ISEAL Response to Proposed Revision of OMB Circular No. A-119

09 May 2014

This document responds to the request for comments on Proposed Revision of OMB Circular No. A-119, "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities" from the US Office of Management and Budget (OMB), dated 11 February 2014.

About ISEAL

ISEAL Alliance is the global association for voluntary sustainability standards and is recognised internationally as an authority in helping to define good practice for credible standards systems. ISEAL membership is dependent on the ability of standards to demonstrate their credibility through compliance with ISEAL Codes of Good Practice, as well as providing an opportunity to participate in a community of learning. In turn, ISEAL Codes and membership are recognised and referenced by a range of governments, NGOs, companies and international organisations, as a means to identify credible and effective systems.

To date, ISEAL has developed three Codes of Good Practice, covering the key steps in the standards and certification process, including standard-setting, impact monitoring and evaluation, and assurance (certification and accreditation). In addition to these Codes, ISEAL has developed its Credibility Principles, which articulate the concepts that underpin credible sustainability standards systems and which are embodied in ISEAL's Codes, including transparency, engagement and improvement. More information on ISEAL and its Codes can be found at www.iseal.org.

Overview

ISEAL would firstly like to commend the approach taken by the OMB and the US Federal Government more broadly in looking to voluntary, consensus standards as a proven, effective mechanism for implementing public policy objectives. They are particularly effective in their ability to help improve the social and environmental impacts of products and services across a range of issues and sectors. Secondly, we would like to emphasise the timeliness of this review. Over the past fourteen years, voluntary, consensus based-standards – specifically those pertaining to sustainability – have scaled up their market presence significantly. In response to this policy-makers across the world are increasingly relying on these tools to support the implementation of policies and regulation

We have reviewed the Draft Revision OMB Circular No. A119 and are impressed by the scope, tenor and recommendations reflected herein. We believe the document clearly defines a voluntary consensus standard, underscores the need to use existing international standards where such standards are in place and cogently outlines the benefit of private sector conformity assessment.

The areas of the document we believe could benefit from further strengthening include the discussion around the reasonable availability of a standard, the appropriate length of time between review and revision of a standard, the importance of clearly stated objectives for consensus decision-making, and the definition of performance-based standards.

Specific Comments on Draft Revision OMB Circular No. A-119

Voluntary Consensus Standard

The definition provided on page 18 of the revision (Section 3:f) for 'Voluntary Consensus Standard' is entirely consistent with the ISEAL Code of Good Practice – Setting Social and Environmental Standards. The Standard Setting Code is currently used by a range of standards setting organisations globally for the development of social and environmental standards, as well as various governments around the world. Indeed, in the 'Draft Guidelines for Product Environmental Performance Standards and Ecolabels for Voluntary Use in Federal Procurement' developed by US Environmental Protection Agency in conjunction with other federal entities, the ISEAL Standard Setting Code is referenced as a source of criteria. Furthermore, the ISEAL Standard Setting Code is in alignment with the six Principles of the TBT Second Triennial Review annex 4, as mentioned on page 26 of the revision The alignment of ISEAL Codes to these six principles is most clearly demonstrated by the similarities and equivalent principles contained in the Credibility Principles, which underpin all three ISEAL Codes[1].In light of this we propose that OMB Circular No. A-119 specifically cites the ISEAL Standard Setting Code as it may be of use to US federal government entities as an additional source of good practice that they can use to determine whether a voluntary consensus standard is suitable for use. In addition to the issues covered by the OMB Circular, the Code contains guidance on, amongst others, stakeholder mapping, drafting of summaries and response to comments received and balanced decision-making.

Consensus

Noting the definition of 'consensus' provided on page 19, we wish to highlight that a consensus decision also needs to be predicated on the establishment of clear objectives and desired outcomes of the proposed standard. It is furthermore recommended that stakeholders involved in standards development make a commitment to those objectives and outcomes so as to avoid the participation of stakeholders whose objectives are to disrupt the process, water down proposals or inhibit the development of an effective standard.

Review and Revision

In addition to the criteria in part 6.e. 'When deciding to use a standard, what are some of the things my agency should consider?', part iii.1.e on page 29, a characteristic of suitable standards that should be added is that the standard is reviewed and revised as necessary at

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[1] Some of these six principles match up directly to one of ISEAL's ten Credibility Principles – 'Transparency', 'Impartiality' and 'Relevance' are included in some form in both documents. The principle of 'Openness' in the TBT Review is captured within 'Accessibility' and 'Engagement' in the Credibility Principles; 'Coherence' is reflected in the principle of 'Efficiency'; the 'Development Dimension' cuts across various ISEAL principles, including 'Accessibility', 'Impartiality' and 'Relevance'.

least every 5 years so as to ensure it remains relevant over time and reflective of current good practice.

Balancing Efficiency and Competition

In response to the point made on page 29 that:

"Allowing the use of more than one standard may also allow producers and service providers to simultaneously meet U.S. requirements and requirements in different markets, reducing burdens for manufacturers and service providers while effectively addressing agency objectives"

We would highlight the need to strike a balance between referencing multiple standards to meet particular market or technical needs and the desire to avoid creating incentives for the duplication of standards and adding confusion to the marketplace.

Reasonable Availability

In response to the question (p) "How should my agency determine whether a voluntary standard is 'reasonably available' in a regulatory or non-regulatory context?" on page 34, ISEAL would propose that, whilst recognising that fees for access to standards may underpin the business model of some VSOs, where stakeholders (beyond companies) will be affected by implementation of the standard, they need to have access to and an ability to influence the content of that standard. This is particularly important in cases where the standard has a strong public interest element (for example in the case of sustainability standards). In these cases not only should draft versions of the standard be made freely available during the comment period (as currently proposed in Draft Revision OMB Circular No. A-119) but final versions of the standard should also be placed in the public domain. Without both these conditions being met, it is hard to justify that a standard is reasonably available if access to the standard as well as the ability to influence its content, is contingent on purchasing the standard.

Preference for Performance Based Standards

While ISEAL shares the view on the need to give preference to performance-based standards and to avoid standards that are overly prescriptive in their requirements it is important to recognise that in the case of sustainability standards these are often structured as process and production method standards – they define the process or production method by which a product is produced or a service delivered, without prescribing the methods for achieving the desired results. It is for this reason that we support the view that these types of standards should also be included within the definition of a performance standard.

Private Sector Conformity Assessment Activities

ISEAL supports the position reflected in the circular pertaining to the use of international and private sector conformity assessment schemes (accreditation bodies). The benefits of private, international accreditation are significant. These bodies are well suited for technical international accreditation since they have specific, sectoral areas of expertise. Furthermore, as single bodies operating internationally, the certificates of accreditation these bodies issue are recognised everywhere, without the need for mutual recognition agreements. These benefits are naturally contingent on the accreditation body being credible and this in turn requires that such bodies be in compliance with the ISO/IEC 17011 standard.