



May 12, 2014

Comments in response to 79 FR 8207 - Request for Comments - Office of Management and Budget (OMB) Circular A-119, Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities

Toy Industry Association (TIA) would like to thank you for the opportunity to comment on the Proposed Revision of OMB Circular A-119, published at 79 FR 8207. TIA is appreciative of the opportunity to provide our perspective on proposed regulations.

TIA members include more than 700 businesses – from inventors and designers to toy manufacturers and importers to retailers and testing labs – who are all involved in creating and bringing toys and games to children. The annual U.S. toy market is US\$22 billion; TIA members represent approximately 85% of the three billion toys sold in the United States each year. The industry supports an estimated 607,020 jobs (FTE) generating \$26.69 billion in wages for U.S. workers and the toy industry’s annual economic impact in the U.S. is \$75 billion.

Toy safety has long been a priority for the toy industry. Since the 1930s, TIA and its members have led the development of toy safety standards – including development of the first comprehensive toy safety standard in the 1970s which was later adopted under the auspices of ASTM International as the ASTM F963 standard – now a mandatory consumer product safety rule in the U.S. and a model for standards internationally. TIA staff and members continue to serve as expert participants in the ongoing review and revision of the ASTM F963 standard, and TIA staff experts in product safety have led the ASTM Subcommittee on Toy Safety as its chair and secretary for more than two decades.

Additionally, TIA is the Standards Development Organization (SDO) for American National Standard ANSI Z315.1, Safety Requirements for Tricycles, and serves as administrator to the U.S. Technical Advisory Group (TAG) to the International Organization for Standardization (ISO) Technical Committee on Toy Safety, which develops ISO standard 8124, Safety of Toys. Finally, TIA staff has served as nominated US experts to the ISO/COPOLCO Joint Working Group on Children’s Safety.

This history and leadership has provided TIA with first-hand knowledge of the value of the multi-stakeholder consensus standards process – including the importance of government participation in that process. Government officials participating in voluntary standards activities can bring unique expertise and perspective to the process. We applaud OMB for proposing to update Circular A-119 to clarify this and enhance the goal of robust voluntary standards development.

Overall, TIA supports the recommended changes to Circular A-119 and we congratulate OMB on its thorough and thoughtful analysis that went into the development of this guidance document. We would, however, like to offer a few additional recommendations which we believe will add clarity to the document

Define appropriate SDOs for International Standards-making activities

At times, the government will need to rely on international standards when no U.S. standard exists. In our experience with various international standards making bodies, not all are created equal. While consensus standards are not always possible, it is clear that those standards produced by an open consensus-based process prove to be the most robust, protective, and observed in practice.

Section 8.a. (page 40) states:

Consistent with this policy guidance, all Federal agencies are encouraged to consider relying on international conformity assessment schemes or private sector conformity assessment activities in conjunction with or, where appropriate, in lieu of, governmental conformity assessment, except where such activities are inconsistent with law, unfit for regulatory or other agency purpose, or otherwise impractical.

We believe that agencies should defer to these standards and assessment schemes in preference to independently developing a standard, so long as the agency's regulatory goals would be met by the private-sector standard, and there is reason to believe that the standard is or would be widely observed by industry. This is the model under which the US Consumer Product Safety Commission operates, and it has proven successful over the last four decades, resulting in the promulgation of standards more expeditiously, providing increased consumer protection. However, we caution that there is a tendency to equate "international" with International Organisation for Standardisation (ISO), International Electrotechnical Commission (IEC), or International Telecommunications Union (ITU) standards – but US government agency recognition of "international" should not be limited to standards from those entities. Indeed, the standards process employed in the U.S., used in creating ANSI and ASTM International standards, is open to all interested parties (and, importantly, seeks "international" representation – not limited to participants from the U.S.), with each standards development committee having a balance of representation by various interests, with each voting member having equal weight. This is, in our experience, the optimal process for achieving the most effective and widely used standard. Some of those entities which we tend to think of most readily as "international" (such as ISO, IEC, etc.) are not as open or as international as their names suggest.¹

Other less open processes can have significant drawbacks. In the EU, for example, a member state can bring forth a complaint or concern that is often not backed up with any scientific information or proof of hazard, and can be inserted into the standard. This end-around to standards making does not lead to sound standards, and may undermine the expertise of the standards committee and the authority of the standard itself. Furthermore, because some "international" standards are often not developed in a fully open manner (toys being a notable

¹ The Vienna agreement (http://boss.cen.eu/ref/Vienna_Agreement.pdf) -- the agreement that binds CEN and ISO to share technical information with each other -- and for ISO to look to standards developed in CEN -- can limit participation and influence in the ISO standards development process for many ISO standards.

exception), they are not as protective or as useful to U.S. industry as ASTM International or American National Standards Institute (ANSI) standards.

Because not all SDO processes are equally open, we encourage OMB to outline which specific SDOs would be appropriate to be considered as producing international standards and conformity assessment schemes, and to encourage agencies to give preference to those developed using open consensus processes over government-developed standards or those private-sector standards developed using less open processes. As stated above, standards developed in an open, consensus-driven environment are the best way for all stakeholders, including those from government, industry, consumer representatives, retailers, academics, subject matter experts, testing labs and all others to participate in the standard setting process. We understand there are limited occasions where government reliance on non-consensus standards, such as those only applying to the government or those standards in the cases of emerging technology, is necessary. However, non-consensus standards should be the exception, not the rule.

While this occurrence is very infrequent, we recommend changes to Section 12.a.(iv) (Page 49) which states:

Your agency must either report on a categorical basis or on a transaction basis to identify, manage, and review the standards used in your agency's procurements... To report use of government-unique standards on a categorical basis, your agency must: ... Enable potential offerers to suggest voluntary consensus standards and, where appropriate, other voluntary standards that can replace government-unique standards.

This clause addresses government procurement activities, however, it does potentially create a situation in which an agency, if using a government-unique or non-consensus standard for its own procurement activities, may be more likely to specify such standards as part of its regulatory realm.

We recommend changing the language such that OMB clearly urges agencies to give preference to standards from open, consensus-driven standards-making bodies over either government-unique standards or private-sector standards developed in a less-open manner.

Ensure the Timely Updating of Standards

Standards that are reviewed and revised on a regular based and/or as needed improve the qualities of the standard and better meet the needs of the marketplace.² However, due to procedural or other reasons, federal agencies that reference such standards in rules and regulations may not be able to make timely updates to rules that accommodate changes in the referenced standards. This may even be the case when the agency's own analysis supports the use of the updated standard for the purpose of the rule.

² For example, approved American National Standards (ANS) are required to be reviewed at least every five years, but many are updated much more frequently. ASTM F963, the toy safety specification under ASTM International, a notable exception, is reviewed on an ongoing basis.

OMB should consider using the model outlined in section 106 of the *Consumer Product Safety Improvement Act of 2008* (CPSIA)³ as a guideline by incorporating future changes to a living standard, as they occur. From the CPSIA, sec. 106 (g):

(g) REVISIONS.—If ASTM International (or its successor entity) proposes to revise ASTM F963–07, or a successor standard, it shall notify the Commission of the proposed revision. The Commission shall incorporate the revision or a section of the revision into the consumer product safety rule. The revised standard shall be considered to be a consumer product safety standard issued by the Consumer Product Safety Commission under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058), effective 180 days after the date on which ASTM International notifies the Commission of the revision unless, within 90 days after receiving that notice, the Commission notifies ASTM International that it has determined that the proposed revision does not improve the safety of the consumer product covered by the standard. If the Commission so notifies ASTM International with respect to a proposed revision of the standard, the existing standard shall continue to be considered to be a consumer product safety rule without regard to the proposed revision.

Under CPSIA, Congress mandated compliance with ASTM F963, which had been a voluntary standard. In doing so, Congress endorsed both the content of the standard and the process by which it is continually reviewed and revised, as necessary, by a multi-stakeholder committee under the auspices of ASTM International.

While this example is specific to ASTM International and a particular standard – the ASTM International toy safety standard, ASTM F963 – encouraging agencies to include a similar provision could be helpful and would provide an efficient mechanism for agencies to consider new information and to incorporate changes made to standards in rules and regulations in order to meet the agency’s needs and goals.

OMB could also consider adding a new clause to section 10.c. (p. 47) that would require agencies to include in their reporting to the National Institute of Standards and Technology (NIST) “the number of voluntary consensus standards and other standards used by the agency that were last reviewed and approved ten or more years ago.” Such a requirement would ensure that the issue remains in focus for the agencies and the public alike.

Encourage Independent government agencies to adhere to Circular A-119

The government agency with which TIA has the most interaction is the U.S. Consumer Product Safety Commission (CPSC). While the CPSC dedicates a significant amount of time to standards development, it is an independent regulatory agency and not obligated to adhere to OMB guidelines or Executive Orders. (Two examples – Executive Order 13610⁴ to reduce the

³ See <https://www.cpsc.gov/PageFiles/129663/cpsia.pdf>

⁴ <http://www.whitehouse.gov/the-press-office/2012/05/10/executive-order-identifying-and-reducing-regulatory-burdens>

regulatory burden on small businesses, and Executive Order 13609⁵ promoting international regulatory cooperation.)

We believe these Executive Orders and Circular A-119 are important policies for all government agencies to engage in, not just those required to by law. As such, we recommend that OMB urge (to the extent possible) independent regulatory agencies, such as CPSC, to follow the recommendations in the A-119 OMB Circular.

Conclusion

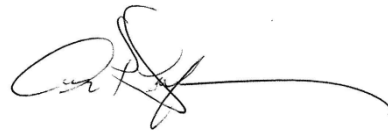
TIA is pleased to participate in this open dialogue forum with OMB to make the process of voluntary standards development even more vigorous by extending its reach with government participation. We support OMB's efforts and stand ready to provide any additional information necessary to support our positions.

Please feel free to contact us at any time if you have any questions on this important matter. Thank you again for the opportunity to comment.

Sincerely,



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Toy Industry Association, Inc.

5 http://www.whitehouse.gov/sites/default/files/omb/infoereg/eo_13609/eo13609_05012012.pdf