



April 30, 2012

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Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Re: “Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities”

Dear Sir/Madam:

Please accept the following comments submitted by the National Association of Convenience Stores (NACS) related to the Office of Management and Budget’s (OMB) request for information pertaining to “Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities.”

NACS is an international trade association, comprised of more than 2,000 retail member companies and more than 1,600 supplier member companies, representing the convenience and fuel retailing industry. Within the United States, this industry operates nearly 150,000 retail facilities, generated \$681.9 billion in sales in 2011 (representing one of every \$22 of GDP), sells 80% of the gasoline consumed annually and employs 1.8 million workers.

The comments contained within this document reflect the positions of NACS. However, I also serve on the Board of Directors of the Petroleum and Convenience Alliance for Technology Standards (PCATS), a consensus-based standards organization. NACS and PCATS share similar positions on these topics. My comments today will focus on only a few specific issues raised in the request for information.

Standardization Activities

While we understand OMB’s suggestion that it might be “important to recognize the contributions of standardization activities that take place outside of the voluntary consensus process, in particular certain activities in emerging technology areas,” NACS is concerned that this statement could lead to official reliance on non-consensus based standard setting bodies.

Standard-setting processes that are not based upon consensus run the risk of being susceptible to market power influences. If consensus is not the basis for developing and finalizing a standard, a consortium of powerful market participants could develop to impose their proprietary preferences on the process. This would undermine the legitimacy of the standard, potentially disadvantage less-powerful market participants and result in a standard that is inequitable and not as effective as it otherwise might have been. Indeed, such a scenario has already played out in the marketplace.

The lack of a federally recognized standard for ensuring the data security of consumers using electronic forms of payment (including debit and credit cards) has resulted in the development of a proprietary standard setting body, the Payment Card Industry (PCI) Security Standards Council (SSC). The PCI SSC has developed a series of requirements for securing payment data and cardholder identity which have not resulted in an effective, secure system. PCI SCC decisions are made by a panel of five stakeholders who represent one element of the financial services supply chain – the card brands. These requirements have been developed without meaningful input from other stakeholders within the financial transaction system, shift the burdens of compliance and liability of risk to other parties in the system, and have not resulted in the most secure system possible. Consequently, consumers, merchants and banking institutions are subject to an elevated risk of fraud.

NACS contends that a voluntary, consensus-based standards setting process, which would include the participation and investment of all stakeholders, would deliver a more robust and effective data security protocol that would better protect consumers and others in the financial transaction system from fraud and loss.

Conformity Assessment

Due to our experience with PCI DSS and our concern about the process in general as it will apply to a variety of other elements of our industry's operations, NACS encourages OMB to review the activities of non-consensus based organizations but to not rely upon such entities when conducting a conformity assessment.

When selecting an appropriate conformity assessment procedure or determining whether to recognize the results of a conformity assessment and accreditation activities conducted by private sector bodies in support of regulation, agencies should consider the participatory nature of the standard setting process and whether all affected parties have the opportunity to contribute. The process should be transparent and include a requirement that all potential conflicts of interest be fully disclosed to ensure no manipulation. Agencies should also consider whether the standard setting process conforms with the applicable international standards setting process.

If the process is open, transparent and based on consensus, the agencies would have a much easier time evaluating the costs such processes might impose on businesses. The development of standards in an efficient manner is important, but so is the implementation. Both can be facilitated by ensuring that all stakeholders are involved throughout the process, enabling broad acceptance of the final standards and leading to a more efficient transition of the market. The alternative format potentially breeds distrust in the process, reluctance to adopt new standards and animosity amongst the stakeholders that must work together to create a more efficient and effective system.

NACS appreciates the opportunity to share our views on the issue of standards development and the role of regulation in the marketplace.

Sincerely,

A handwritten signature in black ink, appearing to read "John Eichberger". The signature is fluid and cursive, with a large, stylized initial "J" and "E".

John Eichberger
Vice President, Government Relations