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Federal Participation in the Development and Use of Voluntary Consensus Standards
and in Conformity Assessment Activities
OMB Circular No. A-119, Revised

**COMMENTS OF:
THE INTERNATIONAL CODE COUNCIL (ICC)
500 New Jersey Ave, NW
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The International Code Council (ICC) offers the following comments on OMB Circular No. A-119, Revised, published on February 11, 2014.

The International Code Council (ICC) is a membership association dedicated to building safety, fire prevention, and energy efficiency. The International Codes, or I-Codes, published by ICC, provide minimum safeguards for people at home, at school and in the workplace. Building codes benefit public safety and support the industry's need for one set of codes without regional limitations. Among the codes published by ICC is the, International Energy Conservation Code (IECC), which is referenced in the Energy Conservation and Production Act (ECPA, Public Law 102-486), and the Energy Independence and Security Act (EISA) of 2007, and is a national requirement in the American Recovery and Reinvestment Act of 2009.

Fifty states and the District of Columbia have adopted the I-Codes at the state or jurisdictional level, typically the International Building Code for commercial and institutional buildings, and the International Residential Code, for one and two family dwellings. Federal agencies including the Architect of the Capitol, General Services Administration, National Park Service, Department of State, U.S. Forest Service and the Veterans Administration also use the I-Codes for all the diverse facilities that they own or manage. The Department of Defense references the International Building Code for constructing military facilities, including those that house U.S. troops, domestically and abroad.



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ICC was established in 1994 as a non-profit organization dedicated to developing a single set of comprehensive and coordinated national model construction codes. The founders of the ICC are Building Officials and Code Administrators International, Inc. (BOCA), International Conference of Building Officials (ICBO), and Southern Building Code Congress International, Inc. (SBCCI). It is also the successor organization to the Council of American Building Officials.

ICC is the parent organization of ICC Evaluation Services and International Accreditation Service (IAS), two prominent market participants in the private conformity assessment system of the United States.

Background

OMB has published a revised version of Circular A-119, that incorporates interpretations and clarifications that have been made over the last 16 years to the 1998 version of A-119, and some new material that reflects changes in the standards and conformity assessment community that have occurred during that time.

In general, the new Circular A-119 continues the policy of government agency reliance on and use of private sector standards, and extends the policy to a clear preference for voluntary consensus standards, with a further preference for private non-consensus standards over government unique standards where no consensus standard exists, and a new preference, similar to the preference for private sector standards, for the use of private sector conformity assessment systems, and criteria for using such systems, for determining conformity with standards.

Comments

ICC generally supports the proposed revision of Circular A-119, and believes it provides important and useful clarification on a number of existing definitions, policies and practices. With respect to the background section of the document, ICC strongly encourages OMB to revise the Circular to require agencies to utilize the retrospective review mechanism set out in Executive Orders 13563, "Improving Regulation and Regulatory Review," and 13610, "Identifying and Reducing Regulatory Burdens," to ensure standards incorporated by reference are updated on a timely basis. As an example, we note that while several Federal agencies (CPSC, HUD, DOJ) have been participants in the development of the ICC/ANSI A-117.1 Standard for Accessible and Usable Buildings and Facilities, the current version of the standard, published in 2009, has still not yet been referenced in HUD Fair Housing Accessibility Guidelines (FHAG). The earlier, 2003 ICC/ANSI A-117.1 was referenced as a "safe harbor" document in FHAG, and the 2006 and 2003 International Building Code were also recognized as "safe harbor" documents in 2007, as they incorporate A-117.1 requirements. To date, despite providing copies of the updated documents to HUD and Department of Justice, there has been no movement toward referencing of the 2009 A-117.1, by HUD or DOJ, and two new versions of



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the IBC that incorporate the 2009 A-117.1 standard have been published (2009, 2012), with the 2015 version due for release in June 2014.

ICC understands that resources to develop and publish rulemakings to update references to standards are time-consuming and agencies often have limited resources to devote to these activities. ICC would support some sort of expedited rulemaking process, to encourage and incentivize agencies to adopt new versions of previously referenced standards. It makes sense for agencies to adopt or reference standards when considerable governmental and private sector resources have been devoted to their development, especially as in this case, when the entire purpose of the standard is to facilitate compliance with a Federal law and policy, e.g., making buildings and facilities accessible to persons with disabilities.

Prompt and regular review and referencing of standards like A-117.1 would serve to accomplish all of the goals expressed in Section 2 of the OMB document.

We particularly endorse Section 2, that defines the goals of the revised document, Sections 3 and 4, that address definitions of standards, consensus standards, consensus standards bodies and conformity assessment, and the new material at Section 6.o. related to agencies insuring that standards are updated on a timely basis.

We support specifically the clarification of the definition of balance, at new Sec. 3.f.ii., that states:

“The representation appropriate to the development of consensus in any given standards activity is a function of the nature of the standard being developed and the sector.”

That new definition, in the context of the other listed elements of a voluntary consensus process, makes it clear that there are diverse systems and processes to develop voluntary consensus standards, which may be related to the industry sector where the standard is being developed, and how standards have historically been developed within that sector.

We also endorse specifically Section 8, which establishes policy for use of Conformity Assessment, which would encourage agencies to utilize accreditation services from U.S based signatories of international recognition agreements, like International Accreditation Services, which has attained international recognition for all types of accreditation services, and ICC Evaluation Services, an accredited certification body with the broadest portfolio of certifications and the widest acceptance in the U.S. construction industry marketplace.

While we endorse all of the new provisions in the proposed A-119, ICC wishes to discuss in more detail several sections, and does suggest a few modest additions to improve the clarity and consistency of the document, as follows:

Section 3.d., after the word “guidelines”, insert the words “model codes.” While ICC believes that the definition in Section 3 of “standards” clearly includes the model codes published by ICC and other well-established model code developers in use in all 50 states as well as by most



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Federal agencies that build, own or manage properties, we recommend addition of the term “model codes” to the description of documents for clarity. “Model codes” is a widely used term, defines a specific subset of standards designed specifically for state and local government adoption, and the term is used at least as often to describe a class of standards as others in the list in Section 3.d. Using this term would also further distinguish these documents from the “codes of ethics” excluded in section 3.b.

Section 3.f. ICC specifically endorses the criteria listed as the required criteria for voluntary consensus standards, as broad enough to include most existing systems, yet restrictive enough to insure the development of consistently good standards, from organizations utilizing robust development systems.

It is important for OMB to understand that, while ANSI is the only body that accredits U.S. standards developers, there are many U.S.-based standards developers developing excellent standards without ANSI accreditation, and many ANSI-accredited standards developers producing thousands of standards annually outside of the ANSI process. For these reasons, it would be a mistake to modify the well-considered OMB definitions and descriptions of voluntary consensus standards, to meet the desires of only one part of the diverse U.S. standards community. ANSI’s own “National Standards Strategy” recognizes multiple paths and processes for the development of U.S. standards (see ANSI comments, 5-6-2014, page 2).

ICC believes the criteria at Sec. 3.f. represent a clear, readily understandable description of reasonable requirements for agencies to determine what attributes voluntary consensus standards should exhibit.

Section 6.b ICC agrees that the language here should specifically instruct agencies that they “must” participate in standards development activities when the developing body is developing a standard that will serve agency needs.

Section 6.e.iii. ICC believes that an additional factor should be added to the list of 5 factors to be considered to determine suitability of a standard for agency use- whether the standard is already in use and adopted by state and or local government jurisdictions. Adding this criteria would benefit the policy in achieving two of the stated goals of the A-119 document: Goal A, decreasing the burden of compliance, and Goal B, promoting efficiency, competition and trade. ICC recommends adding this requirement as an additional factor, as follows:

“(6) the extent to which the standard is in use and/or has been adopted by state and/or local governments, and where use by the agency will reduce conflict and duplication with state and local requirements.”

This additional language would also align the OMB A-119 guidance with the guidance in two other recent Executive Orders, addressing reducing unnecessary regulation and regulatory conflict and duplication (EO 13563), and encouraging Federal agencies to take into account input from State and local officials in determining where regulations can be streamlined (EO13610)



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Section 6.i. In considering what factors an agency shall consider in determining whether to allow more than one standard, the agency should consider the existing use and market acceptance of the standard it is using or selecting, and the market acceptance of other similar or equivalent standards. We recommend adding the following sentence to this section:

“In considering whether to allow more than one standard or equivalent standards in meeting the agency objective, the agency should consider the extent to which the standard selected by the agency, and other equivalent standards are accepted in the marketplace, or are in use and adopted by state and local jurisdictions.”

Such a factor would allow for the recognition of equivalent standards where the Federal agency may prefer one standard, but allow for the acceptance of another standard where states, local governments, or private sector participants are using an equivalent standard for historical or other reasons.

This factor permitting some flexibility would recognize the existence in the U.S. of differing standards covering the same products and processes, and would also be consistent with the policies expressed in EO 13563 and EO 13610.

Section 6.k. When determining whether to select a performance or prescriptive standard, the agency should use the same criteria as are suggested in the definition of voluntary consensus standard, at Section 3.f.ii. “...as a function of the nature of the standard being developed and the market sector.” In some sectors and for some purposes, such as health and safety where determining compliance needs to be simple and straightforward, a prescriptive standard may be more appropriate than a performance standard.

Section 8.b.iv. Add the following to give guidance on how to assess whether U.S.-domiciled accreditation bodies have achieved international recognition of their competence to perform accreditation services:

Agencies are encouraged to use the global agreements for recognizing competent accreditation such as the multilateral mutual recognition arrangements of the International Laboratory Accreditation Cooperation (ILAC) and the International Accreditation Forum (IAF).

This language is important, as there are a number of U.S.-based accreditation bodies, several of which are recognized internationally, and several are not so recognized.

ICC greatly appreciates the opportunity provided by OMB to comment on the revision to OMB A-119, and the obvious research, attention to detail and commitment to an open and transparent process that the A-119 proposed revisions demonstrate. We look forward to continuing to serve both our Federal agency users and participants, as well as the numerous state and local government jurisdictions that rely on our model codes and standards, to assure safe and resilient buildings that Americans can live, work and learn in every day.