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OFFICE OF MANAGEMENT AND BUDGET

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"

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of availability and request for comments.

SUMMARY: The Office of Management and Budget (OMB) request comments on proposed revisions to Circular A-119, "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities" (hereinafter, Circular A-119, or, the Circular) in light of changes that have taken place in the world of regulation, standards, and conformity assessment since the Circular was last revised in 1998. These materials are available at http://www.whitehouse.gov/omb/inforeg_infopoltech.

The National Technology Transfer and Advancement Act of 1995 (Public Law 104-113; hereinafter known as the 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, OMB in 1998 issued a revised version of Circular A-119, which remains the current version.

In this notice, OMB is seeking public comment on proposed revisions to the Circular. These proposed revisions reflect 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.

The proposed revision to Circular A-119 includes the following elements:

Preference for voluntary consensus standards. The revised Circular would maintain a strong preference for using voluntary consensus standards in Federal regulation and procurement. It would also acknowledge, however, that there may be some standards not developed using a consensus-driven process that are in use in the market -- particularly in the information technology space -- and that may be relevant (and necessary) in meeting agency missions and priorities.

Guidance on use of standards and participation in standards development. The revised Circular would provide more detailed guidance on how Federal representatives should participate in standards development activities. It would 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. The Circular would also provide criteria for agencies to consider when examining whether a standard meets agency needs and should be adopted.

Guidance on conformity assessment. The revised Circular would encourage agencies to consider international conformity assessment schemes and private sector conformity assessment activities in lieu of conformity assessment activities or schemes developed or carried out by the government, and set out criteria for agencies to consider when they are selecting or designing an appropriate conformity assessment procedure.

Enhanced transparency. The proposed revisions would 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.

Burden reduction. The proposed revisions would require agencies to utilize the retrospective review mechanism set out in Executive Orders 13563 and 13610 to implement the Circular, including ensuring that standards incorporated by reference in regulation are updated on a timely basis. The revisions also encourage agencies to work

together to reference the same version of a standard in regulation and procurements and coordinate on conformity assessment requirements, where feasible.

International considerations. The proposed revisions incorporate references to trade-related statutory obligations on standards-related measures and direct Federal agencies to consult with USTR on how to comply with international obligations with regard to standards and conformity assessment. They provide guidance on how to identify such obligations, direct agencies to take into account their obligations under Executive Order 13609 when they engage in standards and conformity assessment activities, and encourage greater coordination with respect to the Government's formulation of global strategies on standards, regulation, and international trade.

DATES: Comments are requested on the proposed revision to Circular A-119 no later than [insert date 90 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: All comments should be submitted via <http://www.regulations.gov> or faxed to 202-395-5167. Please submit comments only and include your name, company name (if any), and cite "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities" in all correspondence. All comments received will be posted, without change or redaction, to www.regulations.gov, so commenters should not include information they do not wish to be posted (e.g., personal or confidential business information).

FOR FURTHER INFORMATION CONTACT Jasmeet Seehra, Office of Management and Budget, Office of Information and Regulatory Affairs, at jseehra@omb.eop.gov.

SUPPLEMENTARY INFORMATION: In Section 12(d) of the NTTAA, Congress stated that Federal agencies “shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities,” except when an agency determines that such use “is inconsistent with applicable law or otherwise impractical.” (Section 12(d), as amended, is found as a “note” to 15 U.S.C. § 272. Congress amended Section 12(d) in 2001, in Section 1115 of P.L. 107-107, to include paragraph (4) on “expenses of government personnel.”)

In response to the enactment of the NTTAA, OMB prepared a proposed revision to Circular A-119 and issued a Federal Register notice seeking public comment on the proposal (see 61 FR 68312 (December 27, 1996)). Following OMB’s consideration of the comments, OMB issued a final revision of the Circular in 1998 63 FR 8546 (February 19, 1998) which can be found on OMB’s website at http://www.whitehouse.gov/omb/circulars_a119/.

The policies in the Circular are intended to maximize the reliance by agencies on voluntary consensus standards and reduce to a minimum agency reliance on standards other than voluntary consensus standards, including reliance on government-unique

standards. The Circular also provides guidance for agencies participating in the work of bodies that develop voluntary consensus standards and describes procedures for satisfying the NTTAA's agency-reporting requirements. In addition, consistent with section 12(b) of the NTTAA, the Circular directs the Secretary of Commerce to issue guidance to agencies in order to coordinate conformity assessment activities. The NIST conformity assessment guidelines, which were issued in 2000, are available at http://gsi.nist.gov/global/docs/FR_FedGuidanceCA.pdf.

OMB's proposed revisions are meant to provide more detailed guidance to agencies to take into account agency experience under the current Circular in several areas including the Administrations current work in Open Government, developments in regulatory policy and international trade, and changes in technology.

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Administrator

Office of Information and Regulatory Affairs

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