TO: **The U.S. Office of Management and Budget**

From: **IEEE Standards Association**

SUBJECT: **Request for Comments on OMB Circular A-119, Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities**

Reference: (79 FR 8207), 11 February 2014
Comment Close: 12 May 2014

The IEEE Standards Association (IEEE-SA), a leading developer of market relevant and globally accepted standards, appreciates the opportunity to provide comments on the proposed revisions to Circular A-119, "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities."

SUMMARY

IEEE-SA supports the proposed changes in the OMB Circular A-119 that reinforce and strengthen the U.S. Government's participation in development and use of voluntary standards. Voluntary standards are based on fundamental principles of transparency, openness, consensus, balance, due process, and right of appeal, which are paramount to engendering input from all stakeholders and material interests. These principles serve not only the needs of Federal Agencies, but also serve in the best interest of the public.

IEEE-SA recognizes the potential value of voluntary non-consensus standards but shares the concern that such documents are not supported by all the foundational principles that underpin voluntary consensus standards, and should only be used in cases where no voluntary consensus standards exist, or where no consensus standards developing organization (SDO) has an interest in developing such a standard to meet Agency needs. Where possible, non-consensus standards being considered by an Agency should be submitted for review and adoption by voluntary consensus SDOs to ensure wider input by stakeholders.

Further cooperation between Federal Agencies and voluntary consensus SDOs is encouraged to forge stronger relationships and to accommodate accessibility to standards. IEEE-SA believes that participation by Federal Agency employees in the voluntary standards development process at every level helps to meet the needs of government, industry, as well as the public and private sectors generally. IEEE-SA encourages and welcomes this participation, and provides the infrastructure for government participants in any capacity.

IEEE-SA appreciates the opportunity to participate in the review of the proposed revisions to OMB A-119, and looks forward to further dialogue, as necessary, to achieve an enhanced OMB A-119 that meets the needs of all affected parties. IEEE-SA again commends OMB for its efforts in revising the A-119 Circular.

IEEE-SA's Role as a Developer of Global Standards

IEEE is a global organization with over 430,000 members in more than 160 countries. IEEE-SA is the entity within the IEEE that creates globally deployed standards developed by members and participants from around the world. IEEE-SA supports the concept that Federal Agencies should take globally relevant standards into consideration when identifying appropriate standards.

The global nature of IEEE-SA facilitates economic growth, technological innovation, and international trade through the timely delivery of market-relevant standards that are welcome and accepted around the world. The large participation in IEEE-SA standards development work and the average low cost of IEEE standards enables wide adoption by users.

IEEE standards are developed through one of two distinct processes involving experts from around the world. The first consists of individual experts, and the second of entities – large and small – in standards development activities. In both instances, the five key values of consensus, due process, openness, right of appeal, and balance underpin the activities. All participants are equally recognized and have an equal basis in the standards development processes.

IEEE-SA operates in active agreement with the World Trade Organization (WTO) principle that standards should not create unnecessary obstacles to trade, and whenever appropriate, should specify requirements in terms of performance rather than design or descriptive characteristics. IEEE-SA adheres to the six principles of the Technical Barriers to Trade (TBT) Committee's Decision on International Standards: Transparency, Openness, Impartiality and Consensus, Effectiveness and Relevance, Coherence, and Development Dimension.

https://standards.ieee.org/develop/intl/ieeewto.pdf

Additionally, under the principles of OpenStand, the IEEE and other SDOs have joined to actively promote those same principles as Due Process, Broad Consensus, Transparency, Balance and Openness.

http://open-stand.org/

SPECIFIC COMMENTS

Following are IEEE comments, referencing specific sections of the proposed revisions to OMB A-119.

DEFINITIONS

IEEE-SA agrees with the definitions set forth in Sections 3 and 4 of the Circular, except for the following:

3. What is a Standard?

f. (ii) Balance of representation

The term "Balance of representation" does not effectively communicate the principle of balance, which is directed at the balance of materially interested parties, both in the types of materially interested parties, and in the balance of representation among the materially interested parties. IEEE strongly recommends that this term be changed to "Balance of materially interested parties" and changing "representation" to "materially interested parties" in the definition and in Sections 6e(iii)(3), 6f(i), and 7.

6. What is the Policy for Federal use of Standards?

a. When must my agency use voluntary consensus standards?

IEEE-SA strongly commends Federal Agencies in supporting adoption of technical standards that are developed (or adopted) by voluntary consensus SDOs. IEEE-SA believes, without question, that voluntary consensus standards remain the best choice for Federal Agencies, due to the foundational nature of the underlying processes used; i.e., transparency, balance, openness, due process, right of appeal, and consensus. Voluntary consensus standards developers provide the infrastructure necessary to support these principles, without impediment to participation.

It should be noted that the use of the term "voluntary non-consensus standards" is ambiguous. The term is used to describe specifications developed by organizations other than voluntary consensus standards bodies, i.e., by organizations that do not follow the procedures as defined in Section 3(f). However, the term is misleading because it references a lack of consensus, when in fact differentiation may be with restricted participation or openness. The OMB may want to consider another term that would minimize confusion in identifying immediately the difference between standards developed under procedures as defined in Section 3(f) and those specifications that are not.

IEEE-SA supports the use by Federal Agencies of voluntary consensus standards over voluntary non-consensus standards. Further, comments made by other stakeholders as summarized in the proposed OMB A-119, Background and Discussion of Public Comments (page 4) would imply that only non-consensus bodies develop standards in emerging technology areas, which is far from the truth, either in fact or perception. Traditional voluntary consensus SDOs certainly

do develop and publish standards in high-technology and emerging technology areas on a regular basis.

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires that the Agency submit a report to the OMB, through NIST, describing the reason(s) for considering either a government-unique standard or voluntary non-consensus standard. It appears that the Agency rationale is only sent to the OMB. It would seem prudent to also provide notice via the Federal Register. This would provide public visibility to the available options, as well as publicly provide the rationale for not utilizing a voluntary consensus standard. The opportunity may arise where members of the public may be able to recommend existing voluntary consensus standards of which the Agency may not be aware. In the instance where a voluntary non-consensus standard is used, there is no reason why the document developed in a non-consensus process cannot then be submitted to a voluntary consensus SDO for adoption, allowing for transparency, openness, public review, etc.

IEEE-SA strongly supports the principles set forth in Executive Order 13563 ("Improving Regulation and Regulatory Review") regarding the role of the public and/or all materially interested parties as part of the standards development consensus process. Voluntary consensus standards support this concept; voluntary non-consensus standards do not. It is critical that standards development processes allow for all views to be considered and addressed, which is not always facilitated in a non-consensus process, so that agreement can be found across a broad and diverse range of interests and stakeholders. In some additional cases throughout the Circular, when addressing improving upon the level of transparency and breadth of stakeholder participation and enhanced accessibility to standards, it should be noted that these areas are supported mostly by voluntary consensus standards development processes, as distinct from non-consensus activities.

c. How does this policy affect my agency's regulatory authority and responsibilities?

For added clarity, users should be aware that any modifications made by the Agency are not part of the standard, and were not part of the open consensus process. IEEE-SA proposes to add to Section 6c of the proposed revision, the following: "*Such modifications or supplements must be clearly identified as not part of the voluntary consensus standard, having not been subject to the standardization development process and review policies of the voluntary consensus standards development organization*."

e. When deciding to use a standard, what are some of the things my agency should consider?

IEEE-SA proposes a revision of the draft Section 6e to delete the word "full" from "When considering using a voluntary standard, an Agency should, to the extent permitted by law, take *full* account of the effect of using the standard on the economy," The word "full" expands in an unlimited manner the requirement, is

undefined, and would be prohibitively costly if the Agency were required to take "full" account of the effect of using the standard on the economy.

f. Does this policy establish a preference between voluntary consensus standards and other types of standards?

As mentioned previously, IEEE-SA agrees with the preference for use of voluntary consensus standards by Agencies set forth in the Circular. IEEE-SA recommends that, if there are no voluntary consensus standards that are practical for use, documents developed in a non-consensus process can be submitted to a voluntary consensus SDO for adoption, allowing for transparency, openness, public review, etc.

j. What should my agency consider with regard to intellectual property and the development of standards?

IEEE-SA does not *require* licensing commitments, but its Letter of Assurance Form *seeks* licensing assurance on reasonable and non-discriminatory terms. As such, IEEE-SA requests the addition of language in the first sentence: "Many standards developing bodies have policies which either require or request that participating IPR holders commit to license any patented technology incorporated into..."

IEEE-SA policies regarding potentially essential patents in its standards are easily accessible from its website (see http://standards.ieee.org/about/sasb/patcom/materials.html and http://standards.ieee.org/develop/policies/bylaws/sect6-7.html).

n. How should my agency alert the public of its potential participation in standards development activities that could be used as a basis for rulemaking or other mission-related activities?

IEEE-SA indicates support for Agency notification to the public when participating in the standards development process with the objective of addressing issues of national priority or to support significant regulatory action or international regulatory cooperation. If use of a Federal Register Notice to identify information about standards-related activities is considered, IEEE-SA suggests a more frequent schedule for making this information available; i.e., quarterly or bi-monthly.

p. How should my agency determine whether a voluntary standard is "reasonably available" in a regulatory or non-regulatory context?

IEEE-SA understands that ACUS Recommendation 2011-5, *Incorporation by Reference*, 77 Fed. Reg. 2257 (January 17, 2012) is being considered for adoption into OMB A-119, and that the Recommendation addresses several matters regarding the policy question of reasonable availability. One such recommendation is whether standards developers can provide "a non-copyrighted, non-technical summary that adequately explains the content of the standard in a way that is understandable to a member of the public that lacks relevant technical expertise." The IEEE-SA requests that reference to a non-technical summary provided by SDOs

be removed from the Circular at this time, pending further exploration of this concept. This idea is not without merit; however, it appears to not be fully studied, developed, or considered thoroughly; e.g., feasibility, determining parameters for specific requirements, implementation, economic impact, the challenge of providing a non-technical summary for very large and complex technical standards, consideration of associated costs with summary development, maintenance, etc. It is premature to include this requirement in the Circular; the concept needs more time to be explored, and should perhaps become a stand-alone topic for soliciting comment. Without further review and public comment, it is not reasonable to include this feature in the Circular at this time. IEEE-SA recommends removal of Clause 6.p.iv and all related paragraphs.

IEEE-SA does strongly support the concept that

> "If an agency incorporates by reference material that is copyrighted or otherwise subject to legal protection and not freely available, 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. [OMB A-119 Draft, page 35]

IEEE-SA fully supports the observation and protection of the rights of a copyright holder in all cases as indicated in the excerpt above and in Section 6l of the Circular. The IEEE-SA has explored various options for improving availability of standards, including IEEE, government, and private sector sponsored access to standards at no- or low-cost through its IEEE Get Programs. As one example, a partnership between IEEE-SA and the Department of Homeland Security Domestic Nuclear Detection Office has been in effect since 2004, resulting in Get IEEE/ANSI N42 Standards for Radiation Detection Standards. This program has enabled unlimited public access to eleven N42 radiation detection standards. IEEE-SA will continue to work toward advancing all efforts to improve availability and appreciates the efforts of agencies to respect copyright ownership of its intellectual property. In all cases, the Federal Government should take under consideration the business models of the various SDOs.

What is the Policy for Federal Participation in Voluntary Standards Bodies?
a. Must agency participants be authorized?

IEEE-SA supports the role of federal employees participating in outside organizations, including both technical committees and boards of SDOs. Over the years, IEEE-SA has had a number of federal employees participate as IEEE-SA Standards Board or Board of Governors members, or hold leadership positions on IEEE Committees or Working Groups, either as full members or in a liaison capacity. IEEE-SA also supports the role of federal employees as voting members during the consensus ballot process in all of its standards activities.

While representatives of agencies have participated over the years in the development of IEEE standards, the representation has been variable from agency to agency; with some representatives taking leadership roles and others participating in the development of the standards but abstaining on key ballots because of agency policy. A consistent policy should be provided to Agencies for participation in standards development, especially those related to public health. IEEE has always encouraged governmental participation in its committee activities.[1]

IEEE-SA is concerned about the potential negative impact on government participation if the revision does not clearly delineate acceptable participation by Agencies, e.g., by reinstating the 1998 Policy Section 7c (What forms of support may my agency provide?). The Agency support measures (1-5) provide guidance and justification for government agency participation in voluntary consensus SDO activities and should be included in the revision:

> The form of agency support may include the following:
>
> (1) Direct financial support; e.g., grants, memberships, and contracts.
> (2) Administrative support; e.g., travel costs, hosting of meetings, and secretarial functions.
> (3) Technical support; e.g., cooperative testing for standards evaluation and participation of agency personnel in the activities of voluntary consensus standards bodies.
> (4) Joint planning with voluntary consensus standards bodies to promote the identification and development of needed standards.
> (5) Participation of agency personnel.

Participation of government staff in the development of international standards is also important. When such voluntary international consensus standards are published, Agencies should be in a position to adopt these standards. For example, although the 1991 ANSI/IEEE standard for safety levels with respect to human exposure to electromagnetic fields (IEEE C95.1-1991 [2]) was replaced in 2006 with its revision (IEEE C95.1-2005 [3], [4]), the FCC exposure limits are still based on IEEE C95.1-1991. It is important that Agencies keep abreast of updates to the voluntary consensus standards.

8. What is the Policy on Conformity Assessment?

IEEE-SA broadly supports the addition of policy language on Conformity Assessment into the Circular. IEEE agrees that “agencies should recognize the possible contribution of private sector conformity assessment activities. When

[1] It should be noted that the DOD and Components (Army, Navy, and Air Force), DOE, FCC, FDA, NIST, and NRC have been consistent participants in IEEE standards development.

properly conducted, conformity assessments conducted by private sector conformity assessment bodies can increase productivity and efficiency in government and industry, expand opportunities for international trade, conserve resources, improve health and safety, and protect the environment." IEEE also strongly supports the idea that "all Federal agencies are encouraged to consider relying on international conformity assessment schemes or private sector conformity assessment activities in conjunction with or, where appropriate, in lieu of governmental conformity assessment, except where such activities are inconsistent with law, unfit for regulatory or other agency purpose, or otherwise impractical."

Conformity assessment activities are increasingly important in today's standards arena. They help accelerate market acceptance of new products and enable the advancement of new technologies. Standards conformance activities relative to IEEE standards take place across nearly all the technology areas covered by the IEEE-SA, but in a wide variety of approaches that may be technology or market dependent. The IEEE Conformity Assessment Program (ICAP)—a joint program of the IEEE Standards Association (IEEE-SA) and the IEEE Industry and Standards Technology Organization (ISTO) —provides a focal point for conformity issues and related support for implementers of IEEE standards, as well as for industry groups and individual professionals involved in conformity assessment activities. The foundation of ICAP activities is based on industry best practices, internationally accepted quality systems, and use of proven test tools. Fostering the market acceptance, adoption, and implementation of standardized technologies, ICAP spans the spectrum of today's smart grid, information and communications technologies. The availability of a conformity assessment option gives U.S. Federal Agencies the flexibility, expertise, and support they need.

It is important that Agencies develop and utilize assessment methods based on the voluntary consensus standards rather than internal assessment methods. The ramifications of inconsistent assessment methods can be significant, e.g., when an Agency develops its own assessment methods that are inconsistent with international consensus standards, then different test protocols are required—one for the U.S. market and a different one for products sold outside of the U.S. This can be expensive and may result in impediments to international commerce.

CONCLUSION

IEEE recognizes the importance of OMB Circular A-119 in conducting business in the most efficient manner possible and applauds the OMB for opening a public dialog on the proposed Circular revisions. We look forward to further dialog and the eventual evolution of the guidelines.

Additional information ABOUT IEEE

IEEE is the world's largest professional organization, with a 125-year history of technological innovation. This global organization comprises more than 430,000 members in over 160 countries who conduct and participate in its activities across

the world. IEEE is a leading developer of industry standards, with an active portfolio of over 1,500 standards and projects under development. These standards affect a wide range of industries including: power and energy, information and communications technology (ICT), transportation, nanotechnology, and information assurance. IEEE-SA standards developing participants engage face-to-face in standards development or contribute electronically by, for example, submitting comments during a formal consensus ballot. Anyone in the world can participate in developing IEEE standards. IEEE-SA also supports its activities with an advanced, RAND-based Patent Policy balanced between the rights of the licensor and the licensee that encourages the owner of IP to give an assurance to license on RAND terms.

Additionally, IEEE standards are market-driven and therefore market-accepted around the world, so when industry uses them, its products and services will interoperate around the world. This allows industry to create products for the global market with increased efficiency and cost savings. U.S. Federal Agencies need full flexibility to be able to recognize and support global standards organizations to remain fully relevant. The standards produced by IEEE are known throughout the world for achieving high levels of technical excellence and broad applicability. In the ICT field, for example, standards developed by global standards development organizations (SDOs) define the backbone of ICT infrastructure. These standards, implemented and used worldwide, have proven to be successful. In the ICT field, accepting standards developed by global SDOs such as IEEE-SA is already common practice. IEEE-SA standards, such as Ethernet (IEEE 802.3) and Wireless LAN (802.11) are implemented and used worldwide. These global deliverables are highly relevant for industrial and innovation policies, and have contributed to the competitiveness of industry worldwide.

For many years, government standardization requirements have been successfully met by a voluntary consensus SDO, engendering access to international technical and standardization experts and cost-savings to the government. An example of the effectiveness of the voluntary consensus process, which is the foundation of IEEE-SA's standards development, is the collaboration between IEEE and the North Atlantic Treaty Organization (NATO). IEEE's International Committee on Electromagnetic Safety (ICES) has completed drafting IEEE Project C95.1-2345 (expected publication date is June 2014), which will be the first standard to be transitioned from the NATO Standardization Agency to a voluntary consensus SDO. This represents a unique utilization of the voluntary consensus standardization process in accord with current OMB A-119.