



American Academy of Forensic Sciences Standards Board, LLC

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**Response of the AAFS Standards Board (ASB)
to the
Request for Information
on the Development of the Organization of Scientific Area Committees (OSAC)
for Forensic Science 2.0**

October 27, 2017

The American Academy of Forensic Sciences Standards Board (ASB) was founded to support the OSAC by providing coverage of forensic subject areas not addressed by other Standard Development Organizations (SDO). The ASB was established as a not-for-profit corporation on February 10, 2016. We are an ANSI-accredited SDO dedicated to the development of forensic American National Standards (ANS) and to providing our Standards free of charge to all interested parties. The ASB believes that it should be a national priority to provide high quality Forensic Science procedures to law enforcement, the judicial system and the American people whose lives have been affected by crime, accidents, or disasters.

Any document sent to the ASB for development into an ANS undergoes the ASB ANSI approved procedures including internal Consensus Bodies (CB) review and revision, public comment period and comment resolution, then CB votes to approve it as an ASB Standard. Once a standard has been developed by the ASB, it will be sent to ANSI to undergo the appropriate review to become an ANS. The ASB is funded through January, 2022, by a grant from the Laura and John Arnold Foundation, and we are investigating future funding sources.

The ASB has 12 active Consensus Bodies that correspond to the subject areas of the OSAC subcommittees that are not covered in other existing SDOs. The ASB may accept New Work Proposals from any source but currently many ASB work projects have been submitted drafts from the corresponding OSAC sub-committee. Not all documents that originate in the OSAC are developed by ASB; forensic SDOs have agreed not to have duplication in their coverage areas. Currently we have 351 people participating on our CBs with 14 international participants. While some members of OSAC subcommittees are members of an ASB CB, not all OSAC members are members of the ASB CBs. Any OSAC member can participate in Working Groups of a CB given approval by that CB. ASB CB membership is restricted to 25 members across 8 ANSI approved interest categories, with no more than 1/3 representation from any particular interest category. The ASB interest categories are not the same as those used by OSAC for selection of members of its subcommittees.

The ASB supports the current OSAC structure with slight modifications in its procedures and oversight. Over the past year and a half, the ASB has been working closely with the members of the OSAC developing consensus based standards. The ASB feels that due to our close working relationship with many of the OSAC subcommittees we can provide unique insight to this Request for Information. Thank you for giving us this opportunity to provide feedback on the existing state of the OSAC and possible future structures of OSAC 2.0.

PURPOSE

1. *What is your opinion regarding whether the OSAC is fulfilling these purposes under current structure?*

The first meeting of the OSAC FSSB occurred three years ago on July 7, 2014, followed by the announcement of the first members of the specific committees and subcommittees on October 29, 2014. As with any new organization of this size, establishing and implementing its processes has been slow. The OSAC has impacted the forensic science community by educating it on consensus-based documentary standards and guidelines, and has established working relationships among the existing forensic organizations that did not previously exist.

The OSAC Principles of Professional Practice documents are the core principles developed under the current structure. The communication from the OSAC has succeeded in providing leadership to facilitate development and promoting the use of consensus based standards in forensic science. The development of discipline-focused subcommittees has demonstrated OSAC's important role in identifying specific areas within forensic science requiring standardization of processes and methods. Some accreditation bodies have modified their definitions of forensic work areas to mirror the definitions developed by the OSAC.

To date eight (8) Standards have been placed on the OSAC Registry, all of which were previously written Standards developed by a standards development organization (SDO). Two of those standards are international standards used by forensic accreditation bodies and one is an American National Standard (ANS). To date, many of the 50 new work proposals undertaken by the ASB to become standards are based on OSAC documents. As a SDO, the AAFS Standards Board (ASB) recognizes the length of time it takes to develop sound written documents to become Standards. The current structure and procedures of the OSAC that require extensive review and approval of draft documents submitted to a SDO (which are then subject to revision by the SDO) may duplicate the established SDO procedures therefore slowing down the process of populating the OSAC Registry.

2. *What is your opinion regarding what role, if any, the OSAC should be playing in addressing the recommendation of the 2009 National Academies of Sciences report?*

The OSAC serves a valuable role in addressing the recommendations of the 2009 National Academies of Sciences (NAS) report as well as the President's Council of Advisors on Science and Technology (PCAST) Report on Forensic Science in Criminal Courts. There had never before been a centralized organization that brings together all the forensic science discipline specific subject matter experts with entities outside forensics including researchers, human factors experts, and legal practitioners. The NAS report stressed the collaboration of these groups and the OSAC provides an organized and consistent venue that allows identification of needs and development of specific goals to meet those needs. It is important that the OSAC continues providing this service to move the field forward.

OSAC plays a critical role in bringing together individuals with scientific, operational, statistical and legal backgrounds that may not otherwise have been available to a SDO. The OSAC subcommittees provide scientific feedback to the SDO during the standard development process. This helps to ensure that the final documents have broad representation of stakeholders (the role of the SDOs) and a solid scientific and operational foundation (the role of OSAC subcommittees). The OSAC subcommittees substantially assist SDOs by developing roadmaps of what types of documents to produce, in what order and what the scope of such documents should be. This is a critical planning step, and helps to directly address the issues raised by the NAS report.

OVERSIGHT AND INDEPENDENCE

What type of entity should host the OSAC?

1. *What is your opinion about the preferred characteristics of a host organization for an effective OSAC?*

The host organization should provide the administrative and organizational needs of the OSAC. The current Charter and Bylaws provide for an independent structure of the OSAC with the Forensic Science Standards Board (FSSB) governing the organization's processes. Section 2 of the OSAC Charter and Bylaws under the Administration defines the responsibility of the current "host" organization. The one duty defined that is not appropriate for the host organization is "reviewing and approving the direction and deliverables provided by the OSAC Forensic Science Standards Board". If the OSAC is an independent organization, there is not a need for additional review and approval processes. The host organization should not inject itself into the overall OSAC business, but support it. The host organization will need to have the appropriate financial backing, stability and staffing to facilitate the running of the established procedures.

2. *What are your views as to the type of organization that should provide oversight to the OSAC?*

It is not clear as to what "oversight" is required of the OSAC. The current Charter and Bylaws provide for an independent organization following established procedures to meet the defined Purpose and Aims of the OSAC. The type of organization is not relevant if the OSAC is to maintain autonomy from political and personal biases. The host organization will need to have the appropriate financial backing, stability and staffing to facilitate the running of the established procedures.

3. *Do you believe that the OSAC should have more/less independence from a host organization?*

The OSAC should have complete independence from its host organization as discussed in previous responses. The host organization will need to have the appropriate financial backing, stability and staffing to facilitate the running of the established procedures.

WORK PRODUCTS AND AIMS

1. *What are your views as to the type of work products the OSAC should produce?*

The OSAC Charter and Bylaws states the purpose of the OSAC is "to strengthen the nation's use of forensic science by providing technical leadership necessary to facilitate the development and promulgation of consensus-based documentary standards and guidelines for forensic science", and by "promoting standards and guidelines that are fit-for-purpose and based on sound scientific principles". The organization provides a common venue that allows forensic science discipline specific subject matter experts and entities beyond the forensic scientists, including researchers, academics, human factors experts, and legal practitioners to develop and coordinate action plans to address the needs of the forensic science community. Areas to address include, but are not limited to, standardization, research, and education. These same forensic science subject matter experts, along with other relevant experts, are well suited to draft the standards and guidelines that are needed by the various forensic disciplines.

2. *What do you believe are the essential elements of work products?*

The OSAC work product should include generating initial drafts of standards and guidelines that ensure the practice of forensic science is based on scientifically accepted procedures. The make-up of the OSAC provides the forum for discipline experts to draft standards in coordination with other

advisors (e.g. legal, human factors, etc.). These drafts should then be submitted to an ANSI accredited forensic SDO for the full consensus vetting process. This process will provide an effective mechanism to promulgate American National Standards for forensic science to be placed on the OSAC Registry.

The OSAC work products should identify areas where research is needed to strengthen the scientific foundation for the analysis and interpretation of forensic evidence. The identification of these areas should guide forensic research grant funding and academic research programs.

The OSAC work product should also identify areas for improvement in training of forensic science practitioners and continuing education programs for those practitioners. It should examine the training needs of the consumers of forensic science services. This can provide direction for academic institutions, professional organizations, and certification and accreditation bodies.

3. *Should there be implementation/enforcement of the OSAC work products?*

Adoption of consensus-based standards and best practices should be the priority of the forensic science community. The implementation and enforcement of the Registry approved standards should be a primary focus of accreditation, certification and legal bodies related to forensic science.

One key tool that is available is the NTTAA (National Technology Transfer and Advancement Act of 1995). To quote from Standards.gov: “The Act mandates that all federal agencies use technical standards developed and adopted by voluntary consensus standards bodies, as opposed to using government-unique standards. The guidelines used by agencies to assess and report their conformity with the requirements of the Act are detailed in Office of Budget and Management (OMB) Circular A-119 (“the Circular”). The Circular establishes the National Institute of Standards and Technology (NIST) as the agency responsible for coordinating conformity assessment activities, and requires NIST to report annually to OMB on the progress that federal agencies have made toward using voluntary standards.”

Thus, NIST is in a unique position to develop and maintain the Registry and to enforce its application. Note that NTTAA has been interpreted to mean that Federal agencies issuing grants to state / local / tribal entities should include a requirement that in order to comply with the terms of the grant, the receiving agency shall use voluntary consensus standards. Voluntary consensus standards not on the Registry are also valid for use by Federal agencies. The OSAC Registry in and of itself has no particular significance with regard to the NTTAA. This is an issue complicating the usefulness of the Registry and its implementation. NIST also maintains another Registry for forensic standards. It is the “Registry of USG Recommended Biometric Standards.” That Registry includes forensic applications for disciplines involving biometrics, including friction ridges, voice recognition, face recognition, odontology, and DNA. That Registry is developed considering specific applications, and the method of placing a standard on the Registry is nomination by a Federal agency.

NIST has at its disposal the best available tools to encourage compliance with standards that may be included in either Registry it maintains for forensic science related applications. Those tools are enforcement of the NTTAA, public seminars and workshops (as are periodically offered by NIST) and working with other Federal, state and local agencies to promote the use of the standards.

4. *Should OSAC develop “best practices” and other materials that are not formal “standards”?*

The OSAC should identify the needs of the forensic science community that may be improved by either “best practices” and/or “standards”, and should develop the appropriate level of documents to address those needs in conjunction with a SDO.

STRUCTURE

1. *What are your views as to whether the current OSAC structure works efficiently?*

The OSAC subcommittee structure works well to facilitate the drafting of technical standards and guidelines. The OSAC providing the mechanism for in-person debate and discussion while drafting the technical documents is the most efficient way to accomplish that task. The SAC organization is useful to ensure that scientifically related forensic disciplines can coordinate activities where applicable and avoid duplication of efforts.

2. *Do you believe that another structure should be utilized?*

The OSAC subcommittees are well suited to draft standards and guidelines within their respective areas of expertise. These drafts should then go directly to an ANSI accredited SDO, rather than through multiple OSAC layers of technical review. The SDO process will ensure that the draft standard/best practice is further developed/finalized with representation from all stakeholders, including public comment, in accordance with requirements for balance and lack of dominance.

3. *Should there be any issues in the current work product development process that should be addressed structurally?*

The draft standard/guideline work products should not have to go through multiple layers of review within the OSAC structure, duplicating the SDO process. The OSAC members should comment directly on document drafts during the public review period afforded under the SDO process. In that manner, it is assured that any concerns or issues will be addressed by the SDO. If there is a concern that the SDO does not address concerns or issues during their remediation process, all ANSI accredited SDOs have an appeal process to address those concerns. Reviewing a subcommittee draft prior to submission to an SDO does not ensure that the viewpoints of the reviews will always be reflected in the final document.

4. *Does the reliance on standards development organization function as intended (include reasons for your opinion)?*

The external SDO function is an integral part of developing consensus based forensic standards. It provides an avenue for the proposed standards to go through an accredited process that numerous other scientific standards adhere to. Requiring an external review outside the forensic science community demonstrates that the forensic science community is not “policing” itself and they are reaching out to all walks of science to evaluate proposed practices and responding to comments provided. Requiring an external SDO function addresses concerns that the forensic science community sees itself as a science open to review of all appropriate scientific communities.

PARTICIPATION

1. What community should the OSAC serve?

All interested parties to science that is “pertaining to, connected with, or used in courts of law or public discussion and debate.”¹

2. What stakeholders must be a part of the OSAC (e.g., practitioners, researchers, forensic science societies, accreditation bodies, scientific societies, human factors experts, metrologists, standards development organization, legal practitioners)?

a. If any of these entities should be excluded provide why and identify other venues for the views of the excluded entities to be incorporated into forensic practice, if appropriate.

The suggested stakeholders are all appropriate but additional stakeholders should also be included such as forensic equipment manufacturers and suppliers and public advocacy groups to ensure balance.

The partnership between the OSAC and accredited SDOs ensure that any and all stakeholders are represented. Through the SDO process, balance and lack of dominance among stakeholders is essential. At the OSAC level, there needs to be strong subject matter expertise to ensure the documents are drafted with a solid scientific and operational foundation. The stakeholders listed above provide that type of expertise. Once that scientifically sound draft progresses to the SDO level, additional stakeholders are represented in the final draft, and any and all potential stakeholders are equally represented through public comment.

3. Should some stakeholders serve more limited roles and if so, how and why?

No. The ANSI Essential Requirements states due process requires “any person (organization, company, government agency, individual, etc.) with a direct and material interest has a right to participate by: a) expressing a position and its basis, b) having that position considered, and c) having the right to appeal. Due process allows for equity and fair play.”²

FUNDING

1. What is your opinion as to the funding model that OSAC should employ – entirely funded by the Federal government, by non-Federal funds or a combination of funding sources)?

a. Include your thoughts on the role of funding sources such as membership fees, certification fees and meeting registration fees.

Currently there is no existing entity with the resources to support the OSAC mission. Both the federally funded 2009 National Academies of Sciences (NAS) Report and the President’s Council of Advisors on Science and Technology (PCAST) Report on Forensic Science in Criminal Courts identified areas in forensic science that should be addressed. It should be an ongoing national priority to provide continued reliable and quality forensic science services to law enforcement, the judicial community and the American people. Not dedicating federal funds to support this continued improvement of the forensic science does a disservice to all who rely on it. Regardless of what structure is decided upon for OSAC 2.0 or what organization manages it, without a dedicated source of funding, OSAC in any incarnation cannot survive. The managing organization needs to have adequate funding to fully cover management, technology, both in-person and virtual meetings and appropriate travel costs.

¹ Definition of “forensic” - <http://www.dictionary.com/browse/forensic?s=t>

² ANSI Essential Requirements: Due process requirements for American National Standards; January 2017

Federal funding is the most appropriate source. Supplemental federal support for the SDO process either through directed funding or grants would be beneficial in supporting the SDOs developing forensic specific standards in the subject areas of interest to the OSAC. While some SDOs may be able to partially absorb the functions of OSAC should it disappear, the coordinated direction and collaboration between all interested parties will be lost. It would be a conflict of interest for an SDO to develop standards and to develop and maintain the Registry.

If the OSAC were to eliminate its subcommittee function, it would have a major impact upon the efficiency and ability of the SDO to continue to develop standards for forensic science. Many SDOs will not be able to afford to sponsor the in-person meetings necessary to develop first drafts of proposed standard documents. Due to balance requirements, they would not be able to absorb all persons currently involved in OSAC as voting members. The interest category balance requirements of the SDOs and the balance by skill sets required within the OSAC subcommittees are distinct and complementary. The loss of either greatly diminishes the probability that the final product will be scientifically sound, nationally recognized and simultaneously useful to the forensic community. Any funding model for the OSAC, should be sufficient to support in-person meetings of the Subcommittees to draft documents for submission to a SDO, to allow sub-committee members to participate as working groups during the document refinement process and provide for the FSSB to review published standards for inclusion in the Registry. However, unless the usefulness and need for the Registry can be established, that function could be de-funded.

2. *What are the implication of funding models for the other traits, particularly oversight and independence?*

NIST and the forensic community has invested an enormous amount of time and money developing the current OSAC structure and procedures. To establish a new organization to replace the OSAC would be a waste of the millions of dollars and resources that our federal government has already expended to develop the existing organization.

The host organization should provide for the administrative and organizational needs of the OSAC. The current Charter and Bylaws provide for an independent structure of the OSAC with the Forensic Science Standards Board (FSSB) governing the organization's processes. Section 2 of the OSAC Charter and Bylaws under Administration defines the responsibility of the current "host" organization. The one duty defined that is not appropriate for the host organization is "reviewing and approving the direction and deliverables provided by the OSAC Forensic Science Standards Board". If the OSAC is an independent organization there is not a need for additional review and approval processes. The host organization will need to have the appropriate financial backing, stability and staffing to facilitate the running of the established procedures.