

May 12, 2014

Jasmeet Seehra
Office of Management and Budget,
Office of Information and Regulatory Affairs,
Washington, DC

Re: AHRI Comments on Proposed Revisions to OMB Circular No. A-119, "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities"

Dear Jasmeet:

On February 11, 2014, the Office of Management and Budget (OMB) issued a Federal Register notice requesting comments on a proposed revision of OMB Circular No. A-119. Thank you for the opportunity to comment on the Request for Comments on a Proposed Revision of OMB Circular A-119. AHRI is appreciative of the analysis conducted by the OMB in reviewing comments received in response to its March 2012 Request for Information on "whether and how to supplement Circular A-119."

AHRI is the trade association representing manufacturers of heating, cooling, water heating, and commercial refrigeration equipment. More than 300 members strong, AHRI is an internationally recognized advocate for the industry, and develops standards for and certifies the performance of many of the products manufactured by our members. In North America, the annual output of the HVACR and water heating industry is worth more than \$20 billion. In the United States alone, our members employ approximately 130,000 people, and support some 800,000 dealers, contractors and technicians.

AHRI values the input that government employees provide and the reliance that agencies demonstrate by adopting voluntary consensus standards and compliance programs. AHRI is supportive of this proposed revision of OMB Circular A-119 which continues to be supportive of this public-private partnership.

Our comments presented below reinforce or clarify certain issues and raise some additional points for consideration; they are organized according to the main categories provided by OMB on the proposed revision:

1. *Preference for voluntary consensus standards* – we are fully supportive of the revised circular's preference for using voluntary consensus standards within Federal regulations. We appreciate the fact that OMB recognizes the amount of hard work that goes into developing voluntary consensus standards, and would like to provide you with a summary of how our standards are developed.

AHRI's performance standards and guidelines are used throughout the world, and are referenced in several federal test procedures that have been issued by the U.S. Department of Energy (DOE). Other federal agencies including the U.S. Environmental

Protection Agency (EPA) reference AHRI performance standards and guidelines. AHRI is an American National Standards Institute (ANSI) accredited standards developing body, and all its standards and guidelines are available to the public free of charge. Our industry provides funding for the development of voluntary AHRI standards that stimulate innovation and creation, and are the stepping stones to improving product performance. Such standards should always be used in federal regulations and procurement.

The development of AHRI's voluntary consensus standards or guidelines, or the revision or interpretation of an existing one, starts with a request from an AHRI member or committee, but most often these requests are initiated by AHRI's product sections/committees. A standard may also be proposed by anyone from outside AHRI, such as another trade association, a federal regulatory agency, or an individual. An Engineering Committee typically serves as the development committee for a particular standard and all of its meetings are open to the public. Notification of these meetings is published on AHRI's Web site, e-newsletter, and in ANSI's biweekly publication, [Standards Action](#).

A draft standard undergoes three rigorous reviews: First, it is reviewed by the Engineering Committee, then by the related product section, and finally by AHRI's Standards Policy Committee. It can be rejected at any step in the process. But, if approved by these three groups, which requires a two-thirds majority vote, the standard is then officially published on the AHRI Web site where it is available to download. AHRI standards are then submitted to ANSI for approval as [American National Standards](#) and serve as a basis for international standards work.

AHRI recommends that the definition of "voluntary standard" contained in section 3.d. of OMB Circular No. A119 be modified to include the word "codes" after the word "guidelines." The term "codes" is pertinent within this definition. In the United States, harmonization of regulations and standards among the states is achieved by using "model codes" which are constructed and approved in the same fashion as standards typically. As an example, DOE is required by the Energy Conservation and Production Act (ECPA) to review the latest revision of ASHRAE Standard 90.1 and determine whether the revised code would improve energy efficiency in commercial buildings. If the determination is positive, states must no later than two years after the date of publication of such affirmative determination certify that they have reviewed and updated the provisions of their commercial building codes to meet or exceed the requirements of ASHRAE Standard 90.1.

2. *Guidance on use of standards and participation in standards development* – In the interest of ensuring transparency and information-sharing, agencies should advise the public about ongoing or planned participation in standards development activities, for instance, when doing so to address issues of national priority, or in support of significant regulatory action or international regulatory cooperation activities. Methods could include publication of a notice in the [Federal Register](#), providing notice on the agency's public-facing website, or using other appropriate mechanisms. The information provided could include, for example: (i) which body or organization is developing the standard; (ii) why the agency's participation is relevant to the public; and (iii) methods by which the public can obtain more information.

Where an agency is unsure of the nature and extent of standards activity that may be relevant for an upcoming regulation, procurement, or non-regulatory action, the agency

is encouraged to request information on voluntary standards development that may be relevant for subsequent agency action through, for example, a Request for Information (RFI) or an Advanced Notice of Proposed Rulemaking (ANPRM). Agencies could also use more informal means, such as contacting relevant standards developing bodies directly. However, agency participation in the standards development process should not be a prerequisite for incorporating or otherwise using a standard.

AHRI has observed that agency representatives do not always feel compelled to vote on standards, instead behaving more as observers to the standards development process. AHRI suggests a modification to the final sentence within section 7.c. of Circular No. A-119, to read:

“Agency representatives ~~may~~ have the authority and obligation to vote, in accordance with the procedures of the voluntary standards body, at each stage of the standards development process, unless prohibited from doing so by law or their agencies.”

AHRI supports the multiple-path approach to standardization, meaning that there are multiple paths to global relevance, and that it is the marketplace that decides the utility or applicability of any given standard. AHRI believes that agencies should have latitude in deciding when a particular standard is best suited for the needs of that agency.

3. *Guidance on conformity assessment* – AHRI is pleased to see the addition of guidance and principles for conformity assessment included in the proposed revisions to OMB Circular A-119. These will be instrumental in promoting agency understanding of conformity assessment. We would like to point out that certification programs managed by AHRI qualify as being both international conformity schemes and private sector conformity assessment activities. We believe that agencies should give special consideration to such conformity assessment programs as they adequately consider both international and private sector aspects. Additionally, agencies’ reliance on such programs would help avoid expenditures at the agency level to run such programs, thereby saving a significant amount of taxpayer revenue.

AHRI suggests that the following edits be made to the Circular to further clarify this direction to agencies:

- A final sentence should be added to section 8.b.(viii) to state that “Agencies shall rely on nationally recognized voluntary industry certification programs (VICP) where they exist.”
 - A final sentence should be added to section 8.d to state that “When considering conformity assessment activities, agencies shall be required to ensure that unique requirements or procedures are not being inserted into statutes or regulations that could be in conflict, or cause inconsistencies, with the voluntary industry certification program (VICP) requirements.”
4. *Enhanced transparency* – AHRI is supportive of the factors included in the proposed revision to OMB Circular No. A-119, in section 6.p., in determining whether a standard is “reasonably available.” This concept of “reasonably available” is in alignment with recommendations that were made by the Administrative Conference of the United States (ACUS) in December 2011, and is flexible and non-prescriptive, thereby allowing for a number of different reasonable availability scenarios.

5. *Burden Reduction* – Standards are updated on a constant basis as revisions are created that improve the qualities of the standard or better meet the needs of the marketplace. However, federal agencies that reference such standards in rules and regulations have not been able for procedural or other reasons to make timely updates to rules that accommodate changes in the referenced standards.

AHRI supports OMB's proposal to revise the Circular to require agencies to utilize mechanisms set out in Executive Orders 13563, "Improving Regulations and Regulatory Review," and 13610, "Identifying and Reducing Regulatory Burdens," to ensure standards incorporated by reference are updated on a timely basis. Additionally, AHRI fully supports OMB's encouragement of agencies to work together to reference the same version of standards in regulation and procurements, consistent with statute and agency mission and objectives. Any agency referencing of a standard should include the post-script "latest edition."

We would like to note that there have been several occasions where a policy adopted by one agency has direct implications on another agency's existing or future policies. In such instances, agencies should make the effort to work together and coordinate policies for the greater good of society. An example that projects lack of harmonization across agencies is the energy conservation standards final rule on commercial refrigeration equipment that was issued by the DOE on March 28, 2014. The DOE final rule did not consider the potential effects of alternative refrigerants or current or future legislation on refrigerants within the scope of this rulemaking. Instead, DOE determined the energy conservation standards based on refrigerants that are common today (R-134a and R-404A), and estimated energy savings of 2.89 quads between the years 2017 and 2046. The fact that DOE limited its analyses to hydrofluorocarbons (HFCs) such as R-134a and R-404A puts into question the applicability of the energy conservation standards over an extended time period. It is highly unlikely that such refrigerants will be in use in 2046. EPA's changing refrigerant policy over the next few years will require the industry to use alternative refrigerants that have lower global warming potential (GWP) values. Since the energy savings associated with the DOE final rule have been estimated over several years, the approach ends up having the following implications:

- Impact on predicted national energy savings – switching to alternative refrigerants will affect the energy performance of products. Although the exact amount is not yet clear and will likely differ by application, refrigerant switching would definitely have an impact on the DOE final rule's predicted cumulative national energy savings.
- Backsliding in standard levels – refrigerant switching could end up having an adverse impact on equipment performance. If EPA coerces manufacturers into using alternative refrigerants that adversely impact equipment performance, there is no way that manufacturers would be able to meet the DOE standards that go into effect in 2017. Since the Law does not allow for a backsliding in DOE standards, manufacturers would be either forced out of business, or have to compensate for the refrigerant penalty by somehow developing new technologies that can meet the DOE standards. The cost of developing new technologies would be reflected in the increased cost of perishable foods for the average consumer.

We believe that OMB's activities with respect to strengthening the role of agency standards executives would help address coordination-related issues within and among

Federal agencies. OMB needs to ensure that qualified individuals enter into these important positions and provide the necessary guidance for these individuals to be effective. Although AHRI supports the proposed list of qualifications that all standards executives should meet before they are assigned to respective agencies, the proposed list is merely guidance and is unenforceable. We can point to several instances where this guidance has been routinely violated by an agency across rulemakings that eventually have an impact on a certain product, or multiple products manufactured by a single manufacturer. By placing a cumulative regulatory burden on the manufacturing industry, such agencies would compel manufacturers to move their operations outside of the United States, thereby reducing the overall number of jobs and the gross domestic product of the country. We believe that OMB Circular No. A-119 should further stress on the importance of intra-agency and inter-agency coordination among executives on standards.

6. *International considerations* – AHRI is pleased to see greater attention paid in the proposed revision to OMB Circular No. A-119 to ensuring compliance with international obligations. AHRI is supportive of the multiple-path approach articulated in OMB Circular No. A-119, both for standards and for conformity assessment. AHRI supports the revisions encouraging increased engagement by agencies with the U.S. Trade Representative (USTR) on matters that have trade implications.

As a point of clarification, we note that though the word “national” is in the ANSI name, many standards with the ANS designation (including AHRI standards) also qualify as international or globally relevant standards, according to the terms of the World Trade Organization (WTO) technical barriers to trade agreement.

Concluding Remarks

AHRI appreciates the opportunity to provide comments on this important issue. We are supportive of the proposed revisions within OMB Circular A-119 since they continue to be supportive of public-private partnerships.

Sincerely,



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