



Standards Coordination Office



OMB Circular A-119:

*Federal Participation in the
Development and Use of
Voluntary Consensus
Standards and in Conformity
Assessment Activities*

Proposed Revisions

June 9, 2014

Today's Discussion

- Introduction to OMB Circular A-119
- Factors influencing proposed A-119 revisions
- Timeline
- Terminology
- Overview of key proposed A-119 revisions

Introduction to OMB Circular A-119

- **Guidance** to U.S. federal agencies
- Issued by the Office of Management and Budget (OMB) in support of the National Technology Transfer and Advancement Act (NTTAA) – Public Law 104-113
- Applies to regulatory activities, procurement, and other programs
- Q & A format, 12 pages

OMB Circular A-119 - Current Version

- Provides agencies with guidance on
 - Use of **voluntary consensus standards** in lieu of government unique standards
 - Participation in **standards development activities**
- Directs NIST to issue guidance on **conformity assessment**

NIST Guidance on Conformity Assessment

- NIST *Guidance of Federal Conformity Assessment* was issued in 2000: [15 CFR Part 287](#)
- Provides agencies with guidance for
 - Evaluating **efficacy** and **efficiency** of agency conformity assessment activities
 - Coordination of activities with other agencies and private sector to **reduce unnecessary duplication**
- Outlines responsibilities related to conformity assessment for NIST, federal agencies, agency *Standards Executives*

In 2012, OMB issued a Request for Information (RFI) seeking input on possible changes to the Circular.

Proposed changes were published in February 2014.

Let's take a look at some key factors that influenced the proposed changes.

Factors Influencing Proposed Revisions

- Experience gained by agencies in using the Circular since 1998
- Domestic and international developments in regulations, standards and conformity assessment policy
- Experience in concluding and implementing U.S. trade agreements

Factors Influencing Proposed Revisions

- Issuance of three **Executive Orders** (2011/2012) addressing the need for
 - Improved regulations and regulatory review of regulations
 - Identifying and reducing regulatory burdens
 - International regulatory cooperation
- Issuance of White House memo outlining principles for agency engagement in standards activities

Timeline

- 1995 – Public Law 104-113: NTTAA
 - 1998 - [OMB Circular A-119](#) (Current Version)
 - 2000 - NIST Conformity Assessment Guidelines
- February 2012 - OMB [Request for Information](#) (RFI)
- April 2012 - NIST Public Workshop on Federal Conformity Assessment
- May 2012 - Public Workshop (hosted at NIST)
- February 2014 - [OMB Proposed Revisions Published](#) – [Subject of this discussion.](#)
- May 12, 2014 - Public Comment Due Date
- Current Status: 79 Comments Received - Under Review

Standards - terminology

Voluntary Consensus Standard*

The focus is on the process used to develop the standards:

Balance of Interests/Representation

Openness

Due Process

Appeals
Process

Consensus

**as defined in proposed revised A-119*

Voluntary **Non-Consensus** Standard*

A standards developed in a process that does not include **all** of the attributes of the voluntary consensus standards development process is newly referred to as voluntary non-consensus standard.

**as defined in proposed revised A-119*

Let's take a look at some of the key proposed revisions.

Revisions Address Key Topics

- Policy for federal use of standards
- Policy for federal participation in standards development activities
- Policy on conformity assessment
- And matters related to these topics with respect to:
 - International considerations
 - Enhanced transparency
 - Burden reduction

Use of Standards

- The proposed revised Circular **continues** preference for use of existing **voluntary consensus standards** over agencies developing and using their own government unique standards where feasible (*unless inconsistent with law or otherwise impractical*)

Use of Standards (continued)

- The revised A-119 **further clarifies** the preference for use of voluntary consensus standards over other types of standards (including voluntary non-consensus standards).
- Allows agencies to consider other types of standards if there is no suitable voluntary consensus standard to meet the missions and priorities of the agency.

Criteria for Considering a Standard

The proposed revised Circular provides **criteria** for agencies to consider when examining if a standard meets agency needs and should be adopted.

“.....an agency should...take account of the effect of (1) using the standard on the economy, (2) and of applicable Federal laws and policies including laws and regulations related to (a) antitrust, (b) national security, (c) small business, (d) product safety, (e) environment, (f) metrication, (g) technology developments, (h) international trade, (i) intellectual property and (j) copyright, (k) privacy and (l) security, and (m) conflicts of interest.”

Reasonable Availability

- Agencies must also consider whether the standard is “[reasonably available.](#)” (p 34/35)
- OMB proposes to adopt the Administrative Conference of the United States ([ACUS](#)) Recommendation 2011-5, [Incorporation by Reference](#), with some modifications.
- Legal issue of “reasonable availability” rests with the Office of the Federal Register.

Copyright

- Reaffirms that federal agencies must respect Standards Development Organization copyright
- Where accessibility of copyrighted standards content is desired by agency...

“...The agency should work with the relevant standards developer to promote the availability of the materials, such as through the use of technological solutions, low cost-publication, or other appropriate means, while respecting the copyright owner’s interest in protecting its intellectual property.”

Timely Updating of Standards

- Agencies should utilize retrospective review mechanism (addressed in recent Executive Orders) to update standards incorporated by reference (SIBR) on a timely basis
- Agencies should undertake a standards specific review of SIBR **every 3 to 5 years** or when it is necessary due to urgent matters of health, safety, the need to keep up with technological changes or other compelling reasons

Participation in Standards Development

- Further guidance is provide on how federal representatives should participate in the standards development activities
 - Must be authorized by their agency
 - May serve on an SDO Board

“...active agency technical and leadership participation in standards activities is encouraged...”

“...actively and on an equal basis with other members...”

Enhanced Transparency

- Agencies should advise the public
 - when participating in or planning to participate in standards development activities
 - when considering use of voluntary standards in regulation, procurement or other programs
- Various options noted
 - Notice in Federal Register, Notice on public website, RFI, Advanced NPRM

Complying with International Obligations

Revisions direct federal agencies to consult with **USTR** and **State Department** on how to comply with international trade agreements and other international obligations relating to standards and conformity assessment.

Use of International Standards

“For certain types of standards and regulations and where certain conditions apply, the United States is obligated to use relevant international standards under international trade agreements to which the United States is a party.”

Use of International Standards

- Added WTO TBT *Decision of the Committee on Principles for Development of International Standards* as new [Annex A](#) to the Circular
- Agencies should consult with USTR when determining if a voluntary standards body is “International”.

Conformity Assessment

- Expanded guidance on conformity assessment is included.
- Agencies should consider **international conformity assessment schemes** and **private sector conformity assessment activities** in conjunction with or in lieu of government conformity assessment activities
- Provides criteria for selecting conformity assessment procedures, including consulting with **NIST** and **OMB**

Conformity Assessment (continued)

- Agencies should consult with **USTR** on relevant international commitments for conformity assessment
- Agencies should integrate meaningful review of conformity assessment procedures into agency *retrospective review* plans on a periodic basis

Note: NIST will revisit its Conformity Assessment Guidance once the Circular is finalized.

Additional Agency Guidance

- Encourages Greater Role for Interagency Committee on Standards Policy (ICSP)
- Strengthens Role of Agency Standards Executives
 - Includes qualifications for Standards Executives
 - Senior level official
 - Knowledgeable/experienced
- Updates Agency Reporting Requirements (via NIST) on Development and Use of Standards

Concluding Remarks

- Numerous changes have been proposed to OMB A-119
- Revised document is 47 pages long (expanded from approximately 12 pages)
- Comment period ended in May 2014
- Comments (publicly available) are currently being reviewed
- Agencies are encouraged to track the further developments of this important agency guidance document.
- NIST will provide further information when it becomes available

Thank You

OMB Circular A-119: Proposed Revisions

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