



## GE Aviation

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### Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities

May 31 2012

Dear Sirs

GE appreciates the opportunity for input on the rulemaking process.

In response to the petition raised by Mr Strauss, we believe that incorporation of standards, by reference should give careful consideration to intellectual property rights.

Further considerations in the incorporation of standards by reference should also be taken into account, as follows:

Incorporation by reference has been used to convert a standard into a new requirement, as noted by Mr Strauss. There have also been attempts to convert recommended practices into new requirements. This is a concern because the committee developing a voluntary standard or practice would do so with a different context than a committee developing mandatory requirements. The voluntary standard would reasonably incorporate practices which have been found to work well under certain circumstances, or helpful concepts. The mandatory requirement would only have material which is completely necessary to provide an acceptable minimum standard. Industry consensus to a voluntary standard does not imply support for mandatory enforcement of that standard.

It is therefore very important that incorporation by reference be done with the utmost clarity – that the rulemaking process make clear whether the incorporation is to provide a helpful reference, or to convert the standard into a new set of requirements. If the second approach is intended, the standard must be subjected to the same cost-benefit analysis and change control as the rule itself.

A second issue regarding the incorporation of standards by rules is that standard development is not subject to the same scrutiny as the rule-making process. The standard setting activity and committee membership is not public. Affected groups may not learn that a standard is in work until it has been published. The standard-setting organization may charge a fee for participating in the standard-setting meeting. It is particularly important that government agencies follow the normal rulemaking process, rather than using standard setting as an alternate means.

Since the rulemaking activity may be the first opportunity for an affected organization to comment upon or have input to the standard, and will likely be the first evaluation of the relative costs and benefits of the

standard, it may be appropriate for the standard to change in response to the comments or to enhance the benefits relative to the costs. It is not clear how the government would address this need; whether by requesting a change to the standard itself, or by stating variation from the original standard in the adoption by reference.

Many of these points were mentioned in the ACUS Comments from the Office of the Chairman (page 6); we support careful consideration of these comments by rulemaking teams planning to incorporate standards by reference, especially where the standard involves judgment or process requirements rather than a physical description.

Respectfully

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