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June 1, 2012

Cass Sunstein  
Administrator  
Office of Information and Regulatory Affairs  
Office of Management and Budget  
Washington, DC 20580

Re: Federal Participation in the Development and Use of Voluntary Consensus Standards and in  
Conformity Assessment Activities, Circular A-119

Dear Administrator Sunstein:

The Automotive Recyclers Association (ARA) appreciates the opportunity to comment on the March 30, 2012 Federal Register notice published by the U.S Office of Management and Budget (OMB) requesting stakeholder input on whether OMB Circular A-119 needs to be updated. Circular A-119 directs Federal agencies to use voluntary consensus standards in lieu of government-unique standards and provides guidance for agencies participating in the work of bodies that develop voluntary consensus standards and coordinate conformity assessment activities.

Under this circular, Federal agencies are directed to use technical standards that are developed or adopted by private entities as a means to carry out policy objectives and activities. ARA acknowledges that this practice - established under the National Technology Transfer and Advancement Act of 1995 (NTTAA, P.L. 104-113) - known as "Incorporation by Reference" (IBR) is a process used to make privately developed technical standards Federally enforceable.

#### REQUEST FOR INFORMATION

ARA understands that OMB, the National Institute of Standards and Technology (NIST) and federal regulators are now requesting information from stakeholders on how the federal government should address issues in standards and conformity assessment that have emerged or moved to the forefront since the Circular was promulgated in 1998. Under consideration is the development of a Supplement to Circular A-119.

Following are ARA's responses to select questions posed in the Federal Register notice.

#### ARA CONCERNS ON EPA's INADEQUATE EXPLANATION AND RATIONALE ON REQUIRED STANDARDS

ARA is concerned that Federal agencies are not providing adequate explanation and rationale for their choice of acceptable standards in rulemakings. To address this concern, ARA requests OMB to adopt a supplement to Circular A-119 that specifically outlines the process by which stakeholders can request review of current standards and how to have new standards accepted. Following are three examples of the U.S. Environmental Protection Agency (EPA) proposed changes to rules/policies that ARA believes are based on questionable use of, and rationale for standards.

1. EPA - Stormwater

EPA published a guidance memo early in 2011 in which it recommended the use of numeric equivalent limits to measure the content of industrial stormwater runoff instead of the very accepted and well known best management protocols promoted by EPA since the Clean Water Act was enacted. Vague explanations like the following were the only reasons provided for the change:

*"The technical capacity to monitor stormwater and its impacts on water quality has increased."*

*"In many areas, monitoring of the impacts of stormwater on water quality has become more sophisticated and widespread."*

*"Better information on the effectiveness of stormwater controls to reduce pollutant loadings is now available."*

These very general and non-scientific sweeping statements do not provide adequate explanation and rationale for new policy nor do they refer to any new specific standards. Further, they fail to take into account the costs of implementation versus the benefits realized.

2. EPA - Solid Waste

Another example of inadequate explanation and rationale as well as failure to recognize new costs associated with a new rule, was illustrated in EPA's proposed rule to expand its definition of solid waste. Under this proposal, those who sell scrap metal to processors for recycling as a valuable commodity would also have to test for legitimacy - to prove that the recycling on a material-specific basis is legitimate. This documentation would then have to be submitted to an EPA regional authority. Not only would the amount of paperwork required be financially burdensome, but also it would bring into question how such verifications would be interpreted by EPA. Are the four federal criteria to show that recycling is legitimate appropriate? Was there any stakeholder input as to how these criteria were developed and when they should be applied?

3. EPA's 1985 Guide on the Sale of New Aftermarket and Used Catalytic Converters.

Over 25 years ago, EPA implemented requirements that aftermarket catalytic converters must meet certain minimum federal durability and performance standards to be eligible for use. Only if these exhaust emission and air quality standards were met could the converters be sold and installed.

ARA members are both vigilant stewards of the environment and of consumers' budgets. When ARA recently appealed to EPA to review the over 25 year old standards to see if they were still applicable, EPA staff simply reiterated that the standards used to test the efficiency of new aftermarket or used catalytic converters were still applicable and that updated reviews were unnecessary.

ARA believes that if OMB were to issue a supplement to Circular A-119 then the aforementioned policies would look much different today. We believe that with OMB guidance the agencies would have better achieved that delicate balance between regulation and competition. We look forward to working with OMB to discuss further the necessary contents of the Supplement.

#### ARA CONCERNS ON USE OF PRIVATE, VOLUNTARY STANDARDS AND INCORPORATION BY REFERENCE (IBR)

ARA has concerns with the general IBR practice that allows Federal agencies to comply with the requirement to publish rules in the *Federal Register* and the Code of Federal Regulations (CFR) by simply referring to materials by reference published elsewhere. These privately developed technical standards might be unfamiliar to small business or include little or no small business stakeholder input. Indeed many of these standards when followed have the potential of negatively affecting small businesses. In addition, some statements made by businesses imply the existence of standards, when in actuality no standards exist and they are instead promoting specific biased and untested policies.

##### 1. Automotive Manufacturers' Statements

For example, auto manufacturers often release self serving position statements that warn consumers about "potential" safety concerns. Take for instance a Toyota Motor Company bulletin in November 2010 warning against the use of recycled auto parts. In their release, Toyota stated that it does not recommend the re-use of structural components that have been removed from a previously damaged vehicle. They further state that although parts may appear equivalent, it may be difficult to identify previous damage, if a part has received collateral damage as a result of a prior collision or if the part has been subject to extreme weathering, corrosion or other detrimental environmental exposure.

Following this logic held by Toyota, the safety of every one of their vehicles that has been involved in an accident could be in question given Toyota's assertion that parts that remain on a vehicle post collision "may" only "appear equivalent". If a federal agency were to adopt Toyota's approach, the impact on automotive recyclers - small businesses - would be devastating and ignore most federal policy in support of small businesses.

In addition, over the last three years an increase in the use of recycled OEM automotive parts has reduced the market for new OEM replacement parts. As a result, automotive manufacturers have become more aggressive by releasing revised collision repair position statements that are even more biased and based on weak or no apparent scientific research claiming the recycled OEM parts are inferior to new OEM parts. In making these types of statements, auto manufacturers seem to be attempting to exclude recycled OEM parts from the market which would result in only one source of parts and procedures for the repair of consumers' vehicles – the auto manufacturers. It is ARA's belief that the goal of the manufacturers is to discourage the use of recycled OEM parts and secure a market that establishes automakers as the only source of parts and procedures for the repair of consumers' vehicles. Does Circular A-119 protect the industry at large against this type of monopolistic action?

For example, Chrysler released a position statement in 2010 implying that recycled OEM parts may have invisible defects due to environmental and human error factors and stated that, "Chrysler Group LLC does not approve of or recognize structural repair procedures where Authentic Mopar Parts are not used for Chrysler, Jeep®, Dodge and Ram vehicles." This statement suggests that consumers' warranties might not be honored if parts other than Authentic Mopar Parts were used. Similar statements have also been released by American Honda, Toyota Motor Sales, and Hyundai Motor America.

In response to these inflammatory statements, ARA met with the U.S. Federal Trade Commission (FTC) in March 2011 requesting the FTC to clarify warranty policies so that consumers would not be duped into thinking that using recycled OEM parts in a repair could void their warranty. As a result, the FTC announced the update of a consumer alert entitled *Auto Warranties, Routine Maintenance, and Repairs: Is Using the Dealer a Must?* The revised alert specifically notes that the mere use of recycled OEM parts does not void a warranty and that it is illegal for warrantors to void a warranty or deny coverage simply because a recycled OEM part was used. Does Circular A-119 require federal agencies to work together and share this kind of information before accepting a particular group or industry generated standard?

## 2. Statement of Collision Repair Groups

What if you have one group building off another set of standards that have yet to receive industry review and acceptance? Recently, several collision repair groups have also begun to weigh in on the development of collision standards, highlighting the problem of standards being accepted that have not been subject to widespread stakeholder scrutiny. Late last year, these several prominent collision repair groups issued and signed a joint statement officially recognizing original equipment manufacturers (OEM) published repair procedures as the "collision industry's repair standards" without any

formal process for comment or discussion. ARA believes it defies basic logic to allow automakers to have a role in the composition of collision repair standards when their expertise is in manufacturing new cars, not necessarily repairing damaged vehicles. Not to mention, they have a huge financial stake in dictating the use of only new original equipment parts. It is the fox watching the hen house at its best and much more disturbing at its worst. How would OMB consider a proposal to accept these standards?

ARA urges OMB to recognize that just because a number of large organizations sign on to a joint letter or support a flawed standard process does not make the standards accurate or proper.

### 3. Barriers to Accessing Standards

Lastly, OMB must develop policy that addresses the financial barriers to access of industry sector-specific standards developed by private entities and adopted by federal agencies. For example, if a federal agency does adopt a private set of standards, then it must establish a mechanism by which industries that rely on those standards can access at least an excerpt or federal copy of them. Once again, small businesses cannot be expected to absorb the financial burden of buying standards developed by large businesses to comply with federal programs.

In summary, ARA requests that OMB publish a supplement to Circular A-119 that addresses the inadequate explanation and rationale for the federal adoption of certain privately developed standards as well as establishes a formal protocol on how stakeholders can be involved in the IBR process. In addition, the ARA urges OMB to put in place mechanisms so that no federal agency can use the standards of one private entity over another. Rather, OMB should direct agencies to demand input from all industry-specific

Thank you for the opportunity to address these important issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Wilson". The signature is stylized with a large, sweeping initial "M" and a cursive "Wilson".

Michael Wilson  
CEO, Automotive Recyclers Association