



# Acoustical Society of America

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***The Acoustical Society of America's response to the request for  
comments on proposed revision of  
OMB Circular No. A-119, "Federal Participation in the Development and Use  
of Voluntary Consensus Standards and in Conformity Assessment Activities"  
published 11 February 2014 in the Federal Register, Vol. 79, No. 26***

Dear Madam or Sir:

Thank you for providing this opportunity to comment on the proposed revision of OMB Circular A-119. OMB Circular A-119 is an important document and the proposed revisions, for the most part, appear to reflect a balance of the views that have been broadly discussed in the stakeholder community and via the previous RFI on this Circular.

***Background about the Acoustical Society of America***

The Acoustical Society of America (ASA) is an ANSI-Accredited Standards Developing Organization (SDO). The ASA administers four Accredited Standards Committees covering the topics of acoustics, mechanical vibration and shock, bioacoustics (including animal bioacoustics) and noise. We also administer nine U.S. Technical Advisory Groups (TAGs) to ISO and IEC committees covering the same general topics. Federal Agencies are well-represented on each of these Committees and TAGs and comprise about 30% of the organizational members of these committees.

The standards developed by the ASA-administered committees are voluntary consensus standards. The ASA currently maintains about 115 American National Standards. About 5% of the standards developed by these committees are currently incorporated by reference in the CFR, while another 5% are otherwise recognized by Federal regulatory agencies. Several standards have been developed as a result of the direct request of Federal agencies.

The ASA is a not-for-profit scientific society formed in 1929 to increase and diffuse the knowledge of acoustics and promote its practical application. Soon after its inception the ASA became involved in the development of standards on acoustics and vibration and has continued this activity for over 80 years. The ASA has about 7,000 members spanning 13 different technical areas within acoustics. The ASA is best known for its flagship journal, the *Journal of the Acoustical Society of America*.

## ***The ASA's Comments on the proposed revision of OMB Circular A-119***

### ***1. Encouraging Agency Use of Standards and Participation in Standards Development***

We are pleased to see the proposed revisions which would establish a preference for using voluntary consensus standards in Federal regulations and for other uses (clause 6.f., p.24). We also appreciate the addition of a clear statement in the new clause 7.a. quoting the Office of Legal Counsel's advice that serving in leadership positions on SDO boards is part of the mandate to participate actively in the development of standards.

We are pleased to see continued encouragement of Agency participation in voluntary standards bodies (clause 7). We are deeply concerned, though, that the old clause 7.c. has been removed in its entirety. This clause contained language that very specifically authorized payment of the financial costs related to participation. The deleted text follows:

#### **"c. What forms of support may my agency provide?**

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."

We recognize that the following text has been added in 7a that points out that payment of membership and conference fees is allowed.

"Furthermore, in the 2001 amendment to the NTTAA (in Section 1115 of Public Law 107-107 (which enacted a new paragraph of section 12(d)), Congress expressly exempted application of 5 U.S.C. § 5946 (which prohibits payments for membership and conference fees) with respect to activities of Federal agencies and personnel in carrying out section 12(d) of the NTTAA. (See 15 U.S.C. § 272 note.) As noted in the previous section, active agency technical and leadership participation in standards activities is encouraged by this Circular and the NTTAA. However, agency representatives should avoid the practice or the appearance of undue influence relating to their activities in standards bodies and activities." (p. 37)

However, this paragraph is difficult to parse, and the permission cited does not seem to cover the full range of types of support previously authorized, e.g., grants, contracts, hosting meetings, etc.

The need for these additional forms of support is especially strong in cases where the standard in question is very specific to the mission of the Federal agency and the agency has taken the advice given in clause 6.m. to "...solicit interest from qualified voluntary standards development organizations for development of a standard..." The fact that Federal agencies may need to provide support to an SDO when they are requesting special services from the SDO is recognized in the current OMB Circular A119 (clause 7.b.) which says "Normally, the total amount of federal support should be no greater than that of other participants in that activity, except when it is in the direct and predominant interest of the Government to develop or revise a standard, and its timely development or revision appears unlikely in the absence of such support." To our dismay, this text, too, has been deleted in the proposed revision.

As a non-profit organization, the ASA partially supports its involvement in standards development by charging a participation fee to the organizations that participate in – and are the primary beneficiaries of – this work (companies, trade or professional organizations, academic research groups, or government agencies). The ASA does this work as part of its mission to promote the practical application of acoustics. The actual standards development work is done *entirely by unpaid volunteer working group participants*. The ASA helps coordinate these activities and ensures conformance to ANSI guidelines. The beneficiaries of the published standards are the general public, the government agencies and industry. Because the main focus of the ASA is on scholarly publishing and its members are primarily research scientists, the members of the ASA are not the primary target audience of the standards it facilitates.

The ASA is unable to fully fund standards development work and it expects the beneficiaries to share the cost. If Federal agencies are suddenly unable to pay their fair share, it would be impossible for us to continue to provide this service. The ASA could not (and probably would not want to) underwrite Federal participation, particularly in the cases where standards are developed specifically to meet Government needs.

***Therefore, we propose that the specific authorization to financially support work that benefits the agencies that is given in the current clauses 7.b. and 7.c. should be restored and, in fact, strengthened.***

## **2. Standards Incorporated by Reference in the CFR and Intellectual Property Rights**

As an SDO, we are gratified when our standards are incorporated by reference in the CFR or in Federal rules. We view this as part of the public-private partnership that is the U.S. standards system. It is clear that our contribution saves the Government money and time and helps ensure that those who will have to conform to the rules have an opportunity to participate in the development of the standards.

However, as a small organization with a very limited budget for standards work, the ASA cannot afford to sponsor the Government in this regard. We need to be able to recover some of our costs through the sale of the standards developed.

Accordingly we were happy to see that the proposed revisions to the OMB Circular A119 (clause 6.p., p. 34) do not mandate free availability as the solution to the question of "reasonable availability" and that the circular articulates respect for the SDO's intellectual property rights. We would like to see clause 6 enhanced by the addition of the text currently on page 10, in the preamble to the proposed revision, which states "OMB does not believe the public interest would be well-served by requiring standards incorporated by reference to be made available "free of charge.""

The proposal that SDOs should provide a freely available, non-technical summary of the contents of the standard geared toward the general public is interesting and something to which we will give serious thought. Since standards are developed by volunteers, it is unknown how they will react to this additional assignment.

### ***3. Updating Standards Incorporated by Reference in the CFR***

This topic is very important to ASA. Most of our standards that are referenced in the CFR are outdated or the references themselves are incorrect (i.e., the reference specifies a year which was not the year the standard was published). OSHA, for example, requires audiometers to be calibrated to ANSI S3.6-1969. This standard has been regularly revised and updated throughout the 45 years since 1969, reflecting the changes in equipment and science. We strongly urge OSHA—and every agency referencing one of our standards—to work with us to ensure that the current or future edition of each referenced standard meets Federal regulatory needs, and to ensure all the references in the CFR are updated. In our experience, though, some regulatory agencies believe that they are actually *prohibited* from participation in standards development or that it is somehow inappropriate for them to do so.

***We strongly urge the OMB to require agencies to work with SDOs to ensure that the standards incorporated are current and correct. We further suggest that the Standards Executives of each agency convey the message that it is necessary and acceptable for the agency to do this.***

### ***4. Other comments***

The proposed draft is an extensive revision of the current Circular. A tremendous amount of new material has been introduced making direct comparison between the documents difficult.

**4.a)** We noticed that the ***definition of "consensus"*** is changed. We wonder what the reason for the change is and if it was intended to introduce such dramatic changes (shown here with track changes added).

Consensus, which ~~is~~ may be defined as general agreement, but not necessarily unanimity, ~~-. During the development of consensus, comments~~ and ~~includes a process for attempting to resolve~~ objections ~~by interested parties, as long as all comments have been fairly~~ are considered, ~~each objector is advised of the~~

~~disposition of his or her objection(s) using fair, impartial, open, and the reasons why, and the consensus body members are given an opportunity to change their votes after reviewing the comments-transparent processes.~~ (p. 19)

Of particular concern is the deletion of the requirements (highlighted above) that "each objector is advised of the disposition of his or her objection(s) and the reasons why, and the consensus body members are given an opportunity to change their votes after reviewing the comments." Whose needs are served by this?

*We recommend that OMB restore the long-standing definition of "consensus".*

**4.b)** The introduction of extensive new *guidance on the use of international standards* and topics related to *international trade* appears to be useful. As the Administrator of nine U.S. Technical Advisory Groups to ISO and IEC committees, the ASA has extensive experience in the development of international standards. As noted at the beginning of our comments, Federal agencies have historically been well-represented on these TAGs. In recent years, however, Federal agency experts have been prohibited from traveling to meetings hampering their ability to participate as fully as they had in the past.

*We recommend that Federal agency experts be funded and encouraged to participate in such meetings.*

**4.c) New guidance on alerting the public to an agency's participation in standards development activities**

The proposed requirements regarding agency notification regarding participation in standards development activities could be very helpful in ensuring that other stakeholders also participate in the development of relevant standards. It is important, though, not to make this requirement so onerous that agencies decide not to participate at all.

Thank you for providing this opportunity to comment on this critical document. We would be pleased to provide any additional information you might need.

Sincerely,



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