



National Institute of  
BUILDING SCIENCES

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April 30, 2012

Office of Information and Regulatory Affairs  
Office of Management and Budget

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

Dear Sir or Madame,

Thank you for the opportunity to comment on the role of private sector standards and  
conformity assessment in federal regulations and procurement processes.

As you may know, the National Institute of Building Sciences was established by the U.S.  
Congress to work with the public and private sector to advance building science and the  
design, construction and operations of buildings. Often, the advancement of building science  
and the improvement of our nation's built environment relies on a combination of  
government regulations and codes and standards and guidance developed in the private  
sector (with input from government).

As the Federal Register Notice indicates, there has been considerable focus on standards  
recently. Portions of this response were previously transmitted to the National Archives and  
Records Administration in response to a petition regarding public access to standards.

As recognized by the National Technology Transfer and Advancement Act (NTTAA) and OMB  
Circular A-119, the development of codes and standards in the United States is an inherently  
private sector driven activity. The organizations that administer the development of codes and  
standards have implemented requirements to assure that the resultant documents represent  
the public interest. These requirements include achievement of consensus, openness and due  
process. This rigorous process often requires considerable up-front expense that is typically  
only recouped through the sales of the resultant document.

The expansion of the internet has resulted in increased access to referenced documents. The  
argument to make these documents available for free is predicated on the difference between  
paper-based documents and electronically-based documents. However, it fails to recognize  
that the value in the documents does not rest in the tangible nature of a printed document,  
but in the actual content. As indicated above, the development of that content comes at  
considerable expense. Should the ability to recoup that cost change, the private sector-based  
standards development process would change considerably. Private sector organizations will  
no longer be able to invest in the development process leaving existing standards to remain

stagnant (and thus inhibiting innovation) and shifting future standards development to governments (with government bearing the expense and abandoning the long history of private sector standards development).

Today, the cost of standards development is born by those who are ultimately impacted by the standards (whether through participation in the development process or by purchase of the resultant document). Some standards developers have elected to provide their standards for free for various reasons (to encourage development of a specific market, to spur uptake within an industry, or because of a perceived obligation to a particular community). However, that decision is up to the individual organization due to their ownership of the intellectual property. Shifting the financial and/or process burden to government (either for development or compensating private sector developers) would unfairly obligate all taxpayers to bear the expenses instead of those stakeholders most impacted by the standards.

Many of the questions posed are best answered by the Standards Development Organizations (SDOs) themselves and the American National Standards Institute (ANSI). However, we are pleased to provide responses to the following questions posed in the Federal Register Notice:

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

Given the protections inherent in consensus-based processes including openness and due process, a standard developed under a voluntary consensus process best meets the ideals of the nation. However, as the Notice points out, for emerging technologies or niche needs, only non-consensus standards may exist. The use of such standards would be appropriate to assure consistency and identify necessary specifications. Given the choice between the use of consensus and non-consensus standards, OMB should encourage use of consensus standards. They assure that stakeholders have been engaged in the development and generally indicate the availability of several conforming products or providers (thus containing costs and encouraging interoperability). Further, agencies have the ability to engage in development of consensus-based standards and assure any specific needs are considered.

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

The internet has certainly expanded the public's access to information. However, it has not changed the underlying protections of intellectual property and the ability for content developers to seek a reasonable return on their investment. Most SDOs provide information on the availability of standards online as a part of their efforts to publicize the availability of such a standard. SDOs also often provide instant access to standards (either as a PDF or other format) for those wishing to purchase and review the document immediately.

The development of codes and standards comes at an expense and that expense must be covered by some means. Agencies may elect to provide free access to the public (based on a negotiation with the SDO), but then the agency should be responsible for bearing the cost. In a fiscal environment where agencies are struggling with tight budgets, it appears unwise to add an additional budget item when the current private sector methods are adequate. Shifting the cost burden to agencies would result in the entire burden of the standards development process being born by tax payers while the current system relies on those most impacted by the standards to bear the cost of their development.

Both in the development of voluntary consensus standards and the federal rulemaking process, stakeholders have adequate opportunity to review pending standards and regulations and provide feedback. As the national body to facilitate standards development, ANSI has promulgated strict guidance for the standards development process and weekly publishes notice of upcoming development activities and requests for comments.

*Should OMB set out best practices on how to reference/incorporate standards in regulation? Should an OMB supplement to the Circular set out best practices for updating standards referenced in regulation as standards are revised?*

To facilitate access to standards referenced in regulation, it may be wise for OMB to establish recommended best practices on how to reference/incorporate such standards. While specific uses may warrant variation, any attempt at consistency would be beneficial. Updating standards upon revision is important to encourage innovation and avoid unnecessary burdens on the private sector which may need to demonstrate compliance with multiple versions of a standard depending on its array of customers. In development of such recommendations, OMB should assure that sufficient time and process is in place to adequately review the impacts of any changes. These best practices should be developed with the input and engagement of SDOs, ANSI and other stakeholders.

*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 revisions? Where an agency is requested by stakeholders to consider allowing the demonstration of conformity to another country's standard or the use of an alternate conformity assessment procedure as adequate to fulfilling U.S. requirements, should OMB provide guidance on how to consider such requests?*

In some instances, it may be appropriate for an agency to reference multiple standards or conformity assessment procedures to meet requirements of a regulation. For example, methodologies for achieving specific performance requirements may vary by region, product used, or industry sector. The same is true for international standards and conformity assessment activities. The most important requirement in referencing multiple standards or

conformity assessment processes is that results meet or exceed the level of performance required by the agency. This may require additional investigation and evaluation by a proposing agency to assure regulations are not inadvertently weakened by approval of a less stringent standard.

U.S. based manufacturers often provide (or aspire to provide) products on the global market. Often, such markets require conformance with their own standards or certification processes. Manufacturers must then comply with these requirements—often at considerable expense. The Asia Pacific Economic Cooperation (APEC) and other regional trade efforts within the Department of Commerce are working to reduce the cost of U.S. goods entering international markets and identifying opportunities to harmonize or offer mutual recognition of other standards or certification processes. Where performance and certification stringencies are truly equivalent, agencies should provide mutual recognition.

Thank you for the opportunity to comment on this important issue. Please let me know if there is anything the Institute can do to assist in buildings related issues.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Henry L. Green". The signature is fluid and cursive, with the first name "Henry" and last name "Green" clearly legible.

Henry L. Green, Hon. AIA  
President