



**COMMENTS OF RESILIENT FLOOR COVERING INSTITUTE
ON THE OFFICE OF MANAGEMENT AND BUDGET'S
PROPOSED REVISIONS TO CIRCULAR A-119,
"FEDERAL PARTICIPATION IN THE DEVELOPMENT AND USE
OF VOLUNTARY CONSENSUS STANDARDS AND IN
CONFORMITY ASSESSMENT ACTIVITIES"
79 Fed. Reg. 8,207 (Feb. 11, 2014)**

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RESILIENT FLOOR COVERING INSTITUTE

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The Resilient Floor Covering Institute (RFCI) appreciates the opportunity to submit comments on the Proposed Revisions to OMB Circular No. A-119, “Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,” 79 Fed. Reg. 8,207 (Feb. 11, 2014) (Proposed Revisions). RFCI is a non-profit trade association that represents manufacturers of vinyl composition tile, vinyl tile, sheet vinyl, rubber, and linoleum flooring products and suppliers of raw materials, additives, and sundry flooring products (e.g. adhesives) for the North American market. The RFCI membership list is included as Attachment A.

RFCI seeks to educate the public and policymakers about the durability, affordability, and environmental benefits of resilient flooring used in new construction and renovations. RFCI has long been an advocate of green product selection and sustainable building practices based on risk assessment, life cycle assessment, and sound scientific principles. To this end, RFCI has developed two sustainability programs under which hard surface flooring products may qualify. These are: (1) FloorScore[®] which recognizes flooring products meeting the stringent low VOC emission requirements of the California Section 1350 indoor air quality program based on independent laboratory testing and third-party certification;¹ and (2) NSF/ANSI 332-010 Sustainability Assessment for Resilient Flooring, an American National Standards Institute (ANSI)-accredited standard which provides different certification levels (conformant, silver, gold, and platinum) for flooring products meeting sustainability requirements for product design, manufacturing, end-of-life management, corporate governance, and innovation.² Also, RFCI has developed an environmental product declaration program: a labeling program that documents environmental impacts of a product from cradle to grave and offers a picture of the product’s effects on the atmosphere, water, and earth.³ The industry has also undertaken extensive recycling initiatives.

I. EXECUTIVE SUMMARY

RFCI appreciates the opportunity to comment on the Proposed Revisions. RFCI supports the comments of the American Chemistry Council, as their comments address many issues important to the floor coverings industry.

RFCI supports the Office of Management and Budget’s (OMB’s) efforts to update OMB Circular A-119. First, RFCI strongly agrees with the proposal’s clear expression of a preference for voluntary guidelines developed using a consensus standard-setting process. Second, RFCI backs OMB’s proposal to expand several of the definitions related to the attributes of consensus standards, and RFCI recommends modeling the expanded definitions more closely on definitions in the ANSI *Essential Requirements: Due Process Requirements for American National Standards* (Jan. 2014 ed.) (ANSI *Essential Requirements*). Third, RFCI is in favor of requiring federal agencies to disclose their involvement in standards development, and RFCI recommends that such disclosure be required for all participation. Fourth, RFCI recommends that the Circular

¹ See RFCI, FloorScore, <http://www.rfci.com/knowledge-center/floorscore/>.

² See RFCI, NSF/ANSI Sustainability Assessment, <http://www.rfci.com/about-us/ansi-nsf332/>.

³ See RFCI, Environmental Product Declaration, <http://www.rfci.com/environmental-product-declaration/>.

clarify that agencies may only use privately developed standards to carry out activities that are within their authority.

These comments are discussed in greater detail below.

II. RFCI STRONGLY AGREES WITH OMB'S PROPOSAL TO AMEND CIRCULAR A-119 TO EXPRESS A GENERAL PREFERENCE FOR VOLUNTARY GUIDELINES THAT HAVE BEEN DEVELOPED USING A CONSENSUS STANDARD-SETTING PROCESS.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. § 272 note, obligates federal agencies to adopt voluntary, consensus-based, private sector standards wherever possible. The current version of OMB Circular A-119 does not clearly express a preference for standards developed according to the principles articulated by the ANSI. Since 1918, ANSI has been a premier standards-setting organization promoting voluntary consensus standards and the use of procedures to ensure that standards are developed based on appropriate participation by interested parties, with specific consensus and due process measures.

ANSI has developed a list of the essential requirements for establishing standards in a way that provides due process for interested parties. ANSI, *Essential Requirements: Due Process Requirements for American National Standards* (Jan. 2014 ed.) (*ANSI Essential Requirements*). Participation must be open to all parties who are directly and materially affected by the activity, with no single interest group or organization dominating the process. The process should have a balance of interests, with participants from diverse interest categories. Efforts should be made to harmonize new and existing standards. In addition, information about standards development should be made public so that all directly and materially affected parties have the opportunity to participate. Written comments should be considered promptly and responded to in a meaningful way. For example, a consensus-based standard setting system should use a process to determine whether particular comments are “persuasive” or “nonpersuasive” and, if persuasive, how to change the proposed standard in light of the comments. Evidence of consensus must be documented, and there should be established procedures for appeals.

RFCI strongly supports OMB's proposal to establish a preference between voluntary consensus standards, developed consistent with the ANSI requirements, and voluntary non-consensus standards that are not developed according to procedures that provide adequate due process protections for interested parties.

III. RFCI SUPPORTS OMB'S PROPOSAL TO EXPAND SEVERAL DEFINITIONS RELATED TO THE ATTRIBUTES OF CONSENSUS STANDARDS.

RFCI supports OMB's proposal to provide additional clarification of terms that relate to the attributes of consensus standards. Having additional language interpreting the terms “openness,” “balance of representation,” and “due process” will help agencies identify standards

developed through voluntary consensus standards. In addition, including this language will help parties participating in the development of consensus standards determine whether the procedures provide for due process.

RFCI recommends, however, that OMB add to the definitions language that more specifically tracks definitions in the ANSI *Essential Requirements*. Specifically:

- The definition of “openness” should state that there is no undue financial barrier to participation;
- The definition of “balance of representation” should state that participants from diverse interest categories will be sought, with the objective of achieving balance; and
- The definition of “due process” should include a provision that the procedures require that records be kept to demonstrate adherence to the requirements and, if needed, for use in appeals.

RFCI urges OMB to make the definitions in Circular A-119 as consistent as possible with the definitions in the ANSI *Essential Requirements* so that the potential for confusion will be minimized.

IV. RFCI SUPPORTS THE PROPOSAL’S EFFORTS TO IMPROVE TRANSPARENCY RESPECTING FEDERAL AGENCY PARTICIPATION IN STANDARDS DEVELOPMENT.

RFCI agrees with OMB’s proposal to require agencies to notify the public of their participation in private sector standards development processes. Members of the public should be able to find information about agency participation in such processes consistently and easily. Making this information available should be a minimal burden for agencies given advances in technology since 1998.

RFCI recommends that agencies be required to provide notice of agency participation in standards development for all instances of such participation. Requiring notice only for participation involving “issues of national priority or to support significant regulatory action” is not satisfactory. Those criteria are subjective. Requiring notice only for participation involving issues of national priority or to support significant regulatory action would necessitate a determination whether an issue or action met the criteria, and the need for such a determination could delay the notification. Also, requiring uniform notification would eliminate the possibility that members of the public might not have information that could be important to *them* because someone in the government had decided that an issue was not of national priority. To allow for uniformity and to maximize transparency, all agency participation in standards development should be made public.

V. AGENCIES SHOULD USE PRIVATELY DEVELOPED STANDARDS ONLY TO CARRY OUT ACTIVITIES WITHIN THEIR AUTHORITY.

The Circular encourages federal agencies to use private sector standards where feasible and appropriate, to avoid duplication of effort and waste of limited government resources. Agency actions are limited to those authorized by statute and executive order. Accordingly, OMB Circular A-119 should clearly state that agencies are not to use technical standards for activities or policies that are outside of their prescribed authority.

Further, section 12(d)(1) of the NTTAA, 15 U.S.C. § 272 note, provides that federal agencies shall consult and participate in the development of technical standards “when such participation is in the public interest and is compatible with agency and departmental missions, authorities, priorities, and budget resources. . . .” Agency participation in the development of technical standards is limited by the public interest and by the agency’s mission, authority, priorities, and budget. Congress’s limitations on agency participation in standards development indicate that Congress intended for the development of technical standards to remain outside of the government, with government participation only as appropriate under certain circumstances.

VI. CONCLUSION

RFCI appreciates the opportunity to comment on the Proposed Revisions. Should you have any questions about these comments, please contact me or Bill Hall, counsel for RFCI.

Respectfully submitted,

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