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Submitted Electronically

Ms. Jasmeet Seehra
Office of Management and Budget
Office of Information and Regulatory Affairs
jseehra@omb.eop.gov

www.regulations.gov

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

Dear Ms. Seehra:

The Association of Home Appliance Manufacturers (AHAM) respectfully submits the following comments to the Office of Management and Budget (OMB) on its request for comments regarding Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities, 79 Fed. Reg. 8207 (Feb. 11, 2014). AHAM supports the comments submitted by the American National Standards Institute (ANSI) with a couple of exceptions noted below.

AHAM represents manufacturers of major, portable and floor care home appliances, and suppliers to the industry. AHAM's more than 150 members employ tens of thousands of people in the U.S. and produce more than 95% of the household appliances shipped for sale within the U.S. The factory shipment value of these products is more than \$30 billion annually. The home appliance industry, through its products and innovation, is essential to U.S. consumer lifestyle, health, safety and convenience. Through its technology, employees and productivity, the industry contributes significantly to U.S. jobs and economic security. Home appliances also are a success story in terms of energy efficiency and environmental protection. New appliances often represent the most effective choice a consumer can make to reduce home energy use and costs.

AHAM is also a standards development organization, accredited by ANSI. The Association authors numerous appliance performance testing standards used by manufacturers, consumer organizations and governmental bodies to rate and compare appliances.

I. Ensuring the Timely Updating of Standards

OMB sought feedback on requiring agencies to utilize a retrospective review mechanism to ensure standards incorporated by reference are updated on a timely basis. AHAM agrees that standards that are incorporated by reference in regulation can become outdated and should, instead, be kept current with the most recent version of the voluntary consensus standard.

The Department of Energy (DOE) often incorporates by reference AHAM's standards in its test procedures for measuring energy use/efficiency. Manufacturers must use those test procedures to demonstrate compliance with energy efficiency standards. This approach has worked well. It allows experts on the products being tested (i.e., AHAM's members) to develop test procedures through a voluntary, consensus based process. It also allows DOE to be involved in the process through its test procedure rulemakings. And the result has been a uniform approach to testing the regulated products. This benefits stakeholders, the Federal government, and ultimately, consumers of these products. With that said, AHAM often revises its standards well before DOE can update the incorporation by reference. (For example, though AHAM has revised it several times in the since 1979, DOE has continued to incorporate by reference the 1979 version of ANSI/AHAM HRF-1 in its refrigerator/freezer test procedure. Only in September 2014, will the most recent version, ANSI/AHAM HRF-1-2008, be incorporated by reference in DOE's test procedure.) This inability to incorporate the most recent standard by reference has caused confusion with regard to the proper way to conduct the test procedures. It has also meant that DOE's test procedures lag behind current technologies or do not require the most accurate test method. Thus, AHAM supports guidance to agencies that will help them incorporate the most recent standards by reference.

II. Enhancing Transparency and Stakeholder Participation

OMB sought comment on whether to provide agencies with criteria to consider when determining whether a voluntary standard is "reasonably available." OMB stated that it "does not believe the public interest would be well-served by requiring standards incorporated by reference to be made available 'free of charge.'" AHAM agrees. As OMB recognized and AHAM commented to the Office of the Federal Register, standards development is costly and time-consuming. AHAM does not charge large fees for its standards. Instead, AHAM tries to recover only a small portion of the overall costs of standards development. But we do believe that it is the standards developer's right to charge a reasonable fee for access to standards. A significant portion of AHAM's annual operating budget goes toward the development and maintenance of standards. Even the small revenue received from standards helps to offset some of these administrative costs.

In addition, by charging even a small fee for standards, we establish the rights of our ownership of the work product. It is imperative that we protect these rights from those who could attempt to sell them without our knowledge or consent (as has happened in the past). We would not wish to inadvertently give away these rights.

Recognizing the increasing interest by the Federal government and other parties in ensuring the reasonable availability of standards that government agencies incorporate by reference in their

regulations, AHAM is one of 14 founding organizations participating in ANSI's new Incorporated by Reference (IBR) Standards Portal.¹ The ANSI IBR Standards Portal is an innovative solution for voluntary standards to be made available without cost to parties that need access to them because of the related government action. The portal is specifically designed for the standards that federal agencies incorporate by reference into their regulations. Standards on the portal are available for reading online at no charge; downloading or printing the standards has an associated charge determined by the organization that authors the standards. We believe this tool will allow any interested party to access important voluntary standards in real time while also allowing standards developing bodies, such as AHAM, to maintain individual policies on the sale of their standards. This new and innovative tool will help Federal agencies comply with the proposed revisions to the Circular.

III. AHAM Generally Supports ANSI's Comments

As mentioned above, AHAM generally supports the comments ANSI submitted, but with a couple of exceptions.

First, ANSI's comments suggest adding to 8.c a new final sentence, "Trade associations and their captive certification bodies should be excluded from formal roles as independent oversight bodies to strengthen impartiality and defend against conflicts of interest." We believe AHAM's verification programs for energy and water use claims meet this criterion because the technical details of our program are administered by a third-party laboratory. But, to the extent ANSI is suggesting that trade associations cannot be involved in overseeing conformity assessment programs, AHAM does not agree. Our verification program procedural guides have been carefully drafted to ensure impartiality and defend against conflicts of interest. Our success is demonstrated by the fact that both the Environmental Protection Agency and Department of Energy rely on our verification programs in support of the ENERGY STAR program. Thus, we would not support OMB adding a statement like that suggested by ANSI, which would preclude trade associations from overseeing conformity assessment programs. An industry conformity assessment program can provide technical resources, efficiency, and expertise, allowing agencies to focus their testing resources on less organized and more dispersed product categories and industries.

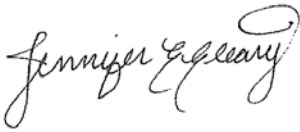
Second, OMB proposes that agency representatives should participate equally with other members of voluntary standards bodies, potentially including voting. ANSI's comments indicate that it has observed that "agency representatives do not always feel compelled to vote on standards" and suggested a revision that would make voting obligatory. AHAM does not agree that voting should be mandatory for agency officials. There may be good reasons why a participating agency member does not feel it appropriate to vote. In addition, AHAM notes that the Consumer Product Safety Commission is currently deciding whether to amend its regulations to permit agency employees to participate as voting members in voluntary standard development groups. AHAM does not have a position on whether the Commission should make such a revision. Similarly, we oppose the Commission's proposal to allow Commission employees to

¹ <http://ibr.ansi.org>

accept leadership positions in voluntary standards development groups. OMB need not address this issue in the Circular because it is addressed by the limitation that agency employees cannot participate if “prohibited from doing so by law or their agencies,” but we note this matter for completeness.

AHAM appreciates the opportunity to submit these comments on OMB’s request for comments regarding Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities and would be glad to discuss these matters in more detail should you so request.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Jennifer Cleary". The signature is written in black ink and is positioned above the printed name.

Jennifer Cleary
Director, Regulatory Affairs