



AmericanCoatings
ASSOCIATION

May 31, 2012

The Honorable Cass Sunstein, Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

RE: Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities, Request for Information; Docket No. OMB-2012-0003

Dear Mr. Sunstein:

The American Coatings Association (ACA)¹ is pleased to submit the following comments on the Request for Information regarding *Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities*.² We thank the Office of Management and Budget (OMB), and appreciate the opportunity to comment on this Request for Information on Circular A-119, which impacts a range of Federal agency decision-making, including the incorporation of voluntary standards in procurement, regulations, and non-regulatory activity. ACA provides the following comments below and fully supports the American Chemistry Council's comment submission.

ACA requests that OMB reopen Circular A-119 *Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities* to consider adding new language and further guidance. In particular, we ask that OMB provide additional direction to federal agencies with regards to referencing independent, voluntary consensus standards and include more specific details such as an expanded definition of "consensus" and "consensus standards" for purposes of Circular A-119. We also ask that Circular A-119 express a clear preference for consensus-based standards.

The A-119 Circular should be amended to make the voluntary consensus standard requirements consistent with the American National Standards Institute's (ANSI) Essential Requirements: Due

¹ The American Coatings Association (ACA) is a voluntary, nonprofit trade association working to advance the needs of the paint and coatings industry and the professionals who work in it. The organization represents paint and coatings manufacturers, raw materials suppliers, distributors, and technical professionals. ACA serves as an advocate and ally for members on legislative, regulatory and judicial issues, and provides forums for the advancement and promotion of the industry through educational and professional development services.

² 77 Fed. Reg. 19357 (March 30, 2012).

process requirements for American National Standards (ANSI Essential Requirements).³ The ANSI Essential Requirements provide a comprehensive set of consensus and due process requirements for consensus-based standards – including openness, balance, consensus, and appeals – and carefully detail benchmarks for each of these individual criteria. When compared to the ANSI Essential Requirements, Circular A-119 is less detailed and may not provide adequate guidance to federal agencies. Although A-119 draws on the principles of openness, balance of interest, due process, and an appeals process for voluntary consensus standards, it lacks definitions of these concepts and does not include a clear mandate to ensure referenced standards meet these criteria. The Circular A-119 would be well served by adopting ANSI’s definitions, especially that of “consensus” itself. We encourage OMB to incorporate ANSI’s definition of consensus and its due process procedures into Circular A-119.

ACA also requests supplemental guidance in Circular A-119 to encourage references to consensus-based standards and discourage the use standards that fail to satisfy the consensus-based standards development criteria outlined in A-119 Section 4. We believe there should be a preference for consensus standards over non-consensus standards in Circular A-119 based on the language in the National Technology Transfer and Advancement Act of 1995 (National Technology Transfer Act), Public Law 104-113. The National Technology Transfer Act directs all federal government agencies to use standards and conformity assessment solutions developed or adopted by voluntary consensus standards bodies, where feasible, instead of developing government-unique standards and regulations. There is no mention of promoting the use of non-consensus standards over government-unique standards in the statutory language. Consistent with this reading, OMB should amend Circular A-119 to provide clear guidance to federal agencies that the preference for private, voluntary consensus-based standards does not also extend to non-consensus standards.

Thank you in advance for your consideration of our comments. Please do not hesitate to contact me if you have any questions regarding our submittal.

Sincerely,

/s/

Timothy Serie, Esq.
Counsel, Government Affairs

*** Submitted via Regulations.gov ***

³ ANSI Essential Requirements: Due process requirements for American National Standards, January 2012.