



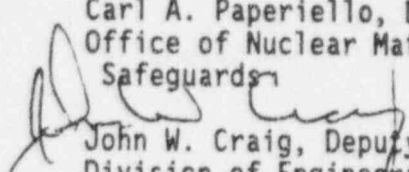
UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

November 21, 1996

MEMORANDUM TO: David L. Morrison, Director
Office of Nuclear Regulatory Research

Frank J. Miraglia, Acting Director
Office of Nuclear Reactor Regulation

Carl A. Paperiello, Director
Office of Nuclear Material Safety and
Safeguards

FROM:  John W. Craig, Deputy Director
Division of Engineering Technology
Office of Nuclear Regulatory Research

SUBJECT: OFFICE INPUT FOR OMB CIRCULAR A-119 ANNUAL REPORT

OMB Circular A-119, "Federal Participation in the Development and Use of Voluntary Standards," (Enclosure 1) requires that each Federal agency submit an annual report on the status of agency interaction with voluntary standards bodies. The Circular provides for designation of an agency Standards Executive who is responsible for agency-wide implementation of the Circular's provisions. As the designated NRC Standards Executive, I am requesting input from you for the noted annual report. Although the Circular addresses many issues associated with staff participation on codes and standards activities, which will be addressed in the future, the response to this memorandum focuses on the information needed to prepare the annual report, which must be submitted to the Department of Commerce, National Institute of Standards and Technology by December 31, 1996.

Enclosure 2 identifies the specific information required for the annual report. Information relevant to Item No. 1 has already been obtained through a survey in March 1996 of each program, staff, and regional office; therefore, you need not address that item. Your office is requested to provide the information identified in Enclosure 2 Item Nos. 2 through 5 for the period October 1, 1995, through September 30, 1996. Item Nos. 2 and 3 should include the applicable standard and method of adoption, and Item Nos. 4 and 5 should include the method of adoption for each standard identified.

Please provide the requested information to Gilbert C. Millman (Program Manager, Codes and Standards) by December 13, 1996. If your staff have questions or require further information, please have them contact Mr. Millman at 415-5843.

cosmetic surgery are at the full reimbursement rate, entitled Inpatient and Outpatient Rates. The patient will be responsible for both the cost of the implant(s) and prescribed rates.

Note: The implants and procedures used for the augmentation mammoplasty are in compliance with Federal Drug Administration guidelines.

* Each regional liposuction will carry a separate charge. Regions include head and neck, abdomen, flanks, and hips.

* These procedures are inclusive in the minor skin lesions. However, CHAMPUS separates them as noted here. All charges are for the entire treatment regardless of the number of visits required.

For the period beginning October 1, 1993, the rates prescribed herein superseded those established by the Director of the Office of Management and Budget on October 27, 1992 (57 CFR 48642).

Dated: October 19, 1993.

Leon Z. Panetta,

Director, Office of Management and Budget.

[FR Doc. 93-26322 Filed 10-25-93; 8:45 am]

BILLING CODE 2510-01-P

Revision of OMB Circular No. A-119, Notice of Implementation

AGENCY: Office of Management and Budget.

ACTION: The Office of Management and Budget (OMB) is issuing a revised version of OMB Circular No. A-119, "Federal Participation in the Development and Use of Voluntary Standards." The Circular has been revised to foster greater agency use of voluntary standards, particularly in light of recently stated national objectives, and to increase the effectiveness of the Circular.

SUMMARY: OMB Circular No. A-119 provides policies on Federal use of private standards, and agency participation in voluntary standards bodies and standards-developing groups. Participation in such groups should occur when it is in the public interest and is compatible with agencies' missions, authorities, priorities, and budget resources.

DATES: The revised Circular is effective immediately upon issuance.

FOR FURTHER INFORMATION CONTACT: Chris Jordan, Policy Analyst, Office of Federal Procurement Policy, 725 17th Street, NW., Washington, DC 20503. Telephone (202) 395-6803. To obtain a copy of the Circular, please contact the Executive Office of the President's Publications Office at (202) 395-7332.

SUPPLEMENTARY INFORMATION:

Comments Received

Comments were received from 43 private sector organizations, from 12 Federal Government entities, and from 34 private individuals in response to the request for comment published in the Federal Register on March 20, 1992. The following is an analysis of the comments received and the changes made to the Circular.

An initial recommendation was made by the Interagency Committee on Standards Policy. They requested that

the guidance letter from the Department of Justice that was attached to the 1982 version of the Circular also be attached to the revised Circular. OMB requested from the Department of Justice a new guidance letter, or a letter reaffirming the 1982 letter. Justice has provided OMB with a letter of reaffirmation. That letter and the 1982 guidance letter follow the text of the Circular.

Definitions

Many commenters requested the deletion of the term "conformity assessment procedures" as part of the definition of a "standard." Consequently, many of these commenters felt that all reference to conformity assessment procedures be deleted from the document. Some of these comments suggested that the issue of conformity assessment be covered in a separate OMB circular while others believed that the issue was simply not a government issue. At this time, OMB believes A-119 is not the proper vehicle to address the complex issue of conformity assessment and therefore all references to conformity assessment procedures have been deleted.

Several commenters recommended that the definitions currently in use in Circular A-119 may be ambiguous, and therefore should be altered to reflect the definitions being used in the GATT Standards Code. Although OMB understands the rationale for this recommendation, it is our belief that the current definitions in the Circular are not being misinterpreted and have served their purpose well. Therefore, we believe that changing these definitions at this time could confuse matters and would, therefore, be inappropriate.

Other commenters suggested definitions should be added to the Circular for the terms "environmentally sound" and "energy efficient". OMB believes that these terms are adequately described in Executive Order 12780, and therefore should not be redefined in an OMB Circular.

Policy Guidelines

One comment was received from the Environmental Protection Agency recommending that in the opening paragraph a clause be added stating that when properly conducted standards could "promote the concepts of pollution prevention and the use of recycled content materials." That has been added to the Circular.

Numerous comments were received regarding section 7.a. on Reliance on Voluntary Standards. Many commenters were concerned about the terminology used in paragraph 7.a.(2) governing voluntary standards "that are internationally recognized or accepted." That language has been changed to reflect the comments received from the Office of the United States Trade Representative (USTR).

Several comments were received on subsections 7.a.(4) and 7.b.(4) giving preference to voluntary standards reflecting the metric system. Many comments received recommended that metric units always be listed first with English units in parentheses or that metric units be the only units listed. Other commenters were concerned that OMB advocating a "hard" conversion to metric could lead to economic hardships in some industry sectors or have an adverse effect on safety considerations. OMB believes that the Circular, as it is currently written, adequately reflects the intention of Executive Order 12770, to promote the use of the metric system of measurements in all aspects of government business, where economically feasible. As is stated at the beginning of paragraph 7, standards activities, when not properly conducted, can have an adverse effect on health and safety, trade and commerce, and can suppress free and fair competition. It is not intended that the promotion of standards using the metric system supersede the concerns expressed earlier in the Circular regarding possible

economic hardships or health and safety considerations.

Sixteen commenters, including 6 Federal agencies and the Interagency Committee on Standards Policy, addressed issues related to agency employee participation in standards developing bodies. A key issue with all the commenters focused on ethics, and under what circumstances an agency employee can participate. To clarify that matter, OMB asked for an opinion from the Office of Government Ethics (OGE). That opinion specifically states that "from an ethics point of view, the Circular does not raise major concerns." However, OMB reminds federal employees participating in standards developing activities that they, as the Circular states, should refrain from decisionmaking involvement in the internal day-to-day management of such bodies.

Responsibilities

Another revision to the Circular was the paragraph added as section 8.a.(4) concerning responsibilities of the Secretary of Commerce. This proposed section read: "The Secretary will pursue, with other nations and international organizations, the mutual recognition of standards, including conformance assessment procedures." OMB received many comments from industry organizations and standards developers recommending that this section be deleted. Their concern was primarily that the issue of conformance assessment was too complex for the scope of this Circular. In addition, the USTR stated its opposition to the inclusion of this paragraph on the basis that delegation of this authority to the Secretary of Commerce would be inappropriate because the Trade Agreements Act states that representation of the United States before international standards developing bodies shall be carried out by the organization member—the private individual who holds membership in the international standards organization. Therefore, the proposed section 8.a.(4) has been deleted from the Circular.

Several comments were received recommending changes to the provision concerning the development of agency-wide directories of participation in standards developing bodies. A few government agencies, including the Interagency Committee on Standards Policy, recommended that a common format be used in development of these directories. Other comments were received from the private sector requesting that a provision be added to ensure that these directories are made

available to the public. OMB agrees with both of these comments, and has added a new paragraph 8.a.(4) which states "(The Secretary will) establish procedures by which agencies will develop the harmonized directories described in paragraph 8.b.(2)d., and establish procedures to make these directories available to the public."

Under section 8.b. concerning the responsibilities of the heads of agencies, there was a proposal in subparagraph 2. that the head of agency shall designate a senior level official "with agency-wide responsibility" to implement the Circular. At the suggestion of the Interagency Council on Standards Policy, the language has been modified to state that the Standards Executive must be a senior level official "who will be responsible for agency-wide implementation of this Circular." The original language was proposed to ensure that the issue of voluntary standards was given proper attention throughout each agency; however OMB agrees that the proposed language may have been too restrictive for some agencies.

Also under section 8.b., language was proposed in subparagraph b. that would "ensure" that two or more agencies participating in a given voluntary standards body, coordinate their views on matters of great importance. Several commenters noted that this could be in violation of some procedural rules of certain standards developing bodies, and could increase the likelihood of block voting. As recommended by the Interagency Committee on Standards Policy, the following clause has been added to the end of that section: " * * * and, where not feasible, a mutual recognition of differences." OMB intends, by making this change to the document, that, on matters of paramount importance, agency representatives should meet and discuss their respective positions. If the different missions of the agencies involved make a compromise not possible, then the participants should advocate their respective agency's position to the standards developing group. OMB simply wants to ensure that the agency participants make a good faith effort to coordinate their views on these important issues.

Reporting Requirements

Twenty commenters recommended changes to the reporting requirements. The Interagency Committee on Standards Policy recommended that instead of the proposed annual reporting requirement, a biennial requirement would be sufficient. OMB believes that the annual requirement

should not prove to be overly burdensome, given the important nature of this policy. OMB believes that following the development of agency directories, the process by which the individual agency reports will be produced should not be excessively time consuming.

Several commenters addressed the subject of what specific data should be included in the report. Most of these comments suggested that the proposed data request was too broad, and possibly, not accessible by the agencies. In the past, OMB has not been specific on this subject; however OMB believes that in order to allow the agency to develop trend data, and more adequately assess agency compliance with the Circular, specific data must be requested. Therefore, the data request has been changed to more adequately reflect current agency participation in standards developing bodies and the extent to which this participation has led to the adoption of voluntary standards. In addition, OMB will request identification of all voluntary standards adopted by each agency for the purpose of promoting environmentally safe and energy efficient materials, products, systems, services or practices.

Dated October 20, 1993.

Allan V. Burman,

Administrator, Office of Federal Procurement Policy.

(Circular No. A-119, Revised)

To the Heads of Executive Departments and Establishments.

Subject: Federal Participation in the Development and Use of Voluntary Standards.

1. *Purpose.* This Circular establishes policy to be followed by executive agencies in working with voluntary standards bodies. It also establishes policy to be followed by executive branch agencies in adopting and using voluntary standards.

2. *Rescissions.* This Circular supersedes OMB Circular No. A-119, dated October 28, 1982, which is rescinded.

3. *Background.* Government functions often involve products or services that must meet reliable standards. Many such standards, appropriate or adaptable for the Government's purposes, are available from private voluntary standards bodies. Government participation in the standards-related activities of these voluntary bodies provides incentives and opportunities to establish standards that serve national needs, and the adoption of voluntary standards, whenever practicable and

appropriate, eliminates the costs to the Government of developing its own standards. Adoption of voluntary standards also furthers the policy of reliance upon the private sector to supply Government needs for goods and services, as enunciated in OMB Circular No. A-76, "Performance of Commercial Activities."

4. *Applicability.* This Circular applies to all Executive agency participation in voluntary standards activities, domestic and international, but not to activities carried out pursuant to treaties and international standardization agreements.

5. *Definitions.* As used in this Circular:

a. *Executive agency* (hereinafter referred to as "agency") means any executive department, independent commission, board, bureau, office, agency, Government-owned or controlled corporation or other establishment of the Federal Government, including regulatory commission or board. It does not include the legislative or judicial branches of the Federal Government.

b. *Standard* means a prescribed set of rules, conditions, or requirements concerned with the definition of terms; classification of components; delineation or procedures, specification of dimensions, materials, performance, design, or operations; measurement of quality and quantity in describing materials, products, systems, services, or practices; or descriptions of fit and measurement of size.

c. *Voluntary Standards* are established generally by private sector bodies, both domestic and international, and are available for use by any person or organization, private or governmental. The term includes what are commonly referred to as "industry standards" as well as "consensus standards", but does not include professional standards of personal conduct, institutional codes of ethics, private standards of individual firms, or standards mandated by law, such as those contained in the United States Pharmacopeia and the National Formulary, as referenced in 21 U.S.C. 351.

d. *Government Standards* include individual agency standards and specifications as well as Federal and Military standards and specifications.

e. *Voluntary standards bodies* are private sector domestic or international organizations—such as nonprofit organizations, industry associations, professional and technical societies, institutes, or groups, and recognized test laboratories—that plan, develop,

establish, or coordinate voluntary standards.

f. *Standards-developing groups* are committees, boards, or any other principal subdivisions of voluntary standards bodies, established by such bodies for the purpose of developing, revising, or reviewing standards, and which are bound by the procedures of those bodies.

g. *Adoption* means the use of the latest edition of a voluntary standard in whole, in part, or by reference for procurement purposes and the inclusion of the latest edition of a voluntary standard in whole, in part, or by reference in regulation(s).

h. *Secretary* means the Secretary of Commerce or that Secretary's designee.

6. *Policy.* It is the policy of the Federal Government in its procurement and regulatory activities to:

a. Rely on voluntary standards, both domestic and international, whenever feasible and consistent with the law and regulation pursuant to law;

b. Participate in voluntary standards bodies when such participation is in the public interest and is compatible with agencies' missions, authorities, priorities, and budget resources; and

c. Coordinate agency participation in voluntary standards bodies so that (1) the most effective use is made of agency resources and representatives; and (2) the views expressed by such representatives are in the public interest and, as a minimum, do not conflict with the interests and established views of the agencies.

7. *Policy Guidelines.* In implementing the policy established by this Circular, agencies should recognize the positive contribution of standards development and related activities. When properly conducted, standards development can increase productivity and efficiency in Government and industry, expand opportunities for international trade, conserve resources, improve health and safety, and promote the concepts of pollution prevention and the use of recycled content materials. It also must be recognized, however, that these activities, if improperly conducted, can suppress free and fair competition, impede innovation and technical progress, exclude safer and less expensive products, or otherwise adversely affect trade, commerce, health, or safety. Full account in carrying out this policy shall be taken of the impact on the economy, applicable Federal laws, policies, and national objectives, including, for example, laws and regulations relating to antitrust, national security, small business, product safety, environment, metrication, technological development,

and conflicts of interest. It should also be noted, however, that the provisions of this Circular are intended for internal management purposes only and are not intended to (1) create delay in the administrative process, (2) provide new grounds for judicial review, or (3) create legal rights enforceable against agencies or their officers. The following policy guidelines are provided to assist and govern implementation of the policy enunciated in paragraph 6.

a. *Reliance on Voluntary Standards.*

(1) Voluntary standards that will serve agencies' purposes and are consistent with applicable laws and regulations should be adopted and used by Federal agencies in the interests of greater economy and efficiency, unless they are specifically prohibited by law from doing so.

(2) International standards should be considered in procurement and regulatory applications in the interests of promoting trade and implementing the provisions of the Agreement on Technical Barriers to Trade and the Agreement on Government Procurement (commonly referred to as the "Standards Code" and the "Procurement Code", respectively.)

(3) Voluntary standards should be given preference over non-mandatory Government standards unless use of such voluntary standards would adversely affect performance or cost, reduce competition, or have other significant disadvantages.

(4) In adopting and using voluntary standards, preference should be given to those based on performance criteria when such criteria may reasonably be used in lieu of design, material, or construction criteria. Preference should also be given, in light of stated national goals and objectives, to the adoption and use of voluntary standards that (i) reflect the metric system of measurement, and (ii) foster materials, products, systems, services, or practices that are environmentally sound and energy efficient.

(5) Voluntary standards adopted by Federal agencies should be referenced, along with their dates of issuance and sources of availability, in appropriate publications, regulatory orders, and related in-house documents. Such adoption should take into account the requirements of copyright and other similar restrictions.

(6) Agencies should not be inhibited, if within their statutory authorities, from developing and using Government standards in the event that voluntary standards bodies cannot or do not develop a needed, acceptable standard in a timely fashion. Nor should the policy contained in this Circular be

construed to commit any agency to the use of a voluntary standard which, after due consideration, is, in its opinion, inadequate, does not meet statutory criteria, or is otherwise inappropriate.

b. Participation in Voluntary Standards Bodies

(1) Participation by knowledgeable agency employees in the standards activities of voluntary standards bodies and standards-developing groups, both domestic and international, should be actively encouraged and promoted by agency officials when consistent with the provisions of paragraph 8b.

(2) Agency employees who, at Government expense, participate in standards activities of voluntary standards bodies and standards-developing groups should do so in their governmental capacities as specifically authorized agency representatives.

(3) Agency participation in voluntary standards bodies and standards-developing groups does not, of itself, connote agency agreement with, or endorsement of, decisions reached by such bodies and groups or of standards approved and published by voluntary standards bodies.

(4) Participation by agency representatives should be aimed at contributing to the development of voluntary standards that (a) will eliminate the necessity for development or maintenance of separate Government standards, and (b) will further such national goals and objectives as increased use of (i) the metric system of measurement, and (ii) environmentally sound and energy efficient materials, products, systems, services, or practices.

(5) Agency representatives serving as members of standards-developing groups should participate actively and on a basis of equality with private sector representatives. In doing so, agency representatives should not seek to dominate such groups. Active participation is intended to include full involvement in discussions and technical debates, registering of opinions and, if selected, serving as chairpersons or in other official capacities. Agency representatives may vote, in accordance with the procedures of the voluntary standards body, at each stage of standards development, unless specifically prohibited from doing so by law or their agencies.

(6) The number of individual agency participants in a given voluntary standards activity should be kept to the minimum required for effective presentation of the various program, technical, or other concerns of Federal agencies.

(7) The providing of Agency support to a voluntary standards activity should

be limited to that which is clearly in furtherance of an agency's mission and responsibility. Normally, the total amount of Federal support should be no greater than that of all private sector participants in that activity except when it is in the direct and predominant interest of the Government to develop a standard or revision thereto and its development appears unlikely in the absence of such support. The form of agency support, subject to legal and budgetary authority, may include:

(a) Direct financial support; e.g., grants, sustaining memberships, and contracts;

(b) Administrative support; e.g., travel costs, hosting of meetings, and secretarial functions;

(c) Technical support; e.g., cooperative testing for standards evaluation and participation of agency personnel in the activities of standards-developing groups; and

(d) Joint planning with voluntary standards bodies to facilitate a coordinated effort in identifying and developing needed standards.

(8) Participation by agency representatives in the policymaking process of voluntary standards bodies, in accordance with the procedures of those bodies, is encouraged—particularly in matters such as establishing priorities, developing procedures for preparing, reviewing, and approving standards, and creating standards-developing groups. In order to maintain the private, nongovernmental nature of such bodies, however, agency representatives should refrain from decisionmaking involvement in the internal day-to-day management of such bodies (e.g., selection of salaried officers and employees, establishment of staff salaries and administrative policies).

(9) This Circular does not provide guidance concerning the internal operating procedures that may be applicable to voluntary standards bodies because of their relationships to agencies under this Circular. Agencies should, however, carefully consider what laws or rules may apply in a particular instance because of these relationships. For example, these relationships may involve the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), or a provision of an authorizing statute for a particular agency. Agencies are best able to determine what laws and policies should govern particular relationships and to assess the extent to which competition may be enhanced and cost-effectiveness increased. Questions relating to anti-trust implications of such relationships should be addressed to the Attorney General.

8. Responsibilities.

a. The Secretary will:

(1) Coordinate and foster executive branch implementation of the policy in paragraph 6 of this Circular, and may provide administrative guidance to assist agencies in implementing paragraph 8.b.(2)(d) of this Circular;

(2) Establish an interagency consultative mechanism to advise the Secretary and agency heads in implementing the policy contained herein. That mechanism shall provide for participation by all affected agencies and ensure that their views are considered;

(3) Report to the Office of Management and Budget concerning implementation of this Circular; and

(4) Establish procedures by which agencies will develop the directories described in paragraph 8b(2)(d), and establish procedures to make these directories available to the public.

b. The heads of agencies concerned with standards will:

(1) Implement the policy in paragraph 6 of this Circular in accordance with the policy guidelines in paragraph 7 within 120 days of issuance;

(2) Within 120 days of issuance, shall designate a senior level official as the Standards Executive who will be responsible for agency-wide implementation of this Circular. The Standards Executive's responsibilities will include, but not be limited to:

(a) Establishing procedures to ensure that agency representatives participating in voluntary standards bodies and standards-developing groups will, to the extent possible, ascertain the views of the agency on matters of paramount interest and will, as a minimum, express views that are not inconsistent or in conflict with established agency views;

(b) Ensuring, when two or more agencies participate in a given voluntary standards body or standards-developing group, that they coordinate their views on matters of paramount importance so as to present, whenever feasible, a single, unified position and, where not feasible, a mutual recognition of differences;

(c) Cooperating with the Secretary in carrying out his responsibilities under this Circular;

(d) Consulting with the Secretary, as necessary, in the development and issuance of internal agency procedures and guidance implementing this Circular, including the development and harmonized implementation of an agency-wide directory identifying agency employees participating in standards developing groups; and

(e) Submitting, in response to the request of the Secretary, reports on the

status of agency interaction with voluntary standards bodies.

(3) Review their existing standards within five years of issuance of this Circular, and at least once every five years thereafter, and replace those for which an adequate and appropriate voluntary standard can be substituted.

9. *Reporting Requirements.* One year from the date of issuance of this Circular, and every year thereafter, the Secretary will submit to the Office of Management and Budget a brief, summary report on the status of agency interaction with voluntary standards bodies. As a minimum, the report will include the following information:

a. The nature and extent of agency participation in the development and utilization of voluntary standards, including:

(1) the number of agency employees participating in at least one standards developing group;

(2) the number of voluntary standards the agency has adopted since the last report which result from agency participation in a standards developing group;

(3) the number of standards the agency has replaced as a result of the requirements set forth in paragraph 8b.(3).

b. Identification of any voluntary standards that have been adopted for the purpose of promoting environmentally sound and energy efficient materials, products, systems, services or practices.

c. An evaluation of the effectiveness of the policy promulgated in this Circular and recommendations for change.

10. *Policy Review.* The policy contained in this Circular shall be reviewed for effectiveness by the Office of Management and Budget three years from the date of issuance.

11. *Inquiries.* For information concerning this Circular, contact the Office of Management and Budget, Office of Federal Procurement Policy, telephone 202/395-6803.

Leon E. Panetta,
Director.

U.S. Department of Justice, Antitrust
Division

July 27, 1993.

Mr. Allan V. Burman,
Administrator, Office of Federal Procurement
Policy, Executive Office of the President,
Office of Management and Budget,
Washington, DC 20503.

Dear Mr. Burman: I am writing in regard to your memorandum of June 25, 1993, soliciting comments concerning OMB's proposed changes to OMB Circular A-119, "Federal Participation in the Development and Use of Voluntary Standards." This Circular encourages Federal participation in

the development of voluntary standards and the use of such standards in procurement, regulatory and other applications.

At the time that Circular A-119 was last revised, the Department of Justice, in a June 22, 1982 letter from Acting Assistant Attorney General for Antitrust Ronald C. Carr, advised OMB concerning the competitive benefits and potential problems that can result from industry development of voluntary standards. I have reviewed that letter, a copy of which is enclosed, in light of OMB's current revision of Circular A-119 and I have determined that it continues accurately to state the Department's views concerning Federal participation in voluntary standards-setting organizations.

From the standpoint of competition policy, Federal employees who participate in the development of industry standards should be aware that the potential for anticompetitive harm resulting from industry standards setting can be reduced to the extent that such proceedings are open and transparent and provide an opportunity for notice and comment to any person potentially affected by the promulgation of the proposed standards. The adoption of performance rather than design standards also helps considerably to reduce competitive concerns. Thus, it is appropriate that Federal personnel who participate in voluntary standards-developing bodies advocate these principles whenever possible. At the same time, Federal personnel should understand that their participation in the standards-setting process generally does not confer antitrust immunity on industry participants, and Federal personnel should make clear that their presence does not imply Federal approval of any particular standards-setting process or of any resulting standards.

Sincerely,

Anne K. Bingaman,
Assistant Attorney General
Enclosure.

U.S. Department of Justice, Antitrust
Division

June 22, 1982.

Mr. Donald E. Sowle
Administrator for Federal Procurement
Policy, Office of Management and
Budget, Washington, DC 20503.

Dear Mr. Sowle: I am writing to express the views of the Department of Justice on competition policy issues raised by the Revised OMB Circular No. A-119, "Federal Participation in the Development and Use of Voluntary Standards" published for comment in the Federal Register on April 20, 1982 (47 Fed. Reg. 16,919).

In our comments on previous drafts of the Circular, dated December 26, 1976 and June 13, 1978, we have supported a policy of federal adoption of privately developed standards when appropriate. Through participation in, and support for, private standards making activities, agencies may benefit greatly from private expertise and will avoid the wasteful duplication of cost and effort involved in developing their own in-house standards. The Department of Justice is not opposed to the policy announced in Revised OMB Circular A-119,

which would eliminate the rigid "due process" precondition to federal participation in private standards activities. Such a precondition is overly restrictive, since as a practical matter federal agencies will often be required to adopt the standards developed regardless of federal participation in their development. Thus, in our view, the better solution is to participate in standards setting bodies and work within them to assure that appropriate procedures are adopted.

The Department believes that federal participants should encourage the adoption of procedures to foster access to standard setting activities and transparency in such activities. Such procedures facilitate the development of standards acceptable to the entire affected industry as well as to consumers. In particular, notice and opportunity for comment help assure that standards will be based on adequate information as to their utility and consequences. Moreover, it is especially important that performance criteria be given a prominent, perhaps predominant, place in any standards activity. Federal agency representatives, therefore, should advocate, as strongly as possible, procedures designed to assure that a broad range of information is solicited, and that performance criteria are central elements of the resulting standards.

In addition to the practical advantages of open standards proceedings, such safeguards would mitigate the substantial anticompetitive potential inherent in private standards groups. The importance of assuring adequate consideration of competition in the work of private standards bodies was noted recently by the Supreme Court in *American Society of Mechanical Engineers, Inc. v. Hydrolevel Corp.* The case involved a product standard which had been adopted in 46 states and all but one of the Canadian provinces. The Court observed that organizations creating such standards could be "rife with opportunities for anticompetitive activity." Federal agencies ought to strongly encourage these private groups to ensure consideration of all relevant viewpoints and interests including those of consumers, and potential or existing industry participants.

This country's international obligations and policy, as expressed in the Standards Code negotiated during the Tokyo Round of the Multilateral Trade Negotiations, see the Agreement on Technical Barriers to Trade, codified at 19 U.S.C.A. 2531 et seq. (1980), provide another important reason for federal agency participants to encourage the adoption of open procedures for private standards groups. This Code, approved by Congress as well as by our leading trading partners, seeks to prevent the creation of product standards which discriminate against import competition. It requires central governmental bodies to provide notice and opportunity to comment in their own standards making activities, and encourages governments to take reasonable measures to ensure that non-governmental bodies provide similar protection. Where the federal government is in fact involved in the private group, the obligations of the Standards Code would appear even stronger.

Enclosure 2

Individual Office Input to
OMB Circular A-119 Annual Report
Period Covered: October 1, 1995 - September 30, 1996

Item No.	Information Request	Office Input	
		Number	[Standard Title (year), Method of Adoption] ^(2,3,4,5)
1	Number of agency (office) employees participating in at least one standards developing group [Identify standards developing organization (SDO)]	N/A	N/A
2	Number of voluntary standards the agency (office) has adopted since 10/1/95 which resulted from agency participation in a standards developing group. [Identify standard and method of adoption]		
3	Number of internal standards agency (office) has replaced with voluntary consensus standards [Identify standard and method of adoption]		
4	Identify any voluntary standards that have been adopted for the purpose of promoting environmentally sound and energy efficient materials, products, systems, services, or practices. [Identify method of adoption]		
5	Identify any voluntary standards, for which there is an ongoing action, that could be adopted by the agency during FY 97. [Identify intended method of adoption]		

(2,3,4,5): Indicates applicability to Item Nos.

MATTHEWS

ACTION

ACTION

EDO Principal Correspondence Control

FROM:

DUE: 12/13/96

EDO CONTROL: G960880

DOC DT: 10/26/93

FINAL REPLY:

OMB

TO:

NRC

*rec'd
11/22/96*

FOR SIGNATURE OF :

** GRN **

CRC NO:

DESC:

ROUTING:

ANNUAL REPORT TO DEPT. OF COMMERCE ON STATUS OF
AGENCY INTERACTIONS WITH VOLUNTARY STANDARDS
BODIES

Taylor
Milhoan
Thompson
Blaha

DATE: 11/21/96

ASSIGNED TO:

CONTACT:

RES	Morrison
<u>NRR</u>	Miraglia
NMSS	Paperiello

*Pls. coordinate
Whether NRR Divisions*

SPECIAL INSTRUCTIONS OR REMARKS:

RES, NRR, & NMSS provide input for report by
12/13/96 to Gilbert Millman, RES, in accordance
with instructions in the attached 11/21/96 memo
from John Craig.

RES prepare annual report to Commerce by 12/27/96.

NRR RECEIVED: NOVEMBER 21, 1996

NRR ACTION: DRPM:MARTIN

NRR ROUTING: MIRAGLIA
THADANI
ZIMMERMAN
SHERON
MARTIN
BOHRER

ACTION

DUE TO NRR DIRECTOR'S OFFICE

BY Dec. 10, 1996

cosmetic surgery are at the full reimbursement rate, entitled Inpatient and Outpatient Rates. The patient will be responsible for both the cost of the implant(s) and prescribed rates.

Note: The implants and procedures used for the augmentation mammoplasty are in compliance with Federal Drug Administration guidelines.

* Each regional lipectomy will carry a separate charge. Regions include head and neck, abdomen, flanks, and hips.

* These procedures are inclusive in the minor skin lesions. However, CHAMPUS separates them as noted here. All charges are for the entire treatment regardless of the number of visits required.

For the period beginning October 1, 1993, the rates prescribed herein superseded those established by the Director of the Office of Management and Budget on October 27, 1992 (57 CFR 49642).

Dated: October 19, 1993.

Leon E. Panetta,

Director, Office of Management and Budget.

[FR Doc. 93-26322 Filed 10-25-93; 8:45 am]

BILLING CODE 9110-01-P

Revision of OMB Circular No. A-119, Notice of Implementation

AGENCY: Office of Management and Budget.

ACTION: The Office of Management and Budget (OMB) is issuing a revised version of OMB Circular No. A-119, "Federal Participation in the Development and Use of Voluntary Standards." The Circular has been revised to foster greater agency use of voluntary standards, particularly in light of recently stated national objectives, and to increase the effectiveness of the Circular.

SUMMARY: OMB Circular No. A-119 provides policies on Federal use of private standards, and agency participation in voluntary standards bodies and standards-developing groups. Participation in such groups should occur when it is in the public interest and is compatible with agencies' missions, authorities, priorities, and budget resources.

DATES: The revised Circular is effective immediately upon issuance.

FOR FURTHER INFORMATION CONTACT: Chris Jordan, Policy Analyst, Office of Federal Procurement Policy, 725 17th Street, NW., Washington, DC 20503. Telephone (202) 395-6803. To obtain a copy of the Circular, please contact the Executive Office of the President's Publications Office at (202) 395-7332.

SUPPLEMENTARY INFORMATION:

Comments Received

Comments were received from 43 private sector organizations, from 12 Federal Government entities, and from 34 private individuals in response to the request for comment published in the Federal Register on March 20, 1992. The following is an analysis of the comments received and the changes made to the Circular.

An initial recommendation was made by the Interagency Committee on Standards Policy. They requested that

the guidance letter from the Department of Justice that was attached to the 1982 version of the Circular also be attached to the revised Circular. OMB requested from the Department of Justice a new guidance letter, or a letter reaffirming the 1982 letter. Justice has provided OMB with a letter of reaffirmation. That letter and the 1982 guidance letter follow the text of the Circular.

Definitions

Many commenters requested the deletion of the term "conformity assessment procedures" as part of the definition of a "standard." Consequently, many of these commenters felt that all reference to conformity assessment procedures be deleted from the document. Some of these comments suggested that the issue of conformity assessment be covered in a separate OMB circular while others believed that the issue was simply not a government issue. At this time, OMB believes A-119 is not the proper vehicle to address the complex issue of conformity assessment and therefore all references to conformity assessment procedures have been deleted.

Several commenters recommended that the definitions currently in use in Circular A-119 may be ambiguous, and therefore should be altered to reflect the definitions being used in the GATT Standards Code. Although OMB understands the rationale for this recommendation, it is our belief that the current definitions in the Circular are not being misinterpreted and have served their purpose well. Therefore, we believe that changing these definitions at this time could confuse matters and would, therefore, be inappropriate.

Other commenters suggested definitions should be added to the Circular for the terms "environmentally sound" and "energy efficient". OMB believes that these terms are adequately described in Executive Order 12780, and therefore should not be redefined in an OMB Circular.

Policy Guidelines

One comment was received from the Environmental Protection Agency recommending that in the opening paragraph a clause be added stating that when properly conducted standards could "promote the concepts of pollution prevention and the use of recycled content materials." That has been added to the Circular.

Numerous comments were received regarding section 7.a. on Reliance on Voluntary Standards. Many commenters were concerned about the terminology used in paragraph 7.a.(2) governing voluntary standards "that are internationally recognized or accepted." That language has been changed to reflect the comments received from the Office of the United States Trade Representative (USTR).

Several comments were received on subsections 7.a.(4) and 7.b.(4) giving preference to voluntary standards reflecting the metric system. Many comments received recommended that metric units always be listed first with English units in parenthesis or that metric units be the only units listed. Other commenters were concerned that OMB advocating a "hard" conversion to metric could lead to economic hardships in some industry sectors or have an adverse affect on safety considerations. OMB believes that the Circular, as it is currently written, adequately reflects the intention of Executive Order 12770, to promote the use of the metric system of measurements in all aspects of government business, where economically feasible. As is stated at the beginning of paragraph 7, standards activities, when not properly conducted, can have an adverse affect on health and safety, trade and commerce, and can suppress free and fair competition. It is not intended that the promotion of standards using the metric system supersede the concerns expressed earlier in the Circular regarding possible

economic hardships or health and safety considerations.

Sixteen commenters, including 6 Federal agencies and the Interagency Committee on Standards Policy, addressed issues related to agency employee participation in standards developing bodies. A key issue with all the commenters focused on ethics, and under what circumstances an agency employee can participate. To clarify that matter, OMB asked for an opinion from the Office of Government Ethics (OGE). That opinion specifically states that "from an ethics point of view, the Circular does not raise major concerns." However, OMB reminds federal employees participating in standards developing activities that they, as the Circular states, should refrain from decisionmaking involvement in the internal day-to-day management of such bodies.

Responsibilities

Another revision to the Circular was the paragraph added as section 8.a.(4) concerning responsibilities of the Secretary of Commerce. This proposed section read: "The Secretary will pursue, with other nations and international organizations, the mutual recognition of standards, including conformance assessment procedures." OMB received many comments from industry organizations and standards developers recommending that this section be deleted. Their concern was primarily that the issue of conformance assessment was too complex for the scope of this Circular. In addition, the USTR stated its opposition to the inclusion of this paragraph on the basis that delegation of this authority to the Secretary of Commerce would be inappropriate because the Trade Agreements Act states that representation of the United States before international standards developing bodies shall be carried out by the organization member—the private individual who holds membership in the international standards organization. Therefore, the proposed section 8.a.(4) has been deleted from the Circular.

Several comments were received recommending changes to the provision concerning the development of agency-wide directories of participation in standards developing bodies. A few government agencies, including the Interagency Committee on Standards Policy, recommended that a common format be used in development of these directories. Other comments were received from the private sector requesting that a provision be added to ensure that these directories are made

available to the public. OMB agrees with both of these comments, and has added a new paragraph 8.a.(4) which states "(The Secretary will) establish procedures by which agencies will develop the harmonized directories described in paragraph 8.b.(2)d., and establish procedures to make these directories available to the public."

Under section 8.b. concerning the responsibilities of the heads of agencies, there was a proposal in subparagraph 2. that the head of agency shall designate a senior level official "with agency-wide responsibility" to implement the Circular. At the suggestion of the Interagency Council on Standards Policy, the language has been modified to state that the Standards Executive must be a senior level official "who will be responsible for agency-wide implementation of this Circular." The original language was proposed to ensure that the issue of voluntary standards was given proper attention throughout each agency; however OMB agrees that the proposed language may have been too restrictive for some agencies.

Also under section 8.b., language was proposed in subparagraph b. that would "ensure" that two or more agencies participating in a given voluntary standards body, coordinate their views on matters of great importance. Several commenters noted that this could be in violation of some procedural rules of certain standards developing bodies, and could increase the likelihood of block voting. As recommended by the Interagency Committee on Standards Policy, the following clause has been added to the end of that section: " * * * and, where not feasible, a mutual recognition of differences." OMB intends, by making this change to the document, that, on matters of paramount importance, agency representatives should meet and discuss their respective positions. If the different missions of the agencies involved make a compromise not possible, then the participants should advocate their respective agency's position to the standards developing group. OMB simply wants to ensure that the agency participants make a good faith effort to coordinate their views on these important issues.

Reporting Requirements

Twenty commenters recommended changes to the reporting requirements. The Interagency Committee on Standards Policy recommended that instead of the proposed annual reporting requirement, a biennial requirement would be sufficient. OMB believes that the annual requirement

should not prove to be overly burdensome, given the important nature of this policy. OMB believes that following the development of agency directories, the process by which the individual agency reports will be produced should not be excessively time consuming.

Several commenters addressed the subject of what specific data should be included in the report. Most of these comments suggested that the proposed data request was too broad, and possibly, not accessible by the agencies. In the past, OMB has not been specific on this subject; however OMB believes that in order to allow the agency to develop trend data, and more adequately assess agency compliance with the Circular, specific data must be requested. Therefore, the data request has been changed to more adequately reflect current agency participation in standards developing bodies and the extent to which this participation has led to the adoption of voluntary standards. In addition, OMB will request identification of all voluntary standards adopted by each agency for the purpose of promoting environmentally safe and energy efficient materials, products, systems, services or practices.

Dated October 20, 1993.

Allan V. Burman,

Administrator, Office of Federal Procurement Policy.

[Circular No. A-119, Revised]

To the Heads of Executive Departments and Establishments.

Subject: Federal Participation in the Development and Use of Voluntary Standards.

1. *Purpose.* This Circular establishes policy to be followed by executive agencies in working with voluntary standards bodies. It also establishes policy to be followed by executive branch agencies in adopting and using voluntary standards.

2. *Rescissions.* This Circular supersedes OMB Circular No. A-119, dated October 26, 1982, which is rescinded.

3. *Background.* Government functions often involve products or services that must meet reliable standards. Many such standards, appropriate or adaptable for the Government's purposes, are available from private voluntary standards bodies. Government participation in the standards-related activities of these voluntary bodies provides incentives and opportunities to establish standards that serve national needs, and the adoption of voluntary standards, whenever practicable and

appropriate, eliminates the costs to the Government of developing its own standards. Adoption of voluntary standards also furthers the policy of reliance upon the private sector to supply Government needs for goods and services, as enunciated in OMB Circular No. A-76, "Performance of Commercial Activities."

4. *Applicability.* This Circular applies to all Executive agency participation in voluntary standards activities, domestic and international, but not to activities carried out pursuant to treaties and international standardization agreements.

5. *Definitions.* As used in this Circular:

a. *Executive agency* (hereinafter referred to as "agency") means any executive department, independent commission, board, bureau, office, agency, Government-owned or controlled corporation or other establishment of the Federal Government, including regulatory commission or board. It does not include the legislative or judicial branches of the Federal Government.

b. *Standard* means a prescribed set of rules, conditions, or requirements concerned with the definition of terms; classification of components; delineation or procedures, specification of dimensions, materials, performance, design, or operations; measurement of quality and quantity in describing materials, products, systems, services, or practices; or descriptions of fit and measurement of size.

c. *Voluntary Standards* are established generally by private sector bodies, both domestic and international, and are available for use by any person or organization, private or governmental. The term includes what are commonly referred to as "industry standards" as well as "consensus standards", but does not include professional standards of personal conduct, institutional codes of ethics, private standards of individual firms, or standards mandated by law, such as those contained in the United States Pharmacopeia and the National Formulary, as referenced in 21 U.S.C. 351.

d. *Government Standards* include individual agency standards and specifications as well as Federal and Military standards and specifications.

e. *Voluntary standards bodies* are private sector domestic or international organizations—such as nonprofit organizations, industry associations, professional and technical societies, institutes, or groups, and recognized test laboratories—that plan, develop,

establish, or coordinate voluntary standards.

f. *Standards-developing groups* are committees, boards, or any other principal subdivisions of voluntary standards bodies, established by such bodies for the purpose of developing, revising, or reviewing standards, and which are bound by the procedures of those bodies.

g. *Adoption* means the use of the latest edition of a voluntary standard in whole, in part, or by reference for procurement purposes and the inclusion of the latest edition of a voluntary standard in whole, in part, or by reference in regulation(s).

h. *Secretary* means the Secretary of Commerce or that Secretary's designee.

6. *Policy.* It is the policy of the Federal Government in its procurement and regulatory activities to:

a. Rely on voluntary standards, both domestic and international, whenever feasible and consistent with the law and regulation pursuant to law;

b. Participate in voluntary standards bodies when such participation is in the public interest and is compatible with agencies' missions, authorities, priorities, and budget resources; and

c. Coordinate agency participation in voluntary standards bodies so that (1) the most effective use is made of agency resources and representatives; and (2) the views expressed by such representatives are in the public interest and, as a minimum, do not conflict with the interests and established views of the agencies.

7. *Policy Guidelines.* In implementing the policy established by this Circular, agencies should recognize the positive contribution of standards development and related activities. When properly conducted, standards development can increase productivity and efficiency in Government and industry, expand opportunities for international trade, conserve resources, improve health and safety, and promote the concepts of pollution prevention and the use of recycled content materials. It also must be recognized, however, that these activities, if improperly conducted, can suppress free and fair competition, impede innovation and technical progress, exclude safer and less expensive products, or otherwise adversely affect trade, commerce, health, or safety. Full account in carrying out this policy shall be taken of the impact on the economy, applicable Federal laws, policies, and national objectives, including, for example, laws and regulations relating to antitrust, national security, small business, product safety, environment, metrication, technological development,

and conflicts of interest. It should also be noted, however, that the provisions of this Circular are intended for internal management purposes only and are not intended to (1) create delay in the administrative process, (2) provide new grounds for judicial review, or (3) create legal rights enforceable against agencies or their officers. The following policy guidelines are provided to assist and govern implementation of the policy enunciated in paragraph 6.

a. *Reliance on Voluntary Standards.*

(1) Voluntary standards that will serve agencies' purposes and are consistent with applicable laws and regulations should be adopted and used by Federal agencies in the interests of greater economy and efficiency, unless they are specifically prohibited by law from doing so.

(2) International standards should be considered in procurement and regulatory applications in the interests of promoting trade and implementing the provisions of the Agreement on Technical Barriers to Trade and the Agreement on Government Procurement (commonly referred to as the "Standards Code" and the "Procurement Code", respectively.)

(3) Voluntary standards should be given preference over non-mandatory Government standards unless use of such voluntary standards would adversely affect performance or cost, reduce competition, or have other significant disadvantages.

(4) In adopting and using voluntary standards, preference should be given to those based on performance criteria when such criteria may reasonably be used in lieu of design, material, or construction criteria. Preference should also be given, in light of stated national goals and objectives, to the adoption and use of voluntary standards that (i) reflect the metric system of measurement, and (ii) foster materials, products, systems, services, or practices that are environmentally sound and energy efficient.

(5) Voluntary standards adopted by Federal agencies should be referenced, along with their dates of issuance and sources of availability, in appropriate publications, regulatory orders, and related in-house documents. Such adoption should take into account the requirements of copyright and other similar restrictions.

(6) Agencies should not be inhibited, if within their statutory authorities, from developing and using Government standards in the event that voluntary standards bodies cannot or do not develop a needed, acceptable standard in a timely fashion. Nor should the policy contained in this Circular be

construed to commit any agency to the use of a voluntary standard which, after due consideration, is, in its opinion, inadequate, does not meet statutory criteria, or is otherwise inappropriate.

b. Participation in Voluntary

Standards Bodies

(1) Participation by knowledgeable agency employees in the standards activities of voluntary standards bodies and standards-developing groups, both domestic and international, should be actively encouraged and promoted by agency officials when consistent with the provisions of paragraph 6b.

(2) Agency employees who, at Government expense, participate in standards activities of voluntary standards bodies and standards-developing groups should do so in their governmental capacities as specifically authorized agency representatives.

(3) Agency participation in voluntary standards bodies and standards-developing groups does not, of itself, connote agency agreement with, or endorsement of, decisions reached by such bodies and groups or of standards approved and published by voluntary standards bodies.

(4) Participation by agency representatives should be aimed at contributing to the development of voluntary standards that (a) will eliminate the necessity for development or maintenance of separate Government standards, and (b) will further such national goals and objectives as increased use of (i) the metric system of measurement, and (ii) environmentally sound and energy efficient materials, products, systems, services, or practices.

(5) Agency representatives serving as members of standards-developing groups should participate actively and on a basis of equality with private sector representatives. In doing so, agency representatives should not seek to dominate such groups. Active participation is intended to include full involvement in discussions and technical debates, registering of opinions and, if selected, serving as chairpersons or in other official capacities. Agency representatives may vote, in accordance with the procedures of the voluntary standards body, at each stage of standards development, unless specifically prohibited from doing so by law or their agencies.

(6) The number of individual agency participants in a given voluntary standards activity should be kept to the minimum required for effective presentation of the various program, technical, or other concerns of Federal agencies.

(7) The providing of Agency support to a voluntary standards activity should

be limited to that which is clearly in furtherance of an agency's mission and responsibility. Normally, the total amount of Federal support should be no greater than that of all private sector participants in that activity except when it is in the direct and predominant interest of the Government to develop a standard or revision thereto and its development appears unlikely in the absence of such support. The form of agency support, subject to legal and budgetary authority, may include:

(a) Direct financial support; e.g., grants, sustaining memberships, and contracts;

(b) Administrative support; e.g., travel costs, hosting of meetings, and secretarial functions;

(c) Technical support; e.g., cooperative testing for standards evaluation and participation of agency personnel in the activities of standards-developing groups; and

(d) Joint planning with voluntary standards bodies to facilitate a coordinated effort in identifying and developing needed standards.

(8) Participation by agency representatives in the policymaking process of voluntary standards bodies, in accordance with the procedures of those bodies, is encouraged—particularly in matters such as establishing priorities, developing procedures for preparing, reviewing, and approving standards, and creating standards-developing groups. In order to maintain the private, nongovernmental nature of such bodies, however, agency representatives should refrain from decisionmaking involvement in the internal day-to-day management of such bodies (e.g., selection of salaried officers and employees, establishment of staff salaries and administrative policies).

(9) This Circular does not provide guidance concerning the internal operating procedures that may be applicable to voluntary standards bodies because of their relationships to agencies under this Circular. Agencies should, however, carefully consider what laws or rules may apply in a particular instance because of these relationships. For example, these relationships may involve the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), or a provision of an authorizing statute for a particular agency. Agencies are best able to determine what laws and policies should govern particular relationships and to assess the extent to which competition may be enhanced and cost-effectiveness increased. Questions relating to anti-trust implications of such relationships should be addressed to the Attorney General.

8. Responsibilities.

a. The Secretary will:

(1) Coordinate and foster executive branch implementation of the policy in paragraph 6 of this Circular, and may provide administrative guidance to assist agencies in implementing paragraph 8.b.(2)(d) of this Circular;

(2) Establish an interagency consultative mechanism to advise the Secretary and agency heads in implementing the policy contained herein. That mechanism shall provide for participation by all affected agencies and ensure that their views are considered;

(3) Report to the Office of Management and Budget concerning implementation of this Circular; and

(4) Establish procedures by which agencies will develop the directories described in paragraph 8b(2)(d), and establish procedures to make these directories available to the public.

b. The heads of agencies concerned with standards will:

(1) Implement the policy in paragraph 6 of this Circular in accordance with the policy guidelines in paragraph 7 within 120 days of issuance;

(2) Within 120 days of issuance, shall designate a senior level official as the Standards Executive who will be responsible for agency-wide implementation of this Circular. The Standards Executive's responsibilities will include, but not be limited to:

(a) Establishing procedures to ensure that agency representatives participating in voluntary standards bodies and standards-developing groups will, to the extent possible, ascertain the views of the agency on matters of paramount interest and will, as a minimum, express views that are not inconsistent or in conflict with established agency views;

(b) Ensuring, when two or more agencies participate in a given voluntary standards body or standards-developing group, that they coordinate their views on matters of paramount importance so as to present, whenever feasible, a single, unified position and, where not feasible, a mutual recognition of differences;

(c) Cooperating with the Secretary in carrying out his responsibilities under this Circular;

(d) Consulting with the Secretary, as necessary, in the development and issuance of internal agency procedures and guidance implementing this Circular, including the development and harmonized implementation of an agency-wide directory identifying agency employees participating in standards developing groups; and

(e) Submitting, in response to the request of the Secretary, reports on the

status of agency interaction with voluntary standards bodies.

(3) Review their existing standards within five years of issuance of this Circular, and at least once every five years thereafter, and replace those for which an adequate and appropriate voluntary standard can be substituted.

9. *Reporting Requirements.* One year from the date of issuance of this Circular, and every year thereafter, the Secretary will submit to the Office of Management and Budget a brief, summary report on the status of agency interaction with voluntary standards bodies. As a minimum, the report will include the following information:

a. The nature and extent of agency participation in the development and utilization of voluntary standards, including:

(1) the number of agency employees participating in at least one standards developing group;

(2) the number of voluntary standards the agency has adopted since the last report which result from agency participation in a standards developing group;

(3) the number of standards the agency has replaced as a result of the requirements set forth in paragraph 8b.(3).

b. Identification of any voluntary standards that have been adopted for the purpose of promoting environmentally sound and energy efficient materials, products, systems, services or practices.

c. An evaluation of the effectiveness of the policy promulgated in this Circular and recommendations for change.

10. *Policy Review.* The policy contained in this Circular shall be reviewed for effectiveness by the Office of Management and Budget three years from the date of issuance.

11. *Inquiries.* For information concerning this Circular, contact the Office of Management and Budget, Office of Federal Procurement Policy, telephone 202/395-6803.

Leon E. Panetta,
Director.

U.S. Department of Justice, Antitrust
Division

July 27, 1993.

Mr. Allan V. Burman,
Administrator, Office of Federal Procurement
Policy, Executive Office of the President,
Office of Management and Budget,
Washington, DC 20503.

Dear Mr. Burman: I am writing in regard to your memorandum of June 25, 1993, soliciting comments concerning OMB's proposed changes to OMB Circular A-119, "Federal Participation in the Development and Use of Voluntary Standards." This Circular encourages Federal participation in

the development of voluntary standards and the use of such standards in procurement, regulatory and other applications.

At the time that Circular A-119 was last revised, the Department of Justice, in a June 22, 1982 letter from Acting Assistant Attorney General for Antitrust Ronald G. Carr, advised OMB concerning the competitive benefits and potential problems that can result from industry development of voluntary standards. I have reviewed that letter, a copy of which is enclosed, in light of OMB's current revision of Circular A-119 and I have determined that it continues accurately to state the Department's views concerning Federal participation in voluntary standards-setting organizations.

From the standpoint of competition policy, Federal employees who participate in the development of industry standards should be aware that the potential for anticompetitive harm resulting from industry standards setting can be reduced to the extent that such proceedings are open and transparent and provide an opportunity for notice and comment to any person potentially affected by the promulgation of the proposed standards. The adoption of performance rather than design standards also helps considerably to reduce competitive concerns. Thus, it is appropriate that Federal personnel who participate in voluntary standards-developing bodies advocate these principles whenever possible. At the same time, Federal personnel should understand that their participation in the standards-setting process generally does not confer antitrust immunity on industry participants, and Federal personnel should make clear that their presence does not imply Federal approval of any particular standards-setting process or of any resulting standards.

Sincerely,

Anne K. Bingham,
Assistant Attorney General.

Enclosure.

U.S. Department of Justice, Antitrust
Division

June 22, 1982.

Mr. Donald E. Sowle
Administrator for Federal Procurement
Policy, Office of Management and
Budget, Washington, DC 20503.

Dear Mr. Sowle: I am writing to express the views of the Department of Justice on competition policy issues raised by the Revised OMB Circular No. A-119, "Federal Participation in the Development and Use of Voluntary Standards" published for comment in the Federal Register on April 20, 1982 (47 Fed. Reg. 16, 919).

In our comments on previous drafts of the Circular, dated December 26, 1976 and June 13, 1978, we have supported a policy of federal adoption of privately developed standards when appropriate. Through participation in, and support for, private standards making activities, agencies may benefit greatly from private expertise and will avoid the wasteful duplication of cost and effort involved in developing their own in-house standards. The Department of Justice is not opposed to the policy announced in Revised OMB Circular A-119,

which would eliminate the rigid "due process" precondition to federal participation in private standards activities. Such a precondition is overly restrictive, since as a practical matter federal agencies will often be required to adopt the standards developed regardless of federal participation in their development. Thus, in our view, the better solution is to participate in standards setting bodies and work within them to assure that appropriate procedures are adopted.

The Department believes that federal participants should encourage the adoption of procedures to foster access to standard setting activities and transparency in such activities. Such procedures facilitate the development of standards acceptable to the entire affected industry as well as to consumers. In particular, notice and opportunity for comment help assure that standards will be based on adequate information as to their utility and consequences. Moreover, it is especially important that performance criteria be given a prominent, perhaps predominant, place in any standards activity. Federal agency representatives, therefore, should advocate, as strongly as possible, procedures designed to assure that a broad range of information is solicited, and that performance criteria are central elements of the resulting standards.

In addition to the practical advantages of open standards proceedings, such safeguards would mitigate the substantial anticompetitive potential inherent in private standards groups. The importance of assuring adequate consideration of competition in the work of private standards bodies was noted recently by the Supreme Court in *American Society of Mechanical Engineers, Inc. v. Hydrolevel Corp.* The case involved a product standard which had been adopted in 46 states and all but one of the Canadian provinces. The Court observed that organizations creating such standards could be "rife with opportunities for anticompetitive activity." Federal agencies ought to strongly encourage these private groups to ensure consideration of all relevant viewpoints and interests including those of consumers, and potential or existing industry participants.

This country's international obligations and policy, as expressed in the Standards Code negotiated during the Tokyo Round of the Multilateral Trade Negotiations, see the Agreement on Technical Barriers to Trade, codified at 19 U.S.C.A. 2531 *et seq.* (1980), provide another important reason for federal agency participants to encourage the adoption of open procedures for private standards groups. This Code, approved by Congress as well as by our leading trading partners, seeks to prevent the creation of product standards which discriminate against import competition. It requires central governmental bodies to provide notice and opportunity to comment in their own standards making activities, and encourages governments to take reasonable measures to ensure that non-governmental bodies provide similar protection. Where the federal government is in fact involved in the private group, the obligations of the Standards Code would appear even stronger.



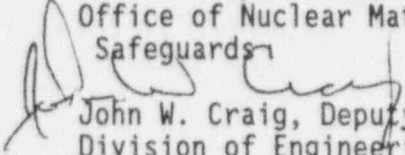
UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

November 21, 1996

MEMORANDUM TO: David L. Morrison, Director
Office of Nuclear Regulatory Research

Frank J. Miraglia, Acting Director
Office of Nuclear Reactor Regulation

Carl A. Paperiello, Director
Office of Nuclear Material Safety and
Safeguards

FROM:  John W. Craig, Deputy Director
Division of Engineering Technology
Office of Nuclear Regulatory Research

SUBJECT: OFFICE INPUT FOR OMB CIRCULAR A-119 ANNUAL REPORT

OMB Circular A-119, "Federal Participation in the Development and Use of Voluntary Standards," (Enclosure 1) requires that each Federal agency submit an annual report on the status of agency interaction with voluntary standards bodies. The Circular provides for designation of an agency Standards Executive who is responsible for agency-wide implementation of the Circular's provisions. As the designated NRC Standards Executive, I am requesting input from you for the noted annual report. Although the Circular addresses many issues associated with staff participation on codes and standards activities, which will be addressed in the future, the response to this memorandum focuses on the information needed to prepare the annual report, which must be submitted to the Department of Commerce, National Institute of Standards and Technology by December 31, 1996.

Enclosure 2 identifies the specific information required for the annual report. Information relevant to Item No. 1 has already been obtained through a survey in March 1996 of each program, staff, and regional office; therefore, you need not address that item. Your office is requested to provide the information identified in Enclosure 2 Item Nos. 2 through 5 for the period October 1, 1995, through September 30, 1996. Item Nos. 2 and 3 should include the applicable standard and method of adoption, and Item Nos. 4 and 5 should include the method of adoption for each standard identified.

Please provide the requested information to Gilbert C. Millman (Program Manager, Codes and Standards) by December 13, 1996. If your staff have questions or require further information, please have them contact Mr. Millman at 415-5843.

Enclosure 2

Individual Office Input to OMB Circular A-119 Annual Report Period Covered: October 1, 1995 - September 30, 1996

Item No.	Information Request	Office Input	
		Number	[Standard Title (year), Method of Adoption] ^(2,3,4,5)
1	<u>Number</u> of agency (office) employees participating in at least one standards developing group [Identify standards developing organization (SDO)]	N/A	N/A
2	<u>Number</u> of voluntary standards the agency (office) has adopted since 10/1/95 which resulted from agency participation in a standards developing group. [Identify standard and method of adoption]		
3	<u>Number</u> of internal standards agency (office) has replaced with voluntary consensus standards [Identify standard and method of adoption]		
4	<u>Identify</u> any voluntary standards that have been adopted for the purpose of promoting environmentally sound and energy efficient materials, products, systems, services, or practices. [Identify method of adoption]		
5	<u>Identify</u> any voluntary standards, for which there is an ongoing action, that could be adopted by the agency during FY 97. [Identify intended method of adoption]		

(2,3,4,5): Indicates applicability to Item Nos.