



# SUSTAINABLE PURCHASING LEADERSHIP COUNCIL

**DATE:** May 12, 2014

**TO:** Office of Management and Budget

**FROM:** Christina Macken, on behalf of the Sustainable Purchasing Leadership Council Staff

**RE:** Comments on Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities, Docket No. OMB-2014-0001

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On behalf of the Sustainable Purchasing Council staff, I am pleased to offer comments on the Office of Management and Budget (OMB) proposed update to the existing Circular A-119, "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities" (Circular A-119).

The Sustainable Purchasing Leadership Council (SPLC) was founded on the principles of multi-stakeholder engagement, building consensus among the procurement community, and fostering and recognizing leadership within this community. The Federal Government – given its significant spending profile in its operations - plays a critical role in driving more sustainable purchasing practices and can be a leader in this effort throughout the years to come.

SPLC brings together visionary professionals from institutions, suppliers, government, standards bodies and NGOs to simplify, optimize and standardize the practice of sustainable procurement. Together, we will leverage the *trillions of dollars* spent by organizations to drive social, environmental, and economic sustainability.

SPLC's membership collaborates with each other and with other partners to supply purchasers with the best available hot spot and product-specific guidance in a manner that prioritizes high-impact areas of spending and that supports procurement processes commonly found in the public and private sector. The SPLC proposes a shared platform for guiding, measuring, and recognizing leadership in sustainable procurement.

Circular A-119 promotes governmental use of voluntary consensus standards, which enables stakeholder expertise to shape the standards while conserving Federal resources, and reducing potential compliance burdens. The upcoming development of SPLC's rating system to recognize leadership in sustainable procurement will serve as an example of how voluntary consensus standards achieve the policy goals of Circular A-119 in practice. This effort will greatly benefit from participation by experts within the Government Sector. The use of a consistent standard by the Federal Government and private industry sends clear and consistent demand signals that enable the market to respond by allocating resources to product development and innovation.

The SPLC's work products are being created in such a way to be of relevance to purchasers and suppliers within and outside the United States. In this spirit, SPLC supports the OMB Circular A-119 revisions that encourage greater coordination with respect to the Government's formulation of global strategies on standards, regulation, and international trade.

The attached document includes SPLC's official comments on the proposed changes. SPLC's comments are in similar spirit to organizations including the U.S. Green Building Council, the Sierra Club, the World Wildlife Fund, and the Forest Stewardship Council.

Sincerely,

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# SUSTAINABLE PURCHASING LEADERSHIP COUNCIL

Comments of the Sustainable Purchasing Leadership Council  
on  
Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity  
Assessment Activities

Docket No. OMB-2014-0001

SPLC is pleased that OMB has taken the opportunity to revise and update OMB Circular A-119. The proposed revisions add clarity and underscore the importance of the interoperability and transferability of standards used by the Federal Government in the global community.

**Encouraging Agency Use of Standards and Participation in Standards Development:**

It is critical that the Federal government participate in standards development in a leadership capacity. Federal employees are our paid representatives: the people whom we, as taxpayers, pay (through our taxes) to represent the public interest. This voice—a voice speaking on behalf of the American public and its common (as opposed to special) interests—is an invaluable voice in any standards development process. This is critical because 501c3 public charities, the other type of entity in American society charged with speaking and acting in the common public interest, are often under-resource to participate in standards development processes. Therefore, the Federal government is often the only voice in a standard's development that speaks on behalf of the public interest. Maintaining this presence is of paramount importance to the future work of SPLC as well as other leadership standard development organizations.

**Ensuring Compliance with International Obligations:**

SPLC supports the efforts to comply with international obligations and recommends that Circular A-119 continue to support the use of multiple standard development processes. Specifically, we support OMB's proposed approach that federal agencies consult with the U.S. Trade Representative, among other steps, in keeping with legal obligations and the Circular's overall case-by-case approach to agency use of standards.

In response to OMB's request for comment on how the Circular's policies can support efforts to reduce costs associated with unnecessary regulatory differences across trading partners, we note that by retaining (1) a factors-based approach to determining whether voluntary standards are consensus standards and (2) agency discretion to use voluntary standards other than consensus standards, where indicated, the Circular will facilitate the broadest range of standards for agency consideration, which inherently will optimize opportunities to harmonize, and thus to reduce costs associated with differing national standards and facilitate international trade.

**Use of Multiple Standards:**

SPLC supports the proposed changes to Circular A-119 that would expressly address Federal agencies' option to reference more than one standard in order to satisfy the requirements of respective programs or regulations. Program objectives may create a need for agencies to specify both minimum standards and leadership (also known as "stretch") standards, with the two used in a complementary setting. Such baseline functions and leadership initiatives can provide for consistent improvement while working to simultaneously raise both the minimum levels of achievement and the ceiling.

**Voluntary Consensus Standards:**

With respect to a federal agency's determination of whether a standard is a voluntary consensus standard, SPLC agrees with OMB's emphasis on a case-by-case determination, based upon listed factors. In the context of the Circular and its ultimate preference for voluntary consensus standards over government-unique standards, **it is particularly important that OMB avoid imposing a one-size-fits-**

**all method for developing consensus standards**, which could have the unintended consequence of reducing the availability of such standards to federal agencies.

In this vein, SPLC supports the changes to the definition of voluntary consensus standard body, which emphasizes agency discretion and avoids overly prescriptive language with respect to defining consensus. SPLC believe that due process should encourage and require public comment and other mechanisms to ensure all interested parties have meaningful opportunity to participate. This is consistent with the approach outlined for program development by the SPLC, as referenced in our [Operating Policies and Procedures](#).

ANSI's standards development process is widely used, but is not the only route to demonstrate a consensus process. While OMB may wish to add language acknowledging that the ANSI process is one way to satisfy the Circular's definition of a voluntary consensus standard process, if OMB were to specify ANSI as a threshold requirement, then it could undermine the primary aim of the Circular and negatively impact the current and future use of voluntary consensus standards by federal agencies. This approach is consistent with the sentiment of ANSI submitted during this comment period, which states that *"ANSI believes that agencies should have wide latitude in deciding when a particular standard – whether it be a voluntary consensus standard or a voluntary non-consensus standard – is best suited for the needs of that agency."*

We urge OMB to retain its longstanding approach that federal agencies tasked with implementing their policy objectives and activities are best positioned to determine whether a particular standard – once deemed suitable for the policy objective – has been developed by a process with the attributes to be a voluntary consensus standard and not impose a single route to consensus.

#### **Voluntary Standards Other Than Consensus Standards**

We support OMB's longstanding and continued recognition of both voluntary consensus standards and other standards developed by non-governmental entities. We agree with OMB's continued guidance to federal agencies to, when appropriate, rely on voluntary standards other than consensus standards, as is found, for example, in section 6(a) of the proposed Circular.

In particular, we note that while implementing a preference for voluntary consensus standards, OMB should retain its interpretation of circumstances under which federal agencies should consider other voluntary standards. We agree with OMB's retention of this interpretation.

#### **Conclusion**

SPLC supports – in theory and in practice – federal agencies' use of voluntary consensus standards and believes OMB's proposed changes are largely helpful to agencies; we request consideration of our comments and suggestions to provide clarity and to ensure agencies continue to have optimum flexibility to use voluntary standards in accordance with law.