



institute of makers of explosives

The safety and security institute of the commercial explosives industry since 1913

May 12, 2014

Office of Management and Budget
725 17th St. NW
Washington, DC 20503

Via Electronic Mail

Request for Comments on a Proposed Revision of OMB Circular No. A-119, “Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities.” 79 Fed. Reg. 8207.

The Institute of Makers of Explosives (“IME”) appreciates the opportunity to provide comment on the above-captioned Notice of Availability and Request for Comments.

Interest of IME

IME is a nonprofit association founded in 1913 to provide accurate information and comprehensive recommendations concerning the safety and security of commercial explosive materials. Our mission is to promote safety and the protection of employees, users, the public and the environment; and to encourage the adoption of uniform rules and regulations in the manufacture, transportation, storage, handling, use and disposal of explosive materials used in blasting and other essential operations.

IME represents U.S. manufacturers and distributors of commercial explosive materials and oxidizers as well as other companies that provide related services. Millions of metric tons of high explosives, blasting agents, and oxidizers are consumed annually in the U.S. Of this, IME member companies produce over 98 percent of the high explosives and a great majority of the blasting agents and oxidizers. These products are used in every state and are distributed worldwide.

As part of our safety and security mission, IME publishes a series of Safety Library Publications (“SLPs”), and other industry guidance documents, many of which have been incorporated by reference into various federal and state regulations.¹ Accordingly, we are very interested in this effort by the Office of Management and Budget (“OMB”) to update Circular A-119.

¹ For example, SLP 2, “The American Table of Distances” is incorporated into regulations administered by the Bureau of Alcohol, Tobacco, Firearms and Explosives. In addition, currently, the Department of Transportation is considering a petition from IME to incorporate SLP 23, “Recommendations for the Transportation of Explosives, Division 1.5, Ammonium Nitrate Emulsions, Division 5.1, Combustible Liquids, Class 3, and Corrosives, Class 8 in Bulk Packaging,” into the Hazardous Materials Regulations.

Comments

IME member facilities use any number of codes, standards, published technical reports, consensus standards and industry best practice documents in conducting their operations. In particular, as noted above, the commercial explosives industry uses SLPs and other guidance documents published by the Institute. All IME publications are reviewed and updated on a regular and/or as needed basis by the IME Standing Committees responsible for their development. As noted above, IME member companies produce more than 98 percent of the explosives and a great majority of the blasting agents and oxidizers produced in the U.S., and the Standing Committees are populated by subject matter experts from these companies. Accordingly, the standards and recommendations in the SLPs can be relied upon to represent current best practices throughout the industry in the manufacture, storage, use, transportation, and disposal of commercial explosives and precursor chemicals. Downloads of these standards and guidelines are offered to the public free of charge. IME encourages federal and state agencies to adopt by reference SLPs applicable to their regulatory jurisdictions. Such use of industry best practices is consistent with the intent of OMB Circular A-119.

With the above in mind, we are encouraged by OMB's acknowledgment that "there may be some standards not developed using a consensus-driven process that are in use in the market . . . and that may be relevant (and necessary) in meeting agency missions and priorities."² IME is not a voluntary consensus standards body ("VCSB"), but the publications of the Institute are nevertheless recognized both in the U.S. and internationally as prescribing the most advanced, practicable, and reputable safety and security practices in the commercial explosives industry. We support a revision of Circular A-119 that would expand its applicability to include standards developed by industry-specific organizations like IME that have an intimate and longstanding familiarity with the operations and processes that the standards address.

While VCSB standards are valuable and many are widely used by the commercial explosives industry, the individuals populating the standards committees are not always representative of all industry segments. Nor do committee members always possess the requisite expertise to produce a document that accurately reflects current technical and scientific knowledge and industry best practices.

For example, the NFPA 400 Hazardous Materials Code contains a chapter on ammonium nitrate ("AN") management and storage ("Chapter 11"). In response to the tragedy in West, TX on April 17th of last year, the NFPA 400 Committee established a task group to review and revise Chapter 11. Yet, despite the fact that the commercial explosives industry is by far the largest user of AN in the U.S., consuming approximately 75 percent of domestic production, and the fact that we have safely

² 79 Fed. Reg. 8207.

managed AN for decades without an accidental detonation, there was no representative from our industry on the task group or, in fact, on the entire NFPA 400 Committee.

This oversight was corrected on March 28, 2014, but it should not be lost on OMB that national/international consensus standards cannot always be relied upon to reflect best engineering, design, or materials management practices. IME's own "Safety and Security Guidelines for Ammonium Nitrate" are more protective than the current Chapter 11 standard and we hope, ultimately, that the NFPA 400 Committee will embrace IME's AN Guidelines. Until the more protective elements of our Guidance document are incorporated into NFPA 400, the standard cannot be considered a complete or adequate resource for the safe management of AN.

IME, therefore, supports OMB's proposed revision of this segment of the Circular. We understand that the National Technology Transfer and Advancement Act does not permit federal agencies to disregard an existing voluntary consensus standard unless it is inconsistent with applicable law or is otherwise impractical. We hope, however, that any interpretation of the term "impractical" under the Circular would encompass a consensus standard that provides inadequate safety and/or security provisions and that agencies could use their discretion, in that case, to adopt a superior non-consensus standard or to use such a standard in developing a government-unique regulation.

Thank you for considering our response to this request for comments. If you have any questions concerning this submission, please do not hesitate to contact me.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Susan JP Flanagan". The signature is fluid and cursive, with a large loop at the end.

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