Proposed Guidance to Federal Agencies Standards Use and Development

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OMB Circular A-119

By statute and policy, U.S. agencies rely on private sector voluntary standards to meet regulatory and procurement needs*

The National Technology Transfer and Advancement Act (NTTAA) requires U.S. agencies to use voluntary consensus standards in lieu of government unique standards

OMB Circular A-119 requires all federal agencies to use voluntary consensus standards in procurement and regulatory activities, except where inconsistent with law or otherwise impractical

*In some sectors, these voluntary consensus standards are developed in intergovernmental bodies, such as Codex and UNECE WP29.

A-119 Proposed Revisions

March 2012: OMB invited public input on current issues for consideration of whether and how to supplement Circular A-119, including the factors agencies should consider with respect to:

- The use of non-consensus standards
- The selection of conformity assessment procedures
- Compliance with international obligations
- Incorporating standards into regulation
- Updating standards incorporated in regulation
- Protection of copyrights associated with standards incorporated in regulation

Public comments can be found at:

http://www.regulations.gov/#!docketDetail;rpp=100;so=DESC;sb=docId;po=0;D=OMB-2012-0003

February 2014: OMB invites comments on proposed revisions of A-119

OMB has joined together with the Office of the United States Trade Representative (USTR) and the National Institute of Standards and Technology (NIST) to develop a comprehensive proposal to update Circular A-119.

Updating Guidance on Use of Voluntary Consensus Standards to Promote Smarter Regulation, Collaboration, and Technological Innovation

Posted by Howard Shelanski, Miriam Sapiro, and Patrick Gallagher on February 14, 2014 at 05:59 PM EDT

http://www.whitehouse.gov/blog/2014/02/14/updating-guidance-use-voluntary-consensus-standards-promote-smarter-regulation-col-0

Preference for voluntary consensus standards

The revised Circular would maintain a strong preference for using voluntary consensus standards in Federal regulation and procurement. It would also acknowledge, however, that there may be some standards not developed using a consensus-driven process that are in use in the market—particularly in the information technology space—and that may be relevant (and necessary) in meeting agency missions and priorities

Guidance on use of standards and participation in standards development

The revised Circular would provide more detailed guidance on how Federal representatives should participate in standards development activities. It would also strengthen the role of agency Standards Executives, encourage better internal coordination and training on standards, and update the provisions on how the U.S. Government manages and reports on the development and use of standards. The Circular would also provide criteria for agencies to consider when examining whether a standard meets agency needs and should be adopted.

Guidance on conformity assessment

The revised Circular would encourage agencies to consider international conformity assessment schemes and private sector conformity assessment activities in lieu of conformity assessment activities or schemes developed or carried out by the government, and set out criteria for agencies to consider when they are selecting or designing an appropriate conformity assessment procedure.

Enhanced transparency

The proposed revisions would provide guidance to agencies on how they should discuss implementation of the Circular in their rulemakings and guidance documents; encourage agencies to alert the public when considering whether to participate in standards development activities; and set out factors for agencies to consider when incorporating standards by reference in regulation.

Burden reduction

The proposed revisions would require agencies to utilize the retrospective review mechanism set out in Executive Orders 13563 and 13610 to implement the Circular, including ensuring that standards incorporated by reference in regulation are updated on a timely basis. The revisions also encourage agencies to work together to reference the same version of a standard in regulation and procurements and coordinate on conformity assessment requirements, where feasible.

International Considerations

The proposed revisions incorporate references to trade-related statutory obligations on standards-related measures and direct Federal agencies to consult with USTR on how to comply with international obligations with regard to standards and conformity assessment. They provide guidance on how to identify such obligations, direct agencies to take into account their obligations under Executive Order 13609 when they engage in standards and conformity assessment activities, and encourage greater coordination with respect to the Government's formulation of global strategies on standards, regulation, and international trade.

Comments due May 12, 2014

https://www.federalregister.gov/articles/2014/02/11/2014-02891/request-for-comments-on-a-proposed-revision-of-omb-circular-no-a-119-federal-participation-in-the