBR) in regulation an issue for commenters responding to a request for public comment in rulemaking or for stakeholders that require access to such standards? Please provide specific examples.

The US aerospace industry has worked with those Federal Agencies and regulatory bodies which impact the aerospace industry to encourage them to participate as active reviewers and commenters on standards. And as industry members, we have not been made aware of any cases where impacted stakeholders in aerospace rulemaking were unable to access standards in order to comment on their inclusion in rulemaking. The standards developing bodies we work with are continually looking for ways to ensure that those who need to have copies during the public commenting process are able to view them.

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? What are the best practices for incorporating standards by reference in regulation while respecting the copyright associated with the standard?

The standards supporting the aerospace industry are accessible world-wide for use by the entire global industry. And relevant aerospace standards are available for viewing from the standards organizations or at various government facilities or libraries. But the industry recognizes that there is a difference between accessibility and availability and

the issue of cost. The US aerospace companies acknowledge and respect the different business models used by various organizations to support the standards setting process. And we strongly support Circular A-119 which states that Federal agencies shall respect the copyrights of standards developers. The cost of the standards process, whether paid through participation fees on technical standards committees or through the purchase of the standards, has been in place as long as the industry has and has long been incorporated into and accepted as one of the costs of doing business.

The aerospace companies are aware of proposals to make standards available for free and these cause us serious concerns. These simplistic proposals ignore the basic fact that nothing is ever free – someone ultimately has to pay for the development, maintenance and distribution of the standards. To demand that the organizations with which the aerospace industry has been partnered with for close to a century suddenly change their funding structures means the costs would need to shift elsewhere. To move the costs to those few companies which develop the standards would be unworkable. By having the costs spread out over the entire aerospace industry and supply chain through the sale of standards, those that benefit from the standards help support their development, maintenance and distribution. To ask the far smaller number of entities, including government agencies, which sit on the technical committees to bare all those costs up front, would have the effect of forcing most of them out of the development process. Standards organizations which fund the process through the sale of standards are able to keep the financial barrier to participation low for small and medium sized enterprises, government agencies, academia and consumer interest groups. This ensures the broadest most robust input into the standards and protects against just a few entities being able to have a disproportionate amount of influence on the resulting standards.

To ask the Federal Agencies to pick up the costs for the standards processes lost by forcing the standards to be made available for free is equally untenable. This would place the need for timely standards development at the mercy of governmental budget cycles and as such would be a far less dependable source of support for the standards process than what exists today. The current business models are market-driven and very responsive to new and changing technologies and standards needs. It would unfairly burden the taxpayers to start to pay for the standards process and place the timely development of needed standards dependent on governmental budgeting processes.

Additionally, while many aerospace standards are developed by organizations domiciled in the US and are incorporated via reference into US rulemaking, they are used by and supported by the entire global industry. To force the standards organizations to give the

standards away for free would mean that other nations would have free access to this technical data without having to pay their fair share to support the process.

So while the aerospace industry encourages the standards organizations to continue to look for ways to address the issues of accessibility and affordability, we would request that OMB continue to respect the copyrights of standards organizations and refrain from changes that would have a negative impact on the rich diversity of participants in the standards setting process or on the system's ability to respond quickly to the need for new standards. Many of the key SDOs supporting the aerospace industry have been operating for over a century. Our industry and our partner government agencies obviously find value commensurate with the cost to have continued to support them all this time.

Voluntary Consensus Standards and Cost-Benefit Analysis:

What resources and other costs are involved in the development and revision of voluntary standards?

It takes a significant amount of resources to support the development of consensus standards. And while the aerospace industry provides technical experts, paying their time and travel to participate on standards committees, we acknowledge the considerable expenses incurred by the standards developing organizations in maintaining the staff, infrastructure, tools, and procedures necessary to support the consensus standards process. The major aerospace OEMs spend millions of dollars on internal company standards systems and so are well aware of the cost-effective nature of the services provided by the SDOs. The US Department of Defense recognized the same cost effectiveness and a number of years ago transferred thousands of Mil-Specs over to industry standards organizations to reduce the costs of maintaining the documents themselves.

What economic and other factors should agencies take into consideration when determining that the use of a voluntary standard is practical for regulatory or other mission purposes?

Federal Agencies are encouraged to select standards based on technical merit and the suitability for use. Other factors may include the extent to which the standard is recognized, accepted and used by the global aerospace industry, the currency of the standard, and the government's ability to develop the standard in-house with the same level of technical input and rigor. Federal Agencies might also want to consider the extent to which they are willing to participate along side industry to develop and maintain those standards critical to their mission. And finally, agencies should consider the conformity assessment activities which may be relevant to applicable standards and

the acceptance of existing entities for the carrying out of certification or the need to develop government programs.

How often do standards-developing bodies review and subsequently update standards? If standards are already incorporated by reference in regulations, do such bodies have mechanisms in place for alerting the relevant agencies and the public, especially in regard to the significance of the changes in the standards?

The majority of standards developing bodies supporting the aerospace industry have procedures in place to review or reaffirm standards at least every five years. However the industry is quick to sponsor a new or revised standard as soon as a technical need arises.

Using and Updating Standards in Regulation:

Should OMB set out best practices on how to reference/incorporate standards (or the relevant parts) in regulation? If so, what are the best means for doing so? Are the best means of reference/incorporation context-specific? Are there instances where incorporating a standard or part thereof into a regulation is preferable to referencing a standard in regulation (or vice versa)?

The public-private partnership in standards setting works best when Federal agencies participate directly with industry to develop standards. This way agencies ensure they have the standards needed to support their rulemaking and that they are a part of any changes or updates to these standards. Many of the agencies which work with the US aerospace industry directly task standards developers to create the necessary standards, relying on the rich technical expertise from the industry participants to ensure the best possible standards to meet the agency's needs. However, if agencies are not directly involved in the standards setting process, most standards organization have some sort of alerting process which will inform any interested party that a standard is undergoing a revision.

Another best practice favored by the aerospace industry has been for Federal agencies where practicable to establish end-item or performance-based requirements and then to simply cite an industry standard as one acceptable means, but not the only way, to meet the regulation. This way the requirements are contained within the rule but the user is not mandated to use any specific standard.

Should an OMB supplement to the Circular set out best practices for updating standards referenced in regulation as standards are revised? If so, what updating practices have worked well and which ones have not?

Federal agencies might benefit from best practices for updating standards referenced in regulations given that agencies vary in their ability to respond to revisions to standards incorporated into rulemaking. The goal would be to identify best practices that facilitate the timely review and adoption of revised standards, support strong interaction and communication between agencies and standards setting bodies, and that are consistent with the existing Circular.

Use of More Than One Standard or Conformity Assessment Procedure in a Regulation or Procurement Solicitation:

Should OMB provide guidance to agencies on when it is appropriate to allow the use of more than one standard or more than one conformity assessment procedure to demonstrate conformity with regulatory requirements or solicitation provisions?

Any guidance provided by OMB should continue to ensure that individual agencies retain the flexibility for determining conformity assessment requirements on a case-by-case basis. Any requests for the use of more than one standard or conformity assessment process should require due diligence by the agency to ensure technical relevance, technical equivalency and consideration of the agency's ability to participate in the standards setting processes.

Other Developments:

Have there been any developments internationally – including but not limited to U.S. regulatory cooperation initiatives – since the publication of Circular A-119 that OMB should take into account in developing a possible supplement to the Circular?

The aerospace industry has long been a global industry and the need for globally relevant standards only continues to grow as new countries and regions develop aerospace capabilities and products. However the US aerospace industry strongly recommends against any policy or guidance which implies some sort of artificial hierarchy in terms of preference for standards developing organizations. Organizations such as ISO and IEC, while excellent standards developing organizations, are not the only venues for the development of globally relevant standards. There are many strong, global standards developers serving the aerospace industry, and the US aerospace industry has a stated policy of choosing standards based on technical merit and suitability for use rather than based on the developing organization.² The aerospace industry urges OMB and Federal Agencies to avoid arbitrarily imposing policies that mandate the use of certain standards based on which organization developed them and inhibiting the selection of the best standards based on technical merit.

² http://www2.aia-aerospace.org/ssfa/pdf/ssfa_excellence.pdf

The aerospace industry does promote the recognition and use of standards developed according to the WTO TBT Principles for the Development of International Standards, but still stresses the need to retain the option to choose the best possible standard regardless of source. OMB guidance may be helpful to ensure Federal Agencies understand that there are many organizations and business models used to achieve global standards.

Conclusion

Our nation's economy and national security rest on the strength of the aerospace industry and its products, which in turn owes its strength to the robustness and flexibility of the standards systems it uses. The ability to collaborate with government agencies to identify and develop the standards necessary to support this vital industry is integral to the continued success of US aerospace superiority. AIA and its members have been well served by the NTTAA and OMB A-119 and public-private partnership it sets forth. We welcome the opportunity to continue to work with all stakeholders in standardization to search for ways to improve this proven partnership and to work with the various Federal Agencies to respond to civil and defense priorities.

The aerospace industry not only welcomes, but requires the participation of government experts in standards development activities and together we will continue to create standards that can be adopted and relied on by Federal Agencies. The framework and guidance set out by OMB Circular A-119 are proven and have successfully stood the test of time. Any supplements should respect the needs of the different industries and agencies served, should uphold and honor the copyrights of standards developing organizations, and should be examined carefully to ensure that they do not have any unintended negative consequences.

We appreciate the opportunity to provide these comments and we look forward to being a part of the ongoing dialogue between OMB, NIST, the various Federal Agencies, and other key stakeholders from the standardization community.

For more information, please contact:

Christopher Carnahan
Director, Standardization
[Aerospace Industries Association](#)
1000 Wilson Blvd., Suite 1700
Arlington, Virginia 22209 USA
T: 703-358-1052 F: 703-358-1152
chris.carnahan@aia-aerospace.org