



Consumer Electronics Association  
1919 South Eads Street  
Arlington, VA  
22202 USA  
(866) 858-1555 toll free  
(703) 907-7600 main  
(703) 907-7601 fax  
www.CE.org

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**VIA ELECTRONIC SUBMISSION**

Office of Management and Budget  
Office of Information and Regulatory Affairs

**RE: Comments of the Consumer Electronics Association  
*Request for Comments on a Proposed Revision of OMB  
Circular No. A-119, "Federal Participation in the  
Development and Use of Voluntary Consensus Standards  
and in Conformity Assessment Activities"***

Dear Sir or Madam:

The Consumer Electronics Association (CEA)<sup>1</sup> appreciates this opportunity to submit comments on the Office of Management and Budget (OMB) proposed revisions to Circular A-119, *"Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities"* (Circular A-119, or, the Circular).<sup>2</sup> CEA urges OMB to strengthen its guidance to Federal agencies in light of the experience gained by U.S. agencies in implementing the Circular since 1998; domestic and international developments in regulatory, standards, and conformity assessment policy; concluding and implementing U.S. trade agreements; and comments received in response to OMB's March 2012 Request for Information on whether and how to supplement Circular A-119. CEA supports the proposed revisions to the Circular. Without these changes, the private-sector standards development process is rendered moot by duplicative and unnecessary competing government standards.

CEA is accredited by the American National Standards Institute (ANSI) to facilitate the development of American National Standards (ANS). ANSI-accredited Standards Development Organizations (SDO) work cooperatively to develop voluntary national consensus standards. Accreditation by ANSI signifies that CEA consistently follows a set of requirements or procedures known as the *"ANSI Essential Requirements,"* that govern the consensus standards

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<sup>1</sup> CEA is the technology trade association representing the \$208 billion U.S. consumer electronics industry. More than 2,000 companies enjoy the benefits of CEA membership, including legislative advocacy, market research, technical training and education, industry promotion, standards development and the fostering of business and strategic relationships. CEA also owns and produces the International CES – The Global Stage for Innovation.

<sup>2</sup> *Request for Comments on a Proposed Revision of OMB Circular No. A-119, "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities"*, 79 Fed. Reg. 8207 (Feb. 11, 2014), available at <http://www.gpo.gov/fdsys/pkg/FR-2014-02-11/pdf/2014-02891.pdf>

development process. Due process is the key to ensuring that ANSs are developed in an environment that is equitable, accessible and responsive to the requirements of various stakeholders. The open and fair ANS process ensures that all interested and affected parties have an opportunity to participate in a standard's development, including Federal and State agencies. It also serves and protects the public interest since standards organizations accredited by ANSI must meet ANSI requirements for openness, balance, consensus and other due process safeguards.

CEA also promotes the use of its standards internationally, advocates U.S. policy and technical positions in international and regional standards organizations, and encourages the adoption of international standards as national standards where they meet the needs of our stakeholders.

These actions at CEA and hundreds of similar U.S. groups achieve major U.S. policy goals by minimizing nonregulatory trade barriers and regulatory costs. This highly transparent and accountable system – although private sector managed – leverages the efforts and expertise of many thousands of individuals from industry, NGO's and government, laboratory and university backgrounds to create critical test procedures and other standards that government could never replicate quantitatively or qualitatively, nor as timely or responsively. There should be a high value placed by the federal government in ensuring and taking care that its actions not disrupt this system unless compelling exigent circumstances warrant. Failure to exercise due care will undermine this successful system.

## **I. Background**

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104-113) (NTTAA) codified pre-existing policies on the development and use of voluntary consensus standards in Circular A-119, established additional reporting requirements for agencies, and authorized the National Institute of Standards and Technology (NIST) to coordinate conformity assessment activities. In response, the OMB in 1998 issued a revised version of Circular A-119, which remains the current version and is now the subject of comment and proposed revision.

The proposed revision to Circular A-119 includes the following elements of interest to CEA and its members: a preference for voluntary consensus standards; guidance on the use of standards and participation in standards development; and enhanced transparency.

## **II. Discussion**

CEA commends the OMB for its proposed revisions to the Circular. CEA continues to work cooperatively with many Federal agencies in setting standards for the consumer electronics industry. These technical standards promote promising innovation while addressing important public policy goals such as energy efficiency, accessibility, interoperability, and public safety. CEA standards setting committees have included participation from the Department of Energy, Federal Trade Commission, Environmental Protection Agency, National Oceanic and

Atmospheric Administration, Consumer Product Safety Commission, among many others. CEA standards are referenced in a host of Federal and State regulations.

*A. The revised OMB Circular will strengthen the preference for voluntary consensus standards*

The revised Circular would maintain a strong preference for using voluntary consensus standards in Federal regulation and procurement. CEA urges that Federal agencies maximize their reliance on voluntary consensus standards and reduce to a minimum agency reliance on standards other than voluntary consensus standards, including reliance on government-unique standards or regulatory language written in lieu of industry standards.

Government-unique standards have a tendency to lag behind technology development, especially in quickly evolving sectors such as consumer electronics. The inability to keep pace with rapid innovation creates unnecessary friction between the current state-of-the-art and the regulations and policies governing such technologies. Only private sector led standards setting can ensure that standards and technologies evolve in a coordinated manner to the benefit all stakeholders equally. Further, agencies should rely upon voluntary consensus standards, as these have been developed under an open and balanced process.

Requiring government led standards in the place of existing voluntary standards undermines the time and effort put into those standards and inevitably impairs efforts at international harmonization and interoperability. Government agencies with narrowly focused agendas generally do not consider whether and how their standards affect trade, whereas trade is vital to CEA members who do business around the world.

*B. The revised OMB Circular should provide more detailed guidance on how Federal representatives should participate in standards development activities*

The revised Circular provides more detailed guidance on how Federal representatives should participate in standards development activities. We note that active participation by Federal agencies includes 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. CEA has experienced many unexplained and unhelpful instances of Federal participation in our standards setting when agencies behaved more as observers to the standards development process. Agency representatives should participate actively and equally with other members of the standards setting committee, contributing rather than merely observing. Such active participation will lead to optimal outcomes.

The revised Circular should also strengthen the role of agency Standards Executives, encourage better internal coordination and training on standards, and update the provisions on how the U.S. Government manages and reports on the development and use of standards. CEA supports efforts to strengthen the role of agency Standards Executives. Standards Executives are an important link between an agency's technical expertise and the private sector, and the proposed revisions to the Circular correctly empower Standards Executives to act with greater authority.

The revised Circular should also provide criteria for agencies to consider when examining whether a private, voluntary standard meets agency needs and should therefore be adopted. The factors used to determine suitability of a standard should create a clear preference for private-sector standards and should also create a high bar for not using such standards when they exist. CEA strongly urges that in cases where no voluntary consensus standards exist, an agency must solicit interest from qualified voluntary standards development organizations for development of a standard before an agency may develop its own standards or use other government-unique standards.

Finally, active participation by Federal government stakeholders is essential to the development of voluntary consensus standards. Accordingly, CEA recommends that the revisions to the Circular include a strong reminder to all Federal agencies to give adequate priority to the budget needed for active participation in standards work, including budgets for traveling to standards development committee meetings. In many cases, such meetings are held by teleconference. But face-to-face meetings are also a necessary part of standard development activity and should be facilitated.

*C. The revised OMB Circular should promote enhanced transparency*

The revised Circular should provide guidance to agencies on how they should discuss implementation of the Circular in their rulemakings and guidance documents; encourage agencies to alert the public when considering whether to participate in standards development activities; and set out factors for agencies to consider when incorporating standards by reference in regulation.

### **III. Conclusion**

CEA urges the OMB to revise Circular A-119. OMB's proposed revisions will provide more detailed guidance to agencies in several areas and strengthen the government's reliance on private-sector standards in Federal regulation and procurement. As one of the largest users of standards, Federal agencies' participation and support of private-sector standards development is critical. CEA strongly values the expert input that Federal agencies provide. CEA believes that the proposed revisions of OMB Circular A-119 are supportive of this public-private partnership, and we therefore encourage adoption of the proposed revisions.

Respectfully,

/s/ \_\_\_\_\_

Veronica Lancaster  
Director, Standards Programs

Bill Belt  
Senior Director, Technology & Standards

David Wilson  
Vice President, Technology & Standards