



OUTDOOR POWER EQUIPMENT
INSTITUTE

May 9, 2014

TO: Executive Office of the President
Office of Management and Budget
725 17th Street, NW
Washington, D.C. 20503

SUBJECT: Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities (Revision of OMB Circular No. A-119)

1. Introduction

The Outdoor Power Equipment Institute (OPEI) is pleased to provide the following comments in response to the subject as posted on February 11, 2014 in the Federal Register.

The Outdoor Power Equipment Institute (OPEI) is an international trade association representing more than 100 small engine, utility vehicle and outdoor power equipment manufacturers and suppliers. OPEI is both an American National Standards Institute (ANSI) accredited Standards Development Organization (SDO) and a U.S. Technical Advisory Group (USTAG) administrator to the International Organization for Standardization (ISO).

In these roles, we serve our industry in promoting policies which advocate for the careful stewardship of the U.S. system of standards development and regulatory development which is based on the public/private partnership. It is this framework which makes the U.S. an international leader in both economic performance and the protection of human health and the environment. The core guidance provided by the existing Circular A-119 is critical to assuring that the United States continue as a global leader with respect to a) transparent process, b) accessible process, c) a firm reliance on risk-based scientific analysis.

While the U.S. system is not perfect, it is preferable when compared to our major trading partners, which do not enjoy the benefits of a system based on the mutual respect of voluntary consensus standards, by both the private and public sectors. It is with this core tenet in mind, that we offer our industry's perspectives on the proposed revision of Circular A-119. Generally, we support the proposal as it respects the primacy of the private sector in the standards process with the measured participation and support of the federal government. However, the OPEI does have a few areas of specific concern in the proposed revision.

2. What is the Policy for Federal Use of Standards? (Section 6)

i. Federal agencies should not use or reference non-consensus standards

The flexibility provided in Section 6 for federal use of voluntary non-consensus standards in place of those developed under consensus processes is of concern. While we appreciate the fact that these

standards are used in many sectors, and further acknowledge the included safeguards in the revised circular required of agencies considering their use, the OPEI does not agree that such standards should be used by the federal government. Standards developed by non-consensus process run afoul of all the principles upon which the federal regulatory framework is based: openness, transparency, and balance of interests.

The circular should be revised to eliminate the flexibility of federal agency use of non-consensus standards. The circular should instead rely upon its existing preference of voluntary consensus standards, with development of government-unique standards as a matter of last resort.

ii. Proposal should discourage continuous maintenance process

With respect to the specific provisions in Section 6 o., related to the timely updating of standards, OPEI urges OMB to recognize that the constant updating of standards is of equal concern as outdated standards. Standards developed in continuous maintenance processes are an excessive burden upon the public with regard to monitoring, commenting, and participating. OMB A-119 should discourage federal participation in, and adoption of, standards developed by continuous maintenance. OMB A-119 should further express a strong preference for standards maintained on regular periodic cycles appropriate to the respective subject matter.

3. What is the Policy for Federal Participation in Voluntary Standards Bodies? (Section 7)

If federal agencies are to maximize the use of voluntary consensus standards in place of government-unique and non-consensus standards, it is essential that they play an active role in their development. While OPEI fully supports active federal participation in standards development, the broad and flexible guidance provided in the revised Section 7 raises several concerns.

i. Federal agencies should be restricted from participating in development of non-consensus standards

Generally, and consistent with our comments specific to Section 6, OMB A-119 should restrict the participation of federal agencies in the development of non-consensus standards. Federal officials should only participate in those processes which require the transparent and balanced consideration of stakeholder views. This proposed restriction is most critical to protect against federal agencies exercising undue influence, out of the public's view and free of public comment.

ii. Federal participation should always be in an official capacity

The OPEI does not support the language in Section 7 a., paragraph 1, providing flexible guidance to federal agencies as to their participant status in voluntary standards bodies. While the proposal requires that participants always serve as authorized agency representatives, when government funded, it further provides the flexibility to participate in an unofficial manner if funding is not available. The OPEI recommends that the proposal be revised to require that federal participation is always authorized by and on behalf of the respective agency. Funding should not be the determinant of this status, but rather adherence to a single standard which requires that agencies are accountable and transparent through official participation.

iii. Proposal should restrict federal agency support of non-governmental participants

The proposed revision of the circular should address the dependence of non-governmental participants on government funding either directly, or as contractors dependent on agency contracts, that could cause undue influence of an agency on those participants' positions and votes. This governmental support could create voting blocs within consensus committees which may result in undue influence or domination by the federal government instead of the intended balance of independent views and influence.

iv. Proposal should restrict federal assumption of leadership positions

OPEI does not support guidance which provides for federal agency assumption of leadership positions on committees or within SDOs tasked with producing voluntary consensus standards. Federal employees should be excluded from these roles to assure that these standards are developed through objectivity and balance, free of the undue influence of the federal government reserved for the development of government-unique standards. The OPEI submitted similar comments to a specific CPSC rulemaking in 2013 (attached).¹

v. Federal policy advocacy should adhere to all federal procedural requirements and laws

Specific to the development of voluntary standards intended for use in regulation, federal agencies should not advocate regulatory policy which has not gone through a public review and stakeholder process or that is inconsistent with policy established via administrative procedures or executive order. At a minimum, OPEI recommends that such policy advocacy should benefit from the guidance of Federal Advisory Committees suited to the nature of the code and standard.

4. Summary

OPEI is fully supportive of the goals of Circular A-119, and adoption of a measured revision which assures that it provides state-of-the-art guidance to federal agencies. U.S. business and commerce is well served by a coordinated and cooperative federal approach to standards and regulatory processes, especially in the interest of improved global trade.

The OPEI works hard with its members and affected public stakeholders to adopt and maintain voluntary consensus standards which provide globally recognized benchmark requirements for the performance and safe use of our industry's many products. These standards are developed according to robust risk-based analysis, and open and fair processes, making them an optimal tool for conformity assessment purposes. To the extent that Circular A-119 provides uniform guidance to agencies, promoting use of these types of processes, U.S. industry will be well served and supported by the federal government.

We appreciate the opportunity to provide these comments, and will remain available for follow-up as requested.

Respectfully submitted,



Daniel J. Mustico
Vice President, Government & Market Affairs

attachment 2 pp.

¹ OPEI Comments, October 21, 2013, CPSC Docket No. CPSC-2013-0034 (Commission Participation and Commission Employee Involvement in Voluntary Standards Activities)

attachment



**OUTDOOR POWER EQUIPMENT
INSTITUTE**

October 21, 2013

TO: Office of the Secretary
Consumer Product Safety Commission
Room 820
4330 East West Highway
Bethesda, MD 20814

ATTN: CPSC Docket No. CPSC-2013-0034 (Commission Participation and Commission Employee Involvement in Voluntary Standards Activities)

The Outdoor Power Equipment Institute (OPEI) is pleased to provide the following comments in response to the CPSC's subject Notice of Proposed Rule Making (NPRM).

The Outdoor Power Equipment Institute (OPEI) is a major international trade association representing the manufacturers and their suppliers of consumer and commercial outdoor power equipment. These products are commonly found in most American households and include consumer rotary walk-behind power lawn mowers (WPM) that are subject to CPSC regulation pursuant to *the Safety Standard for Walk-Behind Power Lawn Mowers*, 16 C.F.R. Part 1205, (WPM Regulation).

The OPEI is an ANSI accredited Standards Development Organization (SDO), responsible for the drafting and maintenance of voluntary safety standards for member manufacturer products. The OPEI utilizes the ANSI "canvass method" to provide for the public review and ballot of standard proposals. CPSC regularly participates in this process as an active stakeholder, assuring that the industry is fully apprised of the Commission's viewpoints and concerns, and the Commission is likewise engaged in industry efforts.

The OPEI believes that the proposed amendments, both to CPSC voting and leadership criteria, would have a negative impact on the existing cooperative relationship between the CPSC and SDOs such as the OPEI. Under the existing rules, industry and the CPSC maintain a level of independence in the development of voluntary safety standards, with the benefit of active CPSC involvement. The existing rules also provide for a clear and balanced distinction between the activities of the Commission and industry, which best serves our shared interest in consumer product safety.

Section II. Section 1031.10(b), 1031.11(c) — Voting:

The OPEI does not support the proposed amendment to CPSC voting rights in industry voluntary standards development. CPSC staff has historically participated in ANSI/OPEI canvass groups in the review and approval of proposed voluntary safety standards. In this process, CPSC has provided substantive input accompanied by a vote of abstention. The amendment authorizing formal votes in the place of abstention provides no added benefit to either industry or CPSC. Under the existing process, CPSC comments are given full consideration and due process, with every attempt made to come to a

consensus agreement on their implementation. A formal CPSC vote would in no way change this process and its outcomes, but would instead compromise the CPSC's objectivity. CPSC employee votes would not be commission approved. They should remain objective and un-biased through abstention since they lack authority to speak on behalf of the Commission. We believe that the CPSC should provide their input in an objective manner, reserving formal opinions for Commission approved actions, regulatory or otherwise. This result is best achieved through the maintenance of the existing CPSC policy on CPSC employee participation in voluntary standards activities with regard to voting.

Section II. Section 1031.11(e) — Leadership positions:

For the same fundamental reasons, the OPEI does not support the proposed amendment authorizing CPSC staff to accept leadership positions in voluntary safety standard development groups. This change would again compromise the necessary independence of industry efforts, and objective input of CPSC staff. The current cooperative relationship between the CPSC and SDOs such as OPEI provides for an effective approach to the mutual interests in consumer product safety. CPSC assumption of leadership positions on private panels and committees would have a negative effect on both the individual and cooperative roles of industry and government in the pursuit of product safety through safety standards.

Summary:

Currently CPSC staff provides technical support to organizations that coordinate the development of voluntary standards. In this regard, there is no added benefit from this proposed rulemaking. Currently CPSC staff work closely with voluntary standards organizations and provide active government participation. The Commission currently works with voluntary consensus bodies, whenever and wherever appropriate.

The CPSC was established as an independent regulatory agency and as an alternative to industry self-regulation. The Commission's admitted policy concerns set forth in 16 CFR 1031.9 (appearance of preferential treatment, loss of impartiality, compromise of the agency's independence, and a real or apparent conflict of interest) are a compelling argument for why the proposed rule amendments should not be adopted.

OPEI appreciates the opportunity to comment on the subject NPRM and is available to provide further input at your request.

Respectfully submitted,

A handwritten signature in black ink that reads "Daniel J. Mustico". The signature is written in a cursive, flowing style.

Daniel J. Mustico
Director, Industry Affairs