

April 30, 2012

Cass Sunstein, Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget

Cass Sunstein:

We wish to comment on F.R. Doc. 2012-7602 “Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities.” We appreciate that the Office of Management and Budget is reviewing key aspects of OMB Circular A-119.

In our limited experience, we have been satisfied with the U.S. Department of Agriculture attention to Circular A-119 and their adherence to the spirit and intent of the policy. We wish to raise issues for your consideration pertaining to the overall approach that is advocated.

1. Announcement of participation in standard development and intent to incorporate said standard in agency policy

While it is admirable to build upon voluntary consensus standards created by Standard Developing Organizations, we are concerned that many in the industry may not be aware of standard development activities. In our case, we have been working with ASTM committee F10 – Livestock, Meat and Poultry Evaluation Systems - with participation by personnel from the USDA-Agricultural Marketing Service concerning a standard for tenderness marketing claims of meat. Development of standards in this way is fairly new to the meat industry. Despite efforts of both ASTM and the USDA we are not confident that all stakeholders in the meat industry have been aware of the standard development process. Most corporate entities pay close attention to the Federal Register and rely on it to inform them of standard development activities. Thus, a fundamental issue with standard development is clear communication to the industry to be affected by the standard. **We recommend that federal agencies seek to inform everyone about their involvement in standard development activities and intention to use such standards through the Federal Register.** Failure to do so could result in both standard development and implementation of government policy without adequate communication of pending implementation of such policy. In our particular case, it appears a Standard Practices document will be implemented without benefit of notice in the Federal Register. We strongly advocate that such a document be published in the Federal Register for comment – where the industry is used to looking. At the least, notice of intent should be required.

2. Cost of participation in the development activity as well as the cost of the standard itself

One challenge of Standard Development Organizations is the cost of creating and maintaining standards. In the case of ASTM, one must be a paid member to participate in the process. Once the standard is referenced in a federal policy document, those who have not been a part of the development process are required to purchase the standard in order to have the opportunity to provide meaningful input to the federal agency. This has a chilling effect on industry involvement if they are unaware of the standard development effort and/or the intent of a federal agency to cite the standard in a policy statement. We comprehend the need for Standard Development Organizations to recover administrative costs but believe there is an inherent flaw in the process when those who wish to be involved in the development process are required to pay to do so. This emphasizes the critical nature of item one – that agencies should clearly communicate to industry when standards are being developed and their intent to use such standards in agency policy.

Sincerely,

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