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Subject: Request for Information, Office of Management and Budget, “Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,” Federal Register, Vol. 77, No. 62, Friday, March 30, 2012

Dear Sir or Madam:

This letter provides comments by Westinghouse Electric Company (Westinghouse) in response to the request for information from interested parties on current issues regarding federal agencies’ standards and conformity assessment related activities per the subject Federal Register notice by the Office of Management and Budget (OMB). In particular, our comments are centered on recent developments on incorporation by reference of standards documents in federal regulations only if such documents or portions thereof are made available to the public, free of charge, on an Internet Web site.

Westinghouse provides fuel, services, and nuclear power plant technology to the worldwide commercial nuclear electric power industry. Our company employs 15,000 people in 15 countries around the globe. Nearly 50% of the more than 400 nuclear power plants worldwide, and nearly 60% of the 104 reactors in the U.S., are based on Westinghouse technology.

Commercial nuclear power is one of the most highly regulated industries in the world, and voluntary consensus standards, in combination with regulations from the U.S. and other countries, have provided the foundation for this technology since its inception 55 years ago. Hundreds of Westinghouse employees have served during these six decades as volunteers to several standards-writing bodies, including ASME, the American Nuclear Society, ASTM International, IEEE and many others. Thousands of volunteers and more than 100 Westinghouse employees continue to serve in various positions within these standards development organizations to ensure that appropriate standards requirements are in place to maintain safety for current and new reactors worldwide.

Westinghouse recognizes the importance of independent voluntary consensus standards to the global nuclear power industry as evidenced by the level of participation cited above. Open participation that includes public, regulators, government laboratories, U.S. and foreign industry members is a key credibility of consensus standards documents. Commitment to developing these consensus standards, based on their value-added to the industry, represents a significant financial investment. Direct costs of Codes and Standards activities are primarily absorbed by administrative fees and end-user payments for end-user access to published Codes and Standards documents. This distributed system of funding is critical to the independence of the standards development organizations (SDOs). The alternative to charging end users for these publications would be either direct corporate or government financial support. Westinghouse is concerned that these alternative financing options would seriously undermine

the credibility of these independent SDOs and the checks and balances that come from a consensus-developed code or standard.

Given this vast global experience in developing voluntary consensus standards, we believe that the enclosed comments on some of the topics that are cited in the Federal Register notice should be important to OMB and other interested parties who are engaged in the above subject.

If you have any questions regarding these comments, please feel free to contact me at 412-374-4643.

Very truly yours,

**Electronically Approved in EDMS*
J. A. Gresham, Manager
Regulatory Compliance

Enclosure

Westinghouse Electric Company Comments –
Office of Management and Budget Request for Information –
Federal Participation in the Development and use of Voluntary Consensus Standards and in Conformity
Assessment Activities; Federal Register Notice March 30, 2012

Agency Implementation of Circular A-119 Rulemakings

No comments

Conformity Assessment

While we have no comments on the topics raised here in the subject Federal Register notice (FRN), we would like to note that an ASME-stamped nuclear component that is deployed in the U.S. and abroad means that a safe, quality product has been designed and manufactured by meeting the ASME Boiler & Pressure Vessel Code, a consensus standard that has been vetted by industry and accepted by regulators worldwide.

Protection of Copyright Associated With Standards

1. How to determine “reasonable availability”

- a. Relative to “reasonable availability,” Administrative Conference Recommendation 2011-5, 3(b), states that agencies should work with copyright owners who do not consent to free publication to achieve low-cost publication. The standards development organizations (SDOs) meet this need by services such as those provided by IHS Inc. that permits a company or organization to obtain electronic access for multiple users at a specified location at a reasonable cost. IHS has provided such service for over 50 years.
- b. Relative to “reasonable availability,” Administrative Conference Recommendation 2011-5, 4(d), states that agencies should consider the types of parties that need access to the incorporated material and their ability to bear the costs of accessing such materials. The types of parties involved in the design, construction and operation of commercial nuclear power plants have the ability to bear the costs of accessing these codes and standards. Moreover, they have the ability to contribute to the promulgation of nuclear codes and standards by voluntary participation on codes and standards committees.
- c. Relative to “reasonable availability,” Administrative Conference Recommendation 2011-5 does not recommend that the agencies consider the costs to develop and publish the codes and standards and their right in a free market economy to recover the costs. However, OMB should include these considerations in a possible supplement to Circular A-119. Without the ability to recover costs, the SDOs would no longer exist.
 - i. This situation is recognized earlier in the document where it states, “Efforts to increase transparency of incorporated materials may conflict with copyright law and with federal policies recognizing the significant value of the public-private partnership in standards.” For development of nuclear codes and standards, there is a significant public-private partnership where representatives of the Nuclear Regulatory Commission, along with representatives from other federal, state, and non-U.S. government agencies in some cases, are voting members on standards committees as well as on subcommittees and subgroups reporting to the standards committees.

- ii. Furthermore, the Administrative Conference Recommendation 2011-5 cites the National Science and Technology Council's acknowledgement that "the text of standards and associated documents should be available to all interested parties on a reasonable basis, which may include monetary compensation where appropriate." Nuclear codes and standards are developed as voluntary consensus standards in an open and transparent manner. This process has proven to be an effective approach for developing these standards.
2. *Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 signed into law on January 3, 2012*
3. *Petition for Rulemaking to Office of Federal Register received on February 13, 2012 to amend its regulations governing the approval of agency requests to incorporate material by reference into the Code of Federal Regulations, and requested public comment*

FRN Question Areas -

Lack of Access to Standards

Westinghouse has no specific examples of not being able to obtain U.S.-based codes and standards. Challenges can exist in obtaining similar standards from other countries, particularly if the standard is developed by a government-owned organization. The standard may not be available in English, requiring the cost of translation.

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

The U.S. Nuclear Regulatory Commission (NRC) endorses codes and standards via 10 CFR 50.55a, regulatory guides, and standard review plans for the nuclear industry. The referenced standards can be readily purchased at a reasonable cost (such as via the IHS service).

Best Practices for Incorporating Standards by Reference in Regulation While Respecting the Copyright Associated with the Standard

The NRC has appropriately endorsed codes and standards via 10 CFR 50.55a, regulatory guides, and standard review plans for the nuclear industry for more than 40 years by use of incorporation by reference of consensus standards documents while respecting the copyright of the standards development organizations.

Voluntary Consensus Standards and Cost-Benefit Analysis

FRN Question Areas -

Resource and Other Costs Involved in Development and Revision of Voluntary Standards

Costs for developing standards include salaries and benefits for SDO staff members, meeting facilities for standards writing activities, offices and facilities for SDO staff / publishing, and SDO staff efforts to provide services reaching around the globe to support industry developments such as new nuclear plant developments in Asia, Africa and South America over the last decade. The staffs of U.S.-based SDOs also interface with other international SDOs, such as the International Organization for Standardization (ISO) and the International Electrotechnical

Commission (IEC) standards body to support global developments for many industries. Many of the SDOs also have to address training costs of staff and volunteers on American National Standards Institute (ANSI) requirements for processes and procedures for development of voluntary consensus standards. Thus, there are many costs that have to be recovered by the SDOs beyond just the printing and publication of the voluntary consensus documents.

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

A key source of revenue for the SDOs is from the sale of codes and standards. This revenue is also used to support the broader mission of the professional engineering societies that embody the standards development activities. The SDOs could not survive as we know it today without this source of revenue, which is also used to sponsor and fund research for new technology impacting standards development. Having voluntary consensus standards available significantly supports our nuclear technology developments, the global nuclear industry as a whole, and other industries by helping us all to be successful in the global market.

The U.S. is recognized as a global leader in nuclear technology today. Part of this recognition comes from private industry offerings, such as new nuclear power plant offerings such as the **AP1000**¹ plant. However, these developments would not be possible without the voluntary consensus standards, which are also recognized and used globally. International recognition and use keeps U.S. nuclear businesses competitive in the global markets. This worldwide recognition and use is because the U.S.-based nuclear standards are voluntary consensus-based standards, promulgated in an open and transparent manner. If the cost of standards development cannot be recovered, global recognition and use will decline, and U.S. nuclear businesses will be significantly challenged.

U.S.-based voluntary consensus standards are accepted and adopted directly or by intent by government agencies and regulators in other countries. Some countries translate the U.S.-based standard to their native language and then adapt it to fit their own regulatory requirements. Most countries generally do not use the regulatory requirements developed by U.S. federal agencies. Because of this international acceptance, a growing number of experts from around the world are becoming key volunteers in U.S.-based standards-writing groups contributing significant technical information and data from their countries to the standards effort.

How often do standards-writing bodies review and subsequently update standards?

Nuclear codes and standards have the most stringent safety requirements of any standard in the world. They are dynamic, responding to lessons learned from operating experience and new research and development. Such needs to update standards include operational issues that drive constant updating of ASME Operation & Maintenance (OM) Code from inservice testing of nuclear systems and components and the ASME Boiler & Pressure Vessel (BPV) Code Section XI for inservice inspection of major nuclear pressure-retaining equipment. New plant developments such as squib valves being used in the **AP1000** plant impacting requirements for the ASME OM Code and core make-up tank for ASME BPV Code Section XI. Events like Fukushima are causing many standards to be reviewed by most SDOs around the globe.

¹**AP1000** is a trademark or registered trademark of Westinghouse Electric Company LLC, its affiliates and/or its subsidiaries in the United States of America and may be registered in other countries throughout the world. All rights reserved. Unauthorized use is strictly prohibited. Other names may be trademarks of their respective owners.

Updates are done using valuable operational and design information that is brought to standards-writing bodies by volunteers from industry and government laboratories worldwide (without financial reimbursement); similar arrangements would not occur if federal agencies are writing standards.

Using and Updating Standards in Regulation

Please see comments provided in the above responses.

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

No comments

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?

There is a need to get new or updated standards requirements readily endorsed by federal agencies that support acceptance of the revised standard requirement by government agencies in other countries. While other countries will not directly use U.S. regulation, having U.S. agencies endorse a voluntary consensus standard does help get acceptance of that standard by other countries. For example, the **AP1000** plant has been readily accepted in other countries because this new nuclear power plant design is based on internationally accepted U.S.-based standards, particularly the ASME BPV Code.

Does the significant role played by consortia today in standards development in some technology areas have any bearing on (or specific implications for) Federal participation?

Are there other issues not set out above that OMB might usefully seek to address in a supplement?

No comments