



Discussion on Changes to the Office of Management and Budget (OMB) Circular A-119

Presented by

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Webinar Structure - Changes to OMB Circular A-119



- Overview (15 minutes)
- SDO-Process-Related Issues (20 minutes)
- IPR-Related Issues (25 minutes)
- Conformity-Assessment-Related Issues (20 minutes)
- Agency-Related Issues (20 minutes)

- Attendees are muted.
- Q&A after each segment. Submit your questions using WebEx Q&A feature (to All Panelists in drop-down).
- Slides will be posted; you will receive a link.

Discussion Facilitators



■ Webinar Structure and Overview

- Patty Griffin, ANSI (5 min); Jasmeet Seehra, OMB (10 min)

■ SDO-Process-Related Issues

- Neil Bogatz, IAPMO (5 min); Andy Updegrave, Gesmer Updegrave (5 min), Q&A (10 min)

■ IPR-Related Issues

- Patent: Clark Silcox, NEMA (5 min); Copyright: Neil Bogatz (10 min); Q&A (10 min)

■ Conformity-Assessment-Related Issues

- Gordon Gillerman, NIST (5 min); Pat Gleason, SEI (5 min); Q&A (10 min)

■ Agency-Related Issues

- Mary Saunders, NIST (5 min); Mary McKiel, The McKiel Group (5 min); Q&A (10 min)

Overview: Changes to OMB Circular A-119

Speaker: Jasmeet Sehra

SDO-Process-Related Issues

Speaker: Andy Updegrave

- Introduces New Category of Standards Called Voluntary Non-Consensus Standards (VNCSs)
 - continues preference for voluntary consensus standards (VCSs) over government-unique standards;
 - acknowledges that other types of voluntary standards (VSs), including VNCSs, may be relevant in meeting agency missions; and
 - states that VNCSs may be used under certain circumstances and establishes a further preference for VCSs over VNCSs.

SDO-Process-Related Issues (continued)

Speaker: Neil Bogatz

- Defines the Attributes of a VCS Development Process
 - adds further information to definition of “openness,” requiring that interested parties be provided “meaningful opportunities to participate at all stages of standards development”;
 - changes “balance of interest” to “balance of representation” and explains that the representation appropriate to the development of consensus in any given standards activity is a function of the nature of the standard being developed and the sector;
 - changes the definition of “due process” to include “full access to the views and objections of other participants”;
 - changes the definition of “consensus” stating that consensus “may be defined” (instead of “is defined”); and
 - removes current language requiring/recognizing value of recirculation of negatives and disposition of objections.

“Note that these changes raise the question whether the ANSI Essential Requirements still align with the OMB revisions.”

SDO-Process-Related Issues



- Questions? Submit via WebEx Q&A to All Panelists (in drop down).

IPR-Related Issues (Patent)

Speaker: Clark Silcox

- Asks “what factors, if any, should an agency consider regarding the interests of IP holders whose IP is incorporated in the standard and the interests of parties seeking to implement that standard?” (p.6) and
- Adds other IPR-Related Content, including:
 - when deciding to use a standard, an agency should consider “the economic effect of the IPR policies of the VCS bodies on standards implementers, such as the extent to which entities practicing the standards may obtain licenses to patented technology incorporated into the standard on a non-discriminatory and reasonable royalty or royalty-free basis. This evaluation should also include consideration of whether such IPR policies bind subsequent transfers of patented technology incorporated into the standard.” (p.22)
 - SDO IPR Policies “should be easily accessible and the rules governing the disclosure and licensing of IPR should be clear and unambiguous.” (p.30)

IPR-Related Issues (Copyright)

Speaker: Neil Bogatz

- Reaffirms rights of the copyright holder in voluntary standards used and published in an agency document:
 - “if a VS is used and published in an agency document, your agency must observe and protect the rights of the copyright holder and meet any other similar obligations, such as those relating to patented technology that must be used to comply with the standard” (p.31) and
 - “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” (p.35)

IPR-Related Issues (Copyright) (continued)

Speaker: Neil Bogatz

- Suggests following factors be considered by federal agencies when determining whether a voluntary standard is “reasonably available”:
 - whether the SDO is willing to make read-only access to the standard available for free on website during comment period;
 - the need for access to achieve agency policy or to subject the effectiveness of agency programs to public scrutiny;
 - the cost to regulated parties to obtain a copy of the material and whether they are able to bear such costs;
 - whether the SDO imposes barriers to membership and participation in SDO process;
 - whether the SDO can provide a non-copyrighted, understandable and freely-available summary of the standard that adequately explains its content (p.9-10, 34-35)

IPR-Related Issues



- Questions? Submit via WebEx Q&A to All Panelists (in drop down).

Conformity-Assessment-Related Issues

Speakers: Gordon Gillerman, Pat Gleason

- Provides Guidance on Conformity Assessment and seeks comment on providing CA guidance including:
 - considering the level of confidence needed, the risks associated with non-compliance, and the costs of demonstrating conformity
 - encouraging agencies to consider international CA schemes and private sector CA activities in conjunction with or in lieu of government CA activities;
 - providing criteria for selecting CA procedure, including consulting with NIST and OMB;
 - directing agencies to consult with USTR on relevant international commitments for CA; and
 - integrating meaningful review of CA procedures into agency retrospective review plans on a periodic basis, taking into consideration
 - EO 13563 “Improving Regulation and Regulatory Review”
 - EO 13610 “Identifying and Reducing Regulatory Burdens”

Conformity-Assessment-Related Issues



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Agency-Related Issues

Speakers: Mary McKiel, Mary Saunders

- **Provides Advice on Agency Participation in Standards Development:** revisions provide guidance to agencies on how federal representatives should participate, including serving on the SDO Boards and criteria (derived from ACUS) for agencies to consider when determining whether a VS meets agency needs.
- **Advises Agencies to Ensure Timely Updating of Standards:** revisions reference the retrospective review provisions of EO's 13563 and 13610 relative to timely agency standards-specific reviews of incorporated standards and consultations with stakeholders.
- **Provides Guidance on Complying with International Obligations:** revisions direct federal agencies to consult with USTR and State Department on how to comply with international trade (e.g., WTO Agreement) and other international obligations relating to standards and CA.
- **Encourages Enhanced Transparency:** revisions encourage agency to notify public when it participates in SDOs and considering use of VS in regulation, procurement, or programs.

Agency-Related Issues (continued)

Speakers: Mary McKiel, Mary Saunders

- **Encourages Greater Role for ICSP and Strengthening Role of Agency Standards Execs:** requests input on whether ICSP should establish process for gathering input from public on developments in standards and CA, whether ICSP should engage with stakeholders on a more frequent basis and whether Standards Executives should be qualified under a proposed list of qualifications, have sufficient authority within their respective organizations and be trained (with others) on SDO activities.
- **Updates Provisions on How US Government Reports on the Development and Use of Standards:** requests comments on how reporting can be improved and whether CA procedures should be integrated into current reporting.

Agency-Related Issues (continued)

Speakers: Mary McKiel, Mary Saunders

- **Requires Assessment of Economic Impact of IPR Issues:** as noted, suggests that agencies consider “the economic effect of the IPR policies of the VCS bodies on standards implementers, such as the extent to which entities practicing the standards may obtain licenses to patented technology incorporated into the standard on a non-discriminatory and reasonable royalty or royalty-free basis. This evaluation should also include consideration of whether such IPR policies bind subsequent transfers of patented technology incorporated into the standard.”

Agency-Related Issues



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Thank you!



- Thank you to facilitators.
- Thanks to ANSI members and other U.S. stakeholders for participating.
- Slides and webinar recording will be posted on ANSI's SharePoint site. You will receive email notification.
- Reminder: Input to ANSI is due by [March 21](#).
- OMB comment deadline is [May 12](#).



for more information

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