

## **ICC Statement on Revision of OMB A-119, published January 27, 2016**

### **OMB Finalizes OMB A-119 Guidance: New Document, Same Basic Policy**

OMB has published its finalized version of OMB A-119, a document that has guided Federal agencies use of private sector standards since the early 1980's. OMB A-119 was first issued during the Reagan Administration, guiding Federal agencies to use voluntary consensus standards from the private sector where they meet agency needs, rather than creating government-unique standards for acquisition and regulatory purposes. OMB A-119 has been revised several times since, and its basic requirements incorporated into the law in Sec. 12(d) of the National Technology Transfer and Advancement Act, in 1995.(15 U.S.C. Sec. 272). Before this 2016 version, the circular was most recently revised in 1998.

Perhaps what is most remarkable about the new OMB A-119 is that it has not made any significant changes to a very important policy for all standards developers. Throughout the years leading up to the proposed revisions made in 2014, there was great concern among standards developers that a review of OMB A-119 might result in any number of negative outcomes: a weakening of the copyright protections that SDO's enjoy, when their standards are adopted by the government; the addition of restrictive or overly burdensome requirements for adopted standards; and/or a change in the overall preference for the use of private sector standards for governmental use.

Against that backdrop, what is most remarkable is that the revised OMB A-119 is so similar to previous versions. Against the wishes of many activists, OMB made no changes to the requirement that agencies adopting private standards respect and protect copyrights of the standards developers; that agencies participate and vote in the same way as other standards development participants, and that agencies continue to be strongly encouraged to use private sector standards, wherever possible, and avoid developing government-unique standards. The changes made reflected public concerns, such as a suggestion that agencies assure that there are ways for the public and regulated entities to access reference standards, such as free read-only internet access, and new language that outlines a number of criteria for choosing which standards should be used, especially when there are multiple potential standards that could be referenced. ICC actively participated in the revision process, filing comments with partner SDO's jointly through ANSI, as well as individually, at several points in the process. Overall, the SDO community, and ICC, achieved our overall objective: a continuation of the Federal preference for standards and codes developed in the private sector over unique government standards.

With respect to specific comments, ICC had some success: ICC had suggested, that in addition to the list of criteria already included for how agencies should select appropriate standards, that a new criterion be added to avoid conflicts by preferring standards already widely adopted at the state or local level. OMB accepted that comment, and added a new item to its list of agency consideration, that suggests a preference for standards already widely adopted at the state and local level to achieve consistency. They also added a related item, that said agencies should use standards already in use by other agencies, to improve Federal consistency and coordination. These criteria should support Federal usage of ICC codes/standards, as ICC codes/standards are widely and consistently adopted at the federal, state and local level. While we had also suggested that the term "standards" used throughout the document be specifically defined to include codes, this recommendation was not followed. However, it is clear from the history of OMB A-119 that "model codes" as the term is used by ICC, are most certainly

included in the definition of standards used in OMB A-119, and widely used by Federal agencies, and it was apparently deemed unnecessary to make that inclusion explicit.