

May 7, 2012

Ms. Cass Sunstein, Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
Docket number OMB-2012-0003 - Federal Participation in the Development and Use of
Voluntary Consensus Standards and in Conformity Assessment Activities

Dear Ms. Sunstein,

The following comments are in response to the March 30, 2012 Federal Register notification (Vol. 77, No. 62, p. 19357- 19360) inviting public comment on Federal participation in the development and use of voluntary consensus standards and in conformity assessment activities.

Are Federal agencies generally following the guidance set out in the Circular and providing an adequate explanation of how they considered standards and conformity assessment-related issues in the preambles to rulemakings?

I believe that several federal agencies continue to feel the need to control the standards development process. While I believe that standards resulting from voluntary consensus standard organizations are typically better than agency developed standards the time frame for achieving such may not be as timely as a well resourced agency effort. As well there is the obvious surrender of absolute agency control.

It is a simple fact that voluntary consensus standards organizations rely on the effort of many individual members to produce worthy standards. Such an overall effort has a real cost even if not realized in the direct cost of developing standards. That actual overall cost is simply distributed across many different organizations.

Where a federal agency has sufficient resources to develop standards I believe the resulting standards are less than they could be through lack of the peer review that the voluntary consensus standards process provides. To me, it would make more sense if such federal agencies would work with voluntary consensus standards organization to at least provide that peer view.

Through the participation of a diverse membership I believe that voluntary consensus standards organizations can have an advantage in anticipating the need and value of new / revised standards for at least some federal agencies.

• What are the best practices for providing access to standards incorporated by reference in regulation during rulemaking and during the effective period of the regulation while respecting the copyright associated with the standard?

I believe the ASTM International response to this request notes the willingness of the organization to provide read-only access in those instances where a federal agency defines such a need.

- *What are the best practices for incorporating standards by reference in regulation while respecting the copyright associated with the standard?*

A further possible service to standards users would be to provide free access to standards after a defined time frame, e.g. 10 years. This being analogous to peer reviewed journals being encouraged to provide free access to published articles after a defined time frame.

- *What resource and other costs are involved in the development and revision of voluntary standards?*

As an ASTM International member I'm quite pleased that given the size of the organization and the drive of its excellent staff that there has been a continual improvement in the resources provided to ASTM International members to assist the standards development process. Through such efficiencies high quality standards can be provided at a relatively low purchase cost. I believe other standards development organizations should be encouraged to make similar improvements – perhaps in a collaborative manner.

- *Have there been any developments internationally—including but not limited to U.S. regulatory cooperation initiatives—since the publication of Circular A-119 that OMB should take into account in developing a possible supplement to the Circular?*

I think OMB should consider whether to provide advice to agencies on whether there are instances in which they should coordinate standard development with the International Standards Organization (ISO) or rely on US based voluntary standards organizations.

While in some instances an agency see advantages to using an ISO method there should also be the realization that the agency will have a much reduced opportunity to influence such standards since the US as a whole will only have one vote.

- *Are there other issues not set out above that OMB might usefully seek to address in a supplement?*

I believe the OMB and NIST should work with the various federal agencies that support research at colleges, universities, and other institutions to enhance the transfer of appropriate resulting research results into voluntary consensus standards. The typical end product of such research is simply considered to be a publication in a peer reviewed journal. However, I believe that there are quite a few cases in which the results of such

sponsored research could have further value in the form of a voluntary consensus standard. I believe that sponsoring federal agencies should encourage their sponsored researchers to consider instances in which there would be value in transitioning research results to voluntary consensus standards and both recognize and support those who can accomplish such.

Given the increasing availability of on-demand 3D printing and other small scale manufacturing capabilities I expect there will be value in having ready access to standardized electronic design files. I believe voluntary standards organizations are well positioned to manage accessible collections of such standard electronic designs. Such designs could be contributed by both government and commercial organizations.

In summary, the voluntary consensus standards organizations rely on the willingness of many members to voluntarily contribute their expertise and time to the process. As well, the employers of those members have to support the participation of their employees. As many such employers (commercial and government) try to be more competitive there is the temptation for such employers to no longer support the participation of their members in voluntary consensus standards organizations. From my participation in ASTM International it is my perception that the average age of participating members is increasing. It is increasingly difficult to attract younger members to such service.

Sincerely yours,

Mr. Donovan Porterfield
Los Alamos, NM 87544