



May 12, 2014

Hon. Howard Shelanski
Administrator, Office of Information and Regulatory Affairs
Office of Management and Budget
Washington, DC

Re: 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 Mr. Shelanski:

The Vinyl Institute (VI) appreciates the opportunity to comment on this proposed revised guidance. VI is a national trade association for U.S. manufacturers of polyvinyl chloride resin and additives.

VI strongly supports the comments submitted by the American Chemistry Council.

To elaborate on some of ACC’s points, the federal government should rely on private voluntary consensus standards where appropriate statutory authority or regulations do not already exist. To do so properly, OMB needs to define carefully what it means by voluntary consensus standards since in practice there are variations on this theme. We urge OMB to stipulate that acceptable voluntary standards are those that have been developed in conformance with open consensus procedures such as have been established by the American National Standards Institute (the gold standard in the United States). Of paramount importance, the standard-development process should permit all stakeholders to have meaningful input from the earliest stages of development through balloting, and technical issues raised by stakeholders should be discussed and adequately addressed or resolved in a timely manner in the effort to reach consensus. OMB should discourage voluntary consensus bodies whose members are hand-picked by the standards developing organization and that are not open to a balanced participation of stakeholders.

We are seeing instances of standards being developed without safeguards to ensure the minimum basic procedural requirements for due process, openness, lack of dominance, balance, and consensus.

Examples of procedural shortcomings:

- Lack of transparency as to the source of criteria in a standard or the process through which criteria were developed, discussed and proposed.
- Lack of technical record justifying criteria.
- The incorporation by reference of third-party standards, eco-labels and other tools not developed through full, open-consensus procedures. Among these inadequately documented tools are “red lists” banning or restricting materials without scientific justification or meaningful opportunity for timely input by affected stakeholders.
- Failure to incorporate risk analysis and life-cycle science in provisions related to use of materials, products or services.
- When opportunities are provided for comment or discussion on proposed criteria, a rushed timeframe or lack of meaningful responses to issues raised. Dwindling funding for a standard may be used as an excuse to rush or truncate discussion.
- Lack of an appeal mechanism by which affected parties can challenge unjustified criteria.

OMB differentiates between technical and regulatory standards. VI suggests a third category that attempts to reside somewhere between these two, incorporating both technical non-technical provisions, the latter often being aspirational or “transformational” in nature. An example of an aspirational provision is a requirement or incentive to use less of a certain material, or to stop using it altogether. Such a provision may be nominated, discussed and adopted in a standard without technical, scientific or legal justification, and without consideration of available alternatives and their life-cycle impacts. A provision like this pushes a policy rather than performance.

The use of such prescriptive provisions has increased in green/sustainable standards. The more complex and aspirational the green/sustainable standard, the more likely the inclusion of such value-based provisions, the more likely they are to be highly controversial, and the more difficult to ensure ANSI-type procedural requirements are met.

One reason for this is the difficulty (or lack of interest on the part of the standard developer) in gathering adequate expertise in all the materials, products, assemblies, sub-assemblies, and other variables that make up the complex subjects of such standards. Another reason is the perception that consensus and aspiration cannot co-exist. In fact, they can, but not in a predetermined way. They co-exist only if the process is open, fair and balanced.

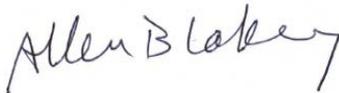
Like ACC, we encourage OMB to differentiate between technical and non-technical standards, to clarify that standards reflecting the policy or value judgments of private groups not be considered technical standards for agency regulatory or procurement purposes, and to favor performance standards over prescriptive/design standards.

We also wish to stress our concern with the role of federal government officials who participate in developing standards. A government official involved in a standards

developing organization carries a great deal of presumed authority. It is important for government personnel not to step outside the scope of the authorizing legislation and regulations under which and through which they work. Statements that imply value judgments – for example, what a regulatory agency wants or doesn't want – can exert undue influence on other members of a standard-writing group. Federal government officials participating in a voluntary consensus body should represent the established, public views and positions of their respective agencies, and not their own personal views or the wish list of a minority in that agency. The participation of more than one federal agency representative in a standards development process magnifies this need.

In VI's view, OMB best serves the needs of the public, government agencies and private-sector standards developers by insisting on ANSI-type procedural safeguards and by emphasizing the strong preference for demonstrated performance criteria rather than design or prescriptive criteria in standards used by the federal government.

Sincerely,

A handwritten signature in blue ink that reads "Allen Blakey". The signature is written in a cursive, slightly slanted style.

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