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Office of Management and Budget
725 17th Street NW
Washington, DC 20503

Re: 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” (Docket No. OMB-2014-0001)

The National Association of Manufacturers (“NAM”) provides these comments to the Office of Management and Budget (“OMB”) in response to the notice of availability and request for comments on the proposed revision of OMB Circular No. A-119, “Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities.”

The NAM is the largest industrial trade association, representing small and large manufacturers in every industrial sector and in all 50 states, and is the voice for 12 million men and women who make things in America. The NAM is committed to achieving a policy agenda that helps manufacturers grow and create jobs.

I. Introduction

The U.S. voluntary standard system plays a crucial role in ensuring the global competitiveness of manufacturers in the U.S., and it is designed to help businesses and other stakeholders develop and promote product measurement, standards and technology in order to enhance productivity, facilitate trade and compete successfully in a global marketplace. The proposed revisions to Circular No. A-119 would further encourage the use of voluntary consensus standards that are developed under certain principles and processes, establish a clear policy on the use of standards for emerging technologies and ensure that outdated standards are updated on a timely basis. Moreover, OMB’s proposed changes would enhance transparency and stakeholder participation and direct agencies to comply with international trade obligations and reduce international regulatory differences.

The NAM supports the revisions to Circular No. A-119 as proposed by OMB because they would advance a regulatory framework that is aligned with the proposal’s stated goals in section 2: reducing costs and compliance burdens, encouraging long-term growth for manufacturers in the U.S. and promoting efficiency, economic competition and trade. The proposed revisions also would ensure that, through the use of voluntary standards, federal agencies are incorporating sound regulatory principles into their regulations as directed by Congress through statute and the executive branch through various executive orders. Through the use of voluntary standards, agencies can tailor regulations to impose the least burden on society and maximize benefits while meeting their regulatory objectives.

II. The Proposal Reflects the Principles for Sound Regulatory Procedures

OMB indicates that the proposed revisions are needed to reflect, among other things, recent guidance to agencies and executive orders on the development of regulations. Executive Order 13563 (“Improving Regulation and Regulatory Review”), issued in January 2011, affirms the sound regulatory principles of President Clinton’s Executive Order 12866, emphasizes that regulations should meet regulatory objectives “while promoting economic growth, innovation, competitiveness and job creation” and requires executive branch agencies to conduct retrospective reviews of existing regulations. Executive Order 13609 (“Promoting International Regulatory Cooperation”), issued in May 2012, requires agencies to engage in international regulatory cooperation to reduce unnecessary regulatory differences between the U.S. and our major trading partners. Executive Order 13610 (“Identifying and Reducing Regulatory Burdens”), also issued in May 2012, directs agencies to consider the cumulative effects of their regulations and give priority to those reforms that “would make significant progress in reducing those burdens.” OMB’s proposed revisions would compel agencies to more effectively meet the requirements of these Orders. The NAM supports the explicit reference to these executive orders because such reference enforces the policy that an agency’s use of voluntary consensus standards is aligned with the sound regulatory principles to which agencies should comply.

We also support OMB’s reference in proposed section 1 to Executive Order 12866 and OMB Circular No. A-4, which provides guidance for agencies as they conduct regulatory analysis including cost-benefit analysis. As OMB articulates in proposed section 2, the goal of federal agency use of voluntary consensus standards is to reduce costs to the government, decrease compliance costs and burdens on regulated entities and encourage long-term growth for U.S. enterprises. OMB’s proposal also would promote “efficiency, economic competition and trade” and ensure that agencies rely “upon private sector expertise to supply . . . high quality, cost-efficient goods and services.”

III. The Proposal Would Establish a Preference for Voluntary Consensus Standards Developed Under Certain Principles and Processes

The NAM supports proposed sections 3(f), 6(a) and 6(f), which collectively establish guidelines for when agencies should use voluntary consensus standards. OMB’s proposal is welcomed because, as recognized in the current Circular, voluntary consensus standards are those developed under procedures that provide for open participation, due process and consensus. The proposed revisions would ensure that voluntary consensus standards used by federal agencies are of high quality and market-oriented and are developed to support innovation and the global competitiveness of manufacturers in the U.S.

Proposed section 3(f) establishes as federal policy the principles for voluntary consensus standards bodies and the voluntary consensus standards development process. In proposed section 6(a), OMB asserts that federal agencies should “use existing voluntary consensus standards in lieu of agencies’ developing and using their own or other standards in their procurement, regulatory, or other agency activities, except when use of an existing voluntary consensus standard would be inconsistent with law or otherwise impractical.” The language is aligned with the statutory requirements established by section 12(d) of the National Technology Transfer and Advancement Act of 1995 (Pub. Law 104-113). Proposed section 6(f) would establish a “preference for the use of standards that are developed or adopted by voluntary consensus standards bodies. The use of voluntary consensus standards is preferred because voluntary consensus standards are developed using processes which provide for openness, a balance of representation, due process, appeals and consensus decision-making.”

The NAM also supports OMB's proposal to not restrict the choice of standards that can be used by government agencies, as outlined in proposed section 6(i). OMB is correct in its proposal, stating that "it may be more appropriate for [an] agency to allow the use of multiple standards in order to permit greater flexibility for producers and service providers in meeting program, procurement, or regulatory requirements, enhance competition in the marketplace, provide greater choice to consumers and enable new innovative solutions to be developed." With proposed section 6(i), agencies should recognize that allowing the use of more than one standard could more effectively and efficiently meet the objectives of a regulation.

Manufacturers also appreciate and support OMB's recognition in proposed section 6(a) that standards developed outside the voluntary consensus process are important for emerging technologies. OMB asserts, "agencies should consider, to the extent consistent with law—as an alternative to using a government-unique standard—other voluntary standards that deliver the most generally favorable technical and economic outcomes (such as improved interoperability) and that are widely utilized in the marketplace." Through the development of advanced technologies, manufacturers in the U.S. are global leaders of innovation. Proposed 6(a) would help ensure that agencies are engaged in regulatory activities that support innovation and a manufacturer's ability to compete in a global economy.

IV. The Proposal Would Establish Guidelines for Agency Consideration of Standards

Proposed section 6(e) includes important provisions that would ensure that agencies are seeking to eliminate unnecessary burdens by thoughtfully considering when the use of voluntary standards is appropriate. We support these provisions, but OMB should consider including explanatory language that would further support the voluntary standards development process. In proposed section 6(e)(iii)(4), OMB should recommend that barriers to membership and participation in standards development process should be addressed directly with the standards development organization and not through rulemaking. Many standards development organizations provide resources and tools that eliminate barriers to membership and participation. Proposed section 6(e) should clarify that a federal agency should consider whether industry or the agency already uses a relevant voluntary consensus standard before the agency uses a different standard or creates its own. Additionally, under section 6(e), OMB should include language that agencies should give primary consideration to whether there is an existing "international" standard developed under the WTO Technical Barriers to Trade principles. This additional consideration under section 6(e) of whether a standard is an international standard would help ensure that the agency meets international obligations addressed in section 6(g) and does not create unnecessary barriers to trade.

The NAM is encouraged by OMB's position that, when referencing voluntary standards, agencies "must observe and protect the rights of the copyright holder and meet any other similar obligations, such as those relating to patented technology that must be used to comply with the standard." To support the development of industry standards, OMB is recognizing the important role of companies in that process. Manufacturers who rely on voluntary standards are invested in improving the quality and safety of products. They provide technical experts and other resources throughout the standards development process to ensure high quality and effective product specifications, as well as testing and other conformity assessment schemes that ensure adherence with regulatory requirements. Companies must have confidence that information provided throughout the process, particularly trade secrets and other business-sensitive information, is appropriately managed.

V. The Proposal Would Ensure that Standards Incorporated by Reference are Updated on a Timely Basis

The NAM supports OMB's directive to agencies, under proposed section 6(o), that standards incorporated by reference should be updated on a regular basis. We agree with OMB's assertion that agencies should "undertake a standards-specific review of such incorporated standards every 3-5 years, or when stakeholders otherwise provide adequate information that a standards-specific review is necessary due to urgent matters of health and safety, the need to remain current with technological changes, or for other compelling reasons." As industry strives to enhance public safety through the development of updated standards, agencies should ensure that its regulations are updated and based on the best available information. Such an approach also supports innovation as regulated entities can be confident they are not competing under outdated rules and that standards in force reflect the needs of the market.

VI. Conclusion

The NAM supports OMB's proposed revisions to Circular No. A-119 as they make clear the fundamental importance of maximizing our standards system to enhance public safety through the use of high quality standards, minimize costs to the government and to regulated entities and support innovation and U.S. global competitiveness. The use of voluntary consensus standards provides enormous efficiencies both within the U.S. economy and internationally. They form the core of many regulatory programs today and their importance would be affirmed by the proposed revisions.

Comments submitted by:

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