

May 12, 2014

Howard Shelanski
Administrator
Office of Information and Regulatory Affairs
725 17th Street NW
Washington, DC 20503

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

Dear Mr. Shelanski:

The National Marine Manufacturers Association (NMMA) appreciates the opportunity to provide comments as requested by the Office of Management and Budget on proposed revisions to Circular A-119. NMMA has a significant interest in the development of voluntary consensus standards and conformity assessment activities and welcomes this opportunity.

By way of background, NMMA is the leading national recreational marine trade association in North America, with nearly 1,400 members involved in every aspect of the boating industry. NMMA members manufacture over 80 percent of recreational boats, engines, trailers, accessories, and gear used in the United States. The NMMA is committed to boating safety and quality through its extensive certification program. The NMMA certification program incorporates safety standards established by the American Boat & Yacht Council.

The American Boat & Yacht Council (ABYC) is a non-profit organization created with the purpose of developing safety standards for the design, construction, equipage, repair and maintenance of boats. ABYC develops standards based on extensive consultation with a standards development technical board, comprised of industry stakeholders and technical experts. ABYC's voluntary, consensus-based standards have evolved into a vital supplement to the mandatory United States Coast Guard (USCG) regulations. NMMA is committed to boating safety and quality through its extensive certification program which incorporates ABYC safety standards. Together, NMMA certification and ABYC safety standards aim to ensure U.S. manufacturer's boats meet USCG federal regulations and the most rigorous of safety standards.

The International Organization of Standardization (ISO) is a standard setting body covering a broad range of products and services, including those affecting the recreational marine industry. NMMA and other U.S. marine industry groups work with ISO to set compatible boat and engine standards for international markets.

Preference for Voluntary Consensus Standards:

NMMA strongly believes voluntary consensus standards are an important tool in regulating product safety and manufacturing. The standards developed through ABYC and ISO are thorough and well supported by engineering and industry experts. These standards oftentimes supplement government

regulatory requirements. Standard setting bodies maintain greater flexibility in reviewing and updating standards, than oftentimes government agencies. Additionally, the expertise and dedication of standards setting bodies is unparalleled.

NMMA works extensively with both ISO and ABYC to develop standards for recreational vessels that ensure the utmost safety and design construction. The ability for industry, engineers, and technical experts to work together in developing voluntary consensus standards allows the industry to grow and advance new technologies. Standards development is thoroughly vetted while allowing for flexibility, that government regulations do not provide. Standards setting bodies are an integral tool in supplementing government regulations. NMMA encourages the continued support of standard setting bodies and government recognition of their value and significance.

Guidance on use of standards and participation in standards development:

The importance of standards setting bodies is only supplemented with active engagement by government agencies in standards development. Agency buy-in and recognition to the standards development process is critical to its legitimacy by government and non-governmental bodies. Though standards setting bodies operate outside of the scope of government activity, federal representatives should be encouraged to actively participate in these bodies.

Active participation of federal representatives will not only bolster legitimacy within government, but internationally as well. For some international governments, standard setting is accomplished through government regulation and mandates. As mentioned previously, for the recreational boating industry, ABYC standards are used to supplement federal regulations. By incorporating federal officials on non-governmental standard setting bodies, it helps to ensure US standard setting bodies gain recognition and adherence by foreign governments. While some foreign governments may be hesitant to accept non-governmental standards, the presence of federal officials on such standard setting bodies helps to ensure legitimacy and acceptance in the international communities.

The US government should not only encourage participation on private standard setting bodies, but also recognize the usefulness and efficacy of these groups when developing agency regulations. When appropriate, agency regulations should reference standards and allow for a process of incorporation by reference in their own regulations. This helps to codify the standards while institutionalizing the standard setting body existence. Though many federal agencies do already reference standards setting by voluntary consensus bodies, inflexibility remains when these standards are amended. Rather than simply reference a standard in a regulation, agencies should broaden the reference to “as amended” which allows the regulation to adapt to standards changes. Without the “as amended” phrase, standards incorporated by reference can lose relevance by becoming outdated in the Code of Federal Regulations. Ensuring federal officials sit on voluntary consensus bodies allows government oversight and involvement in the standards process to quell concerns of review.

Federal agency involvement in standard setting bodies maximizes efficiency within the agency regulatory process. It will ensure regulations are made in conjunction with existing standards rather than in conflict. Additionally, as agencies look to harmonize regulations with international standards,

involvement in these standard setting bodies helps to ensure proper harmonization while facilitating trade in our ever global market. The USCG does play a role in the technical committee of ABYC, allowing for input and consultation. In international standard setting bodies, the involvement of government officials, such as EU commissioners on ISO standard committees is significant. US federal officials should be encouraged and maintain active participation on ABYC and ISO standard settings bodies to maximize input and involvement.

Participation by federal agencies in standard setting bodies will ensure legitimacy and efficiency. International governments look to US involvement in the process to lend credibility for adoption and application. Particularly as the US engages in international trade agreements such as the Transatlantic Trade and Investment Partnership (TTIP), Trans Pacific Partnership (TPP) and Regulatory Cooperation Council (RCC), involvement in US and international standard setting bodies is integral to harmonization and ensuring compatible conformity assessment procedures.

As we become an increasingly global market, international standards help to ensure products can be sold across borders without the extra cost and burden of being adjusted due to technical standard differences. When the goal of the standard is the same, technical differences only burden trade and the free flow of products. Federal engagement in standard setting bodies will help ensure harmonization and consistent application, thus enabling the greatest reduction in barriers to trade.

Guidance on conformity assessment:

NMMA encourages agencies to consider international and private sector conformity assessment schemes in lieu of those developed by the government. NMMA, in its product certification program, conducts annual inspections of recreational vessels to ensure conformity with US regulations and ABYC standards. The US government, through the Manufacturing Inspection Program (MIP) of the USCG conducts similar inspections, with a far more limited scope. Though the MIP program is extremely useful, the government's efforts should not be duplicated when the private sector is providing the same oversight. In a time of limited resources, government agencies should focus on effective oversight not duplication.

The EU conformity assessment procedures for recreational craft provides a similar example of unnecessary duplication that could be alleviated with government recognition of standard setting bodies. Similar to the USCG regulations and ABYC standards, the EU mandates safety standards through recreational craft directives and requires CE certification for all recreational boats entering or being sold in the European Union. Manufacturers must test and document to ensure conformity to all applicable European directives and requirements. CE certification is obtained from Notified Bodies, organizations that are recognized by European states to conduct CE assessments. U.S. marine manufacturers are therefore required to build their products to two different manufacturing and emission standards in order to sell in the U.S. and export to the EU. This product segregation causes increased production and manufacturing costs as well as the research and development required to comply with differing standards.

NMMA manufacturers sustain significant costs to meet CE certification requirements and related inspections, while also meeting USCG requirements and ABYC standards through NMMA certification. Having the EU accept NMMA or ABYC certification in lieu of CE certification would significantly reduce manufacturer costs and open new markets for U.S. marine manufacturers. This acceptance is hindered by a lack of agency recognition of NMMA certification procedures and standards harmonization. For these reasons, NMMA, in conjunction with the European Boating Industry, has petitioned for inclusion of a recreational boating annex in the TTIP to specifically address standard harmonization and conformity assessment procedures for recreational craft.

Burden Reduction:

The recreational marine industry provides a perfect case where outdated regulations can lead to unsafe products. NMMA, in consultation with ABYC, has identified several standards which are currently outdated in the CFR, and therefore ripe for update. NMMA's certification and membership outreach programs take steps to ensure the industry is following the most up-to-date standards. However, NMMA's certification program does not encapsulate the entire market of boat manufacturers. The USCG issues upwards of 3000 Manufacturer Identification Codes (MICs), with only a few hundred being NMMA certified members. By not maintaining updated incorporated by reference standards in the CFR, thousands of U.S. boat manufacturers and foreign importers are relying on outdated information and thereby misapplying critical safety standards. For this reason, it is essential the incorporated by reference standards are updated now, and on a consistent basis thereafter, to ensure uniformity and completeness of standards setting information.

The burden can be alleviated if US agencies, such as the USCG, referenced private standard setting bodies such as ABYC and allowed for "as amended" status for updates to the standards themselves. The current status of at least three years to update or amend a regulation does not allow for the flexibility standards setting bodies require. Timely updates are critical and any process which ensures expedited update to referenced standards should be supported.

NMMA appreciates the opportunity to provide comments to OMB on Circular A-119. If you should have any additional questions on these comments please do not hesitate to contact Nicole Vasilaros at nvasilaros@nmma.org or 202-737-9763.

Sincerely,



T. Nicole Vasilaros, Esq.
Director of Regulatory and Legal Affairs
National Marine Manufacturers Association