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# Facsimile Transmittal Form

**To:** Federal Participation Use **From:** CALVIN Di GIOVANNI  
**Company:** DFVd CONS STDS - DMBS A119 **Date:** 6/11/12  
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The Global Source and Voice for the Recreational Water Industry

June 1, 2012

Office of Management and Budget

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

Thank you for the opportunity to comment on the *Federal Register* notice submitted by the Office of Management and Budget (OMB) regarding whether and how to supplement OMB Circular A-119, "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities."

The following is submitted on behalf of the Association of Pool & Spa Professionals (APSP) in regard to OMB Circular A-119.

The Association of Pool & Spa Professionals (APSP) is the world's largest trade association in the pool and spa (hot tub) industry and a leading industry advocate. Its members include manufacturers, manufacturer's agents, distributors, retailers, builders, installers and service professionals. All members agree to adhere to a code of business ethics and share a commitment to promote the safe design, construction and use of pools and spas. The APSP promotes professional best practices through education, certification, research safety initiatives and the development of voluntary national consensus standards as a Standards Developing Organization (SDO) under the auspices of the American National Standards Institute (ANSI).

Since 1983, the APSP has served as the ANSI accredited secretariat and developer of the nation's swimming pool and spas standards. Today, there are 13 published voluntary consensus standards developed under the rigorous national consensus review process prescribed by the American National Standards Institute:

- ANSI/APSP-1 2003 Public Pools
- ANSI/APSP-2 1999 Public Spas
- ANSI/APSP-3 1999 Permanently Installed Inground Spas
- ANSI/APSP-4 2007 Aboveground Pools
- ANSI/APSP/ICC-5 2011 Inground Residential Swimming Pools
- ANSI/APSP-6 1999 Portable Spas
- ANSI/APSP-7 2006 Standard for Suction Entrapment Avoidance in Swimming Pools, Wading Pools, Spas and Hot Tubs
- ANSI/APSP-8 2005 Model Barrier code
- ANSI/APSP-9 2005 Aquatic Recreational Facilities (Water parks)
- ANSI/APSP-11 2009 Water Quality for Public Pools and Spas
- ANSI/APSP/ICC-14 2011 Portable Electric Spa Energy Efficiency
- ANSI/APSP/ICC-15 2011 Residential Swimming Pool and Spa Energy Efficiency
- ANSI/APSP-16 2011 Suction Fittings for Use in Swimming Pools, Wading Pools, Spas and Hot Tubs

These Standards are relied upon by Federal Agencies such as the US Consumer Product Safety Commission (CPSC), as well as many state agencies and legislatures and developers of model codes, such as the International Code Council (ICC) and the International Association of Plumbing and Mechanical Code Officials (IAPMO). They also form the basis for the newly developed and published 2012 International Swimming Pool and Spa Code (ISPS). This Code, jointly developed by the APSP and the ICC is the first comprehensive code to address all aspects of pool and spa design and construction. It is currently being considered for adoption in many state and local jurisdictions that will vastly improve public safety in pools and spas at a tremendous cost savings to tax payers and local jurisdiction budgets.

Voluntary consensus standards provide substantial benefit to consumers, government and members of industry and are frequently relied upon by the US Consumer Product Safety Commission as well as other agencies. In a statement given March 10, 2010 by US Consumer Product Safety Commission (CPSC) Chairman, Inez Tenenbaum on the Final Interpretive Rule on Civil Penalty Factors, Chairman Tenenbaum stated:

*"Any good program will make sure that there is continuing compliance with all relevant mandatory and voluntary safety standards. This is not the same as saying if one's product meets all mandatory and voluntary standards that the Commission will not seek a civil penalty in appropriate cases. The Commission expects companies to follow all mandatory and voluntary safety standards as a matter of course."*

One area where this is evident is with regard to pool and spa safety at the Federal level. The ANSI/APSP-16 2011 *Standard for Suction Fittings for Use in Swimming Pools, Wading Pools, Spas and Hot Tubs* was recently adopted by the U.S. CPSC under the Federal Law, Virginia Graeme Pool & Spa Safety Act as the successor to the ASME/ANSI A112.19.8 2007 Standard. Commission staff is working with members of the APSP-16 Standards Writing Committee on further testing for the development of the next edition. Other ANSI/APSP consensus standards have been adopted by various state and local jurisdictions.

For example, over 40 states have now adopted the ANSI/APSP-7 *Standard for Suction Entrapment Avoidance in Swimming Pools, Wading Pools, Spas and Hot Tubs* and Florida has recently adopted the ANSI/APSP/ICC -15 *Standard Residential Swimming Pool and Spa Energy Efficiency* and the ANSI/APSP/ICC-14 2011 *Standard Portable Electric Spa Energy Efficiency*. Both the ANSI/APSP/ICC-15 and ANSI/APSP/ICC-14 Standard have been referenced in proposed Congressional energy related legislation.

The APSP continues to urge the adoption of these Standards at the State and Federal level. In adopting these Standards, State and Federal agencies are able to draw on the vast cross section of expertise of those who participate in the drafting and consensus review processes with the expectation that States and Federal agencies do not have to spend their scarce, pressure resources attempting to "reinvent the wheel". The money saved can then be allocated to other areas of concern. For example, reliance on the above mentioned ISPS and list of ANSI/APSP standards could have eliminated the need for the costly development of the Model Aquatic Health Code (MAHC) by the Center for Disease Control and Prevention (CDC). After nearly a decade, the MAHC is still in the developmental stages and consumed resources better spent elsewhere.

The APSP supports public access to its standards that have been adopted by federal or state legislatures or agencies, while taking reasonable steps to protect its copyright interest

Reasonable access, however, does not mean that everyone has the right to own a free copy. Copyright protection must be afforded to standards developers for their original works of authorship. Everyone should have the right to access standards referenced into law and be able to review such work, at a minimum, at government facilities and libraries on a read-only basis. Depending on the nature of the standard and its intended use, APSP has made available for free many such standards either electronically or at a deep discount especially to building code and public health officials.

### Summary and Overview

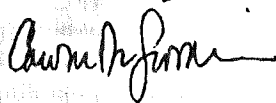
It is critical to the continued success of our democratic standardization system that the U.S. government continues to promote the system and participate actively to identify and support the technical work that it perceives to be in the national interest.

Any changes to OMB Circular A-119 that would address incorporation by reference and reasonable availability of standards have the potential to significantly alter the way that U.S. SDOs are able to do business, and would fundamentally shift the open, balanced, and consensus-based way that standards are developed in this country. These changes would have consequences that reach far beyond our borders, especially when it comes to the continued success of American products, services, and workforce on the global stage.

Any decisions or actions that would fundamentally alter or undermine this system will cause the U.S. to lose this competitive advantage to other countries that would be quick to seize the opportunity. Additionally, significant changes to the system would compromise the role that standards play in protecting health, safety, and the environment.

The U.S. government's announced policy under OMB Circular A-119 is to "observe and protect" the right of copyright holders when incorporating by reference into law voluntary consensus standards. The very purpose of this policy is to permit the government to benefit from the efficiencies of the voluntary consensus standards development process. When the government references copyrighted works, those works should not lose their copyright, but the responsible government agency should collaborate with the SDOs to ensure that the public does have reasonable access to the referenced documents.

Sincerely,



Carvin DiGiovanni

Senior Director, Technical and Standards