

Office of Management and Budget
Office of Information and Regulatory Affairs

The following comments are in response to the February 11, 2014 Federal Register notification (Vol. 79, No. 28, p. 8207 - 8208) inviting public comment on Revision of OMB Circular No. A-119, "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities". These comments are my own and should not be construed to represent any organization that I may be associated with.

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

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

"... In some situations, it may be necessary for an agency to modify or supplement voluntary standards that are being incorporated by reference in order to accomplish the agency's regulatory objectives."

I believe some agencies have taken an all or nothing approach to adopting voluntary consensus standards, i.e. if any aspect of the standard is "inconsistent with law or otherwise impractical" then the agency felt it had legitimate grounds to refuse to use the entire standard. So I appreciate the flexibility that this provides to both the agency and standards organization. I think it may be useful for OMB or NIST to provide examples of how such modifications or supplements to a voluntary consensus standard would be handled.

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

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

(iii) In evaluating whether to use a standard, an agency should also consider the following factors:

(1) The apparent suitability of the standard for agency use, taking into consideration factors including:

(c) The cost of other available standards that may also meet the agency's needs and whose use would be consistent with law;

If cost is the only justification for not using a standard would it not be preferable to permit the market place instead to be the arbiter of choosing which of two more functionally equivalent standards is preferable for usage?

tandards?

g. Are there standards-related international trade obligations that agencies must adhere to regarding the use of standards?

There may be a clear need for NIST and various agencies in consultation with relevant standards bodies to develop a common list of what will be considered “international standards bodies” with respect to the implementation of this circular. Such a process will insure some level of consistency and objectivity in such determinations.

I take the following three paragraphs from the business plan of a ISO technical committee that provides a view point of the phrase “international standards bodies”. I think OMB very clearly needs to address what its view is of that phrase.

“The foremost aim of international standardization is to facilitate the exchange of goods and services through the elimination of technical barriers to trade.”

“Three bodies are responsible for the planning, development and adoption of International Standards: ISO (International Organization for Standardization) is responsible for all sectors excluding Electrotechnical, which is the responsibility of IEC (International Electrotechnical Committee), and most of the Telecommunications Technologies, which are largely the responsibility of ITU (International Telecommunication Union). ISO is a legal association, the members of which are the National Standards Bodies (NSBs) of some 140 countries (organizations representing social and economic interests at the international level), supported by a Central Secretariat based in Geneva, Switzerland.”

“The principal deliverable of ISO is the International Standard.”

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

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?

I believe that an integrated view of such notification should be accessible through www.standards.gov.

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

o. How should my agency ensure that standards incorporated by reference in regulation are updated on a timely basis?

Reference (SIBR) database would seem to be a very useful tool for such purposes but I believe needs to be better designed and more actively verified to insure better representation of information on each referenced standard. The database should also be designed to interface with other standards databases, e.g. ANSI or IHS, to check for updated versions of standards.

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

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

While a greater use of international standards is advocated in the circular revision some of the more customary international standards organizations are those who I assume would be less flexible in providing the mentioned more “reasonably available” access.

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

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

In the public comment (OMB-2014-0001-0002) representing Public.Resource.Org / Carl Malamud I would like to take issue with some cited information. Within point 8 of that public comment footnote 26 provides “Table of Revenue and Renumeration” to the statement of “The CEOs of the ten leading SDOs, all of them nonprofits, earned more than the President of the United States”. What the Public.Resource.Org document fails to make clear is that several of the listed entities are primarily professional organizations of which standards development is a small component of their overall activities. So from my point of view I see very little correlation between CEO remuneration and the extent to which the organization is a SDO. I even know that the CEOs of some professional organizations that have no SDO component but still make more than the President of the United States. So I’m at a bit of a loss about what real point can be made in that regard.

Also in the same Public.Resource.Org comment an identified priority is the “promise of the Internet to create opportunity and economic growth”. In as much as Carl Malamud is the author of several copyrighted commercial publications regarding the Internet has not the cost that users of those documents have had to pay created a comparable obstacle to his concern of SDOs charging for their authored content.

Using Carl Malamud as a further example, given that the US government is widely acknowledged as the early developer of the Internet it might have been quite reasonable for some to advocate early on that all derivative works regarding the Internet should have

In such a scenario would Carl Malamud have still taken the time and effort to write similarly high quality publications with the clear knowledge that he would not be individually compensated for such an effort? As well would have the many other authors of published works regarding the Internet have also provided high quality publications despite no direct potential for compensation? Page 10 of the Public.Resource.Org public comment describes many significant benefits that would have come from providing free access to such a collection of technical information. I leave it to Carl Malamud to express any personnel regrets he may have from having benefited from the Article I, Section 8 provision of the US Constitution to “promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries”.

While I certainly see that there may be a public benefit to having free access to IBR voluntary consensus standards, I believe Public.Resource.Org trivializes the possible repercussions. As a contributor to one SDO I pay an annual fee personally. A substantially higher annual fee might allow that SDO to provide IBR standards without any cost. However, how many fewer SDO members might be willing to pay that same increased fee? What makes voluntary consensus standards of such great value is that they represent the wisdom of many individuals from different perspectives working together in a common manner. Actions that may substantially reduce the number of such participating individuals can directly diminish the quality of the produced standards. So while Public.Resource.Org may find it easy to analyze the income of a few CEOs they diminish their point of view by overlooking the impact on the many SDO participants that generate the true value of voluntary consensus standards.

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

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

I’m aware of at least one instance where a federal agency arranged with a SDO to provide free access to developed standards of significant interest to that agency. I would imagine that there are similar examples across the entire federal government. Such a practice would seem to address the mutual concern of insuring SDOs have the support necessary to continue their important mission but also insure maximum access to the developed standards. I’m not sure if there has been a federal effort on the part of OMB or NIST to document any lessons learned from such instances for the potential benefit of other federal agencies?

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

a voluntary standard is “reasonably available” in a regulatory or non-regulatory context?

While I have a much different point of view than that of Public.Resource.Org I do share some frustration that a clear consistent federal perspective on this matter has been elusive between the various branches of government. It is my hope that this intended revision of circular A-119 can start to achieve such a clear consistent federal perspective.

While I do contribute to the development of standards for one specific SDO I also on occasion need to purchase standards. On such occasions I’m pleased to note that the standards purchased from the SDO that I contribute most to are also among the least expensive and are of better quality than other similar standards provided by other SDOs. While I’m concerned about the implications of mandating free access to all IBR impacted standards I do feel it most appropriate for OMB and NIST to highlight the cost of SDO offered standards as a valuable form of feedback to the SDO community. There may be situations in which a professional organization is using standards development income to supplement member dues, e.g. a profit center, for the organization. In still other cases the high cost of standards may reflect the small scale of an organization’s standard development effort.

I’m also appreciative of the steps taken by the SDO I work with most and other SDOs to provide reasonable read-only access to IBR standards.

7. What is the Policy for Federal Participation in Voluntary Standards Bodies?

Given the advocacy of greater participation in international standards organizations is there likely to be an associated greater support of travel support to international meetings of those same organizations? While one can often participate in the standards development of such organizations without actual meeting attendance it may be more difficult to effectively represent the interest of an agency effectively.

10. How Does My Agency Manage and Report on the Development and Use of Standards?

I believe the standards community needs to also be invited provide input on the use of government-unique standards in lieu of voluntary consensus standards in addition to self-reporting by agencies themselves. I believe that would improve the responsiveness of some federal agencies in more clearly and fully reporting their status in this regard.

It is also not clear to me whether the standards community is making itself aware of the noted objections and seeing if some can’t be addressed through method modifications.

to provide comments and believe it would be useful for the Interagency Committee on Standards Policy to periodically gather input from the public on developments in standards.

Sincerely yours,

Mr. Donovan Porterfield
Los Alamos, NM 87544