



AUG 05 2015

Carl Malamud  
President & CEO  
Public.Resource.Org  
1005 Gravenstein Highway North  
Sebastopol, CA 95472

Dear Mr. Malamud:

This acknowledges receipt of and serves as a final response to your July 22, 2015, Freedom of Information Act (FOIA) request to the National Institute of Standards and Technology (NIST) in which you requested:

“I am requesting 3 types of records under FOIA regarding Ms. Saunders relationship with ANSI and ASTM International:

- Legal Advisory LA-13-05 states “it is a best practice for agencies to commit the scope of an employee’s permissible activities to writing in a memorandum of understanding between the agency, the employee and the nonprofit organization.” I am requesting a copy of any such memoranda and supporting documents leading to the issuance of such memoranda. If instead Ms. Saunders service with ANSI and/or ASTM is or was in her individual capacity and not her official capacity, I would request any documents discussing such status and/or any waiver requested or approved.
- Legal Advisory LA-13-05 states “the employee may not receive any supplementation of salary, including personal reimbursement of travel expenses, from the nonprofit organization” and any such reimbursement must come from the nonprofit organization directly to the government. I am requesting records detailing the amounts and nature of such reimbursements from ANSI and ASTM International.
- Legal Advisory LA-13-05 outlines a number of additional limitations, such as “limiting or prohibiting the employee from participating in the development of regulations that could affect the nonprofit organization.” I am requesting any memoranda, email, or other records that discuss instances where Ms. Saunders is limited or prohibited from working on matters with the nonprofit organization or has been recused, limited, or prohibited from working on matters for the government in her official capacity.”

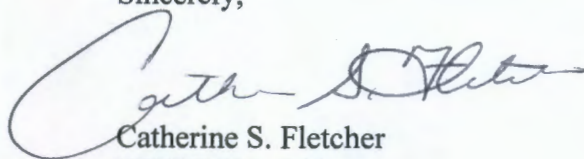
Your request was received at the FOIA Control Desk on July 22, 2015, and was assigned FOIA Log #2015-001617.

NIST has completed the actual search for responsive records and enclosed are two (2) documents consisting of eight (8) pages that are being released in their entirety.

It was determined that you are in the "all other requesters" category, for which chargeable services include search and duplication of responsive documents excluding the cost of the first 2 hours of search and the first 100 pages of duplication. The search and duplication costs were under the chargeable threshold thus the documents are being provided to you at no cost.

Janet W. Brumby, Management Analyst of my office, was the contact point for processing your request. If you have any questions regarding your completed FOIA request, she may be reached by email at [foia@nist.gov](mailto:foia@nist.gov) or by phone (301) 975-3189.

Sincerely,

A handwritten signature in cursive script, appearing to read "Catherine S. Fletcher".

Catherine S. Fletcher  
NIST FOIA Officer

## Participation in Documentary Standards Activities

NIST P 805.01

Effective Date: **AUG 15 2012**

### PURPOSE

Establish the National Institute of Standards and Technology (NIST) Policy on Participation in Documentary Standards Activities

### SCOPE

All NIST employees and contractors engaged in documentary standards activities for NIST.

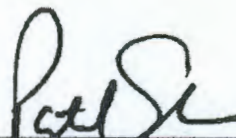
### LEGAL AUTHORITY AND REFERENCES

- Public Law 104-113, National Technology Transfer and Advancement Act of 1995, as amended by Section 1115 of P.L. 107-107, Section 12(d)
- OMB Circular A-119, Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities, dated February 10, 1998
- White House Policy Memorandum on Principles for Federal Engagement in Standards Activities to Address National Priorities, dated January 17, 2012

### POLICY

It is NIST policy to encourage staff participation in domestic and international standards body activities, whenever such participation is in the public interest and is compatible with NIST's mission, policies, positions, priorities and available resources. NIST's engagement in documentary standards activities is an important means by which NIST transfers knowledge to the private sector, to accelerate technology development and accomplish its mission of promoting U.S. innovation and industrial competitiveness. Only NIST employees and contractors, contracted for that purpose, may participate in a standards body on NIST's behalf.

The Associate Director for Laboratory Programs is responsible for ensuring that processes and procedures are developed, implemented and maintained that encourage individual and organizational responsibility in engagement in the development and application of documentary standards on behalf of NIST.



Patrick Gallagher  
NIST Director

15 August 2012  
Date

# Participation in Documentary Standards Activities

NIST O 805.01  
Effective Date: 10/11/2012

## PURPOSE

This directive describes the requirements and responsibilities for the acceptance and maintenance of memberships on government and nongovernment standards bodies working in areas related to the activities of the National Institute of Standards and Technology (NIST).

## APPLICABILITY

This issuance is applicable to all NIST employees and contractors, contracted for that purpose, who participate in standards activities conducted by or on behalf of NIST.

## REFERENCES

- NIST Policy 805.01
- *Guidelines for NIST Staff Participating in Documentary Standards Developing Organizations' Activities (NISTIR 7854)*
- *OMB Circular A-119, Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities, dated February 10, 1998*

## PRINCIPLES AND REQUIREMENTS

NIST manages its documentary standards activities strategically by setting priorities for voluntary standards activities appropriate to the overall NIST mission and by allocating staff resources effectively. NIST values participation in standards activities and provides mechanisms for recognition of effective activity. NIST engagement in documentary standards activities is guided by five fundamental strategic objectives:

- Ensure timely availability of effective standards and efficient conformity assessment schemes critical to addressing identified NIST priorities, including national priorities established in statute or Administration policy;
- Achieve cost-efficient, timely and effective solutions to legitimate regulatory, procurement and policy objectives;
- Promote standards and standardization systems that enable innovation and foster competition;
- Enhance U.S. competitiveness while ensuring national treatment<sup>1</sup>; and
- Facilitate international trade and avoid the creation of unnecessary obstacles to trade.

<sup>1</sup> National treatment is the principle of giving others the same treatment as one's own nationals. ([http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact2\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm))

In order to realize these objectives, NIST works with the private sector to address common standards needs, looking to private sector standards development processes that are well coordinated, open, deliver optimal outcomes for all stakeholders and are internationally accepted.

In accordance with *OMB Circular A-119*, participation in an organization or body does not necessarily connote NIST agreement with, or endorsement of, the decisions reached by the organization or body or the standards developed by voluntary standards bodies.

## **DEFINITIONS**

**Board** - the governing body of an organization such as an incorporated firm or nonprofit. The board, having ultimate decision-making authority, is empowered to set policy, adopt bylaws, and perform other tasks required for governance. It may hold a fiduciary capacity and may be held liable for the organization's actions.

**Body** - Any institute, board, commission, council, conference, panel, task force, committee, or other similar group or organization, or any subcommittee or other subgroup thereof.

**Government Liaison** – In the role of government liaison, a NIST employee serves as NIST's representative to an outside organization in a non-voting, non-fiduciary capacity. Such service is appropriate where there is need for an exchange of nonproprietary information, or where the service facilitates the coordination of NIST's and the organization's activities.

**Individual Membership** – Refers to professional affiliation and membership of a NIST employee on external committees/organizations and technical working groups (TWGs), the objectives and outputs of which contribute to the enhancement of the Institute's functions and activities.

**Institutional Membership** – Refers to institutional professional affiliation and membership of NIST on external committees/organizations and TWGs, the objectives and outputs of which contribute to the enhancement of the Institute's functions and activities.

**List of Approved Standards Bodies** – A list of standards bodies for which the NIST Director has authorized NIST to pay for memberships.

**Policy Making Group** - A group within an organization that formulates basic principles and associated guidelines to direct and limit the organization's actions in pursuit of long-term goals.

**Standard** - The term "standard" includes all of the following:

- (1) Common and repeated use of rules, conditions, guidelines or characteristics for products or related processes and production methods, and related management systems practices.
- (2) The definition of terms; classification of components; delineation of procedures; specification of dimensions, materials, performance, designs, or operations; measurement of quality and quantity in describing materials, processes, products, systems, services, or practices; test methods and sampling procedures; or descriptions of fit and measurements of size or strength.

(3) A set of rules that specify the minimum acceptable level of safety for constructed objects such as buildings and nonbuilding structures, or the safe installation of equipment in structures.

Standards Body - Any governmental or private sector group that exercises policy control over standards activities, or that administers one or more standards programs, or that develops or approves or promulgates standards. Examples of types of standards bodies are treaty organizations where governments are members, such as International Telecommunication Union - Telecommunication Standardization Sector (ITU-T) or Codex Alimentarius; private, voluntary organizations where the United States is represented by a single "national body" organization, such as International Organization for Standardization (ISO) or International Electrotechnical Commission (IEC) where the United States is represented by the American National Standards Institute (ANSI); professional and technical organizations whose membership is on an individual or organizational basis, such as ASTM International or Institute of Electrical and Electronics Engineers (IEEE); and consortia, whose membership is typically technology-based, such as the Cloud Printing Alliance.

## **RESPONSIBILITIES**

### **NIST Director**

- Sets NIST documentary standards participation policy

### **NIST Associate Director for Laboratory Programs**

- Ensures effective implementation of NIST documentary standards policy.
- With support from the Director, Standards Coordination Office (SCO), conducts periodic reviews of the effectiveness of NIST participation in documentary standards activities.
- Ensures effective integration of documentary standards into NIST programmatic priorities and activities, particularly those with involvement of multiple operating units (OUs).

### **NIST SCO Director**

- As authorized by the NIST Director, determines suitability of additions to the NIST List of Approved Standards Bodies.
- Reviews and provides policy guidance on all invitations to serve on boards or policy making bodies of standards bodies.
- Working with NIST OUs, provides leadership and support to facilitate more effective coordination of the voluntary standards and conformity assessment activities of the federal, the state and local governments, and the private sector.
- Maintains and promotes the Standards Committee Participation Database (SCPD).
- Annually queries OUs for updates to the List of Approved Standards Bodies

### **Chief Counsel for NIST**

- Reviews organizational documentation associated with all initial NIST requests for membership in standards bodies.

- After addressing any changes necessary to ensure legal compliance, forwards all approved requests to the Director, SCO.

#### NIST Management (OU Directors, OU Deputy Directors, and Division Chiefs)

- Include voluntary standards activities within overall strategic planning and track progress in NIST program reviews. Explicitly link standards activities to the NIST and OU mission and set priorities accordingly. This includes deliberate selection of committee work that is most likely to result in standards used worldwide, and developing continuity plans for ensuring effective NIST participation in key documentary standards activities.
- Cultivate staff participation in the development and use of pertinent, voluntary standards as a key means of transferring NIST technology and research results, and allocate personnel and resources for these activities during the normal planning process.
- Periodically review standards activities to identify gaps in representation for mission-critical areas as part of long range planning.
- Determine appropriateness of staff participation in standards bodies.
- Ensure that staff participation in standards activities is effective and has a measurable and demonstrable impact, and that positive impact is rewarded as appropriate.
- Annually review OU/Division standards participation as documented in the SCPD and update SCO on standards bodies in which they will no longer maintain memberships.

#### Contracting Officer Representative (COR)

- Develop statement of work defining appropriate contractor activities in standards developing committees. Additional guidance can be found in *Guidelines for NIST Staff Participating in Documentary Standards Developing Organizations' Activities* (NISTIR 7854).
- Provide appropriate oversight of contractor performance, where relevant, by requiring timely and periodic reports and meetings.

#### NIST Employees

- When approved, serve as the NIST principal representative to a standards body.
- Know and act in conformity with established policies and program objectives of NIST, the Department of Commerce, and the Administration, recognizing that for NIST employees who participate in activities related to the professional basis of their employment carry an inseparable identification with NIST.
- Ensure that their participation in standards activities is effective and has a measurable and demonstrable impact.
- Clear with DOC Ethics Division all invitations to serve on boards or policy making bodies of standards bodies approved for NIST membership.
- Record standards participation in the Standards Committee Participation database at <https://standards-i.nist.gov/scp/data/index.cfm>.

- Follow *Guidelines for NIST Staff Participating in Voluntary Standards Developing Organizations' Activities* (NISTIR 7854).

## **NIST MEMBERSHIP IN STANDARDS BODIES**

### **For All Standards Body Assignments (Committee Participation) –**

Committee participation and fee payment must be approved in advance of NIST employees and contractors registering committee membership in the SCPD at <https://standards-i.nist.gov/scp/data/index.cfm>. Committee participation must be updated in the SCPD at least annually.

### **Fees for Standards Bodies –**

NIST employee membership fees for standards bodies may be paid by NIST only to entities currently on the List of Approved Standards Bodies. OUs are responsible for paying applicable fees for standards body activities directly to the bodies concerned after obtaining all required approvals except with regard to administrative service fees to ANSI (see below).

Institutional membership (also referred to as "organizational" or "sustaining" membership) is preferred, whenever possible, over individual membership. NIST institutional membership does not confer any individual membership rights or privileges to any member of the NIST staff, including officially designated representatives to the standards body. For approved institutional memberships, NIST OUs may pay using NIST appropriated funds (STRS), reimbursable funds transferred to NIST by a requesting organization for this purpose (membership fees or work with the standards body must be called out in the agreement statement of work), or funds generated by overhead.

NIST payment for an individual membership is only permitted if the standards body does not itself provide for institutional memberships. For approved individual memberships, NIST OUs may pay using NIST appropriated funds (STRS), reimbursable funds transferred to NIST by a requesting organization for this purpose (membership fees or work with the standards body must be called out in the agreement statement of work), or funds generated by overhead. Individual membership fees may be paid either as a membership or indirectly (e.g., where purchase of a society journal would confer membership status on an individual) to voluntary standards bodies.

(1) Requests for NIST Payment of Memberships in Bodies Not on the List of Approved Standards Bodies - Requests for approval of membership payment for standards bodies not on the List of Approved Standards Bodies must be sent to the SCO Director for policy determination. The request should be in the form of a memo cleared by the division and signed by the OU Director or designated management, addressed to the SCO Director ([sample available here](#)). The charter and bylaws of the organization and any other relevant documentation (for example, membership application or membership agreement) should be attached to this memo. The SCO Director will make a policy determination and, if the determination is positive, will forward the request to the Chief Counsel for NIST for legal review. The Chief Counsel for NIST will review the organizational documentation and related information to determine whether



NIST membership is legally permissible. The SCO Director forwards all findings to the requestor and OU Director for noting and to Standards Services for listing.

(2) Standards Bodies Administrative Service Fees - Fees may be paid to private sector standards bodies to help cover the costs associated with standards committee operations and communication, including preparation and distribution of minutes, circulation of draft standards, meeting arrangements, and committee records. These fees may be paid to a voluntary standards body if required for a NIST unit to serve on one or more committees of that body and if the OU Director or designee determines that the intended committee service is consonant with NIST goals and objectives.

Payment of administrative service fees does not confer individual membership rights or privileges to any member of the NIST staff, nor does it result in NIST becoming an institutional member of the standards body.

OUs must incorporate the following language into all contracts and agreements, relating to the payment of administrative service fees:

*"Our payment of these administrative service fees is based on the understanding that:*

- (1) The fees will be used exclusively to help cover costs associated with standards committee operation and communication, e.g., preparation and distribution of minutes, circulation of drafts for comment, meeting arrangements, maintenance of committee records, and allocation of dues to international standards development organizations;*
- (2) Payment of administrative service fees to a standards body does not signify that NIST endorses or supports positions taken by that body on any subject or issue; and*
- (3) Payment of the fees does not confer individual membership rights or privileges on any member of the NIST staff nor result in NIST being recognized as an institutional member of (add name of standards body)."*

ANSI charges an administrative service fee in connection with sponsorship of secretariats of committees of international organizations of which ANSI is the recognized U.S. member body. NIST laboratories that sponsor secretariats should determine their fees with ANSI. ANSI annually submits an invoice to SCO covering all NIST international secretariat fees. After reviewing for completeness and accuracy, SCO informs each responsible unit of the portion it must pay. To permit thorough and accurate review, SCO should be provided with copies of all pertinent correspondence and contracts with ANSI regarding administrative service fees. SCO is responsible for forwarding these administrative fees along with the annual institutional membership fee to ANSI.

#### **DIRECTIVE OWNER**

601 -Standards Coordination Office

#### **APPENDICES**

A - Revision History

## Appendix A

### Revision History

Revision	Date	Responsible Person	Description of Change
Initial Draft	8/23/2012	Nathalie Rioux	Initial Draft
Final Draft	10/2/2012	Dan Cipra	Incorporated OCC and DRB Comments