



Submitted May 9, 2014
GTW Associates Response to Request for Comments on a Proposed Revision of
OMB Circular No. A-119

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

79 FR 8207
Office of Management and Budget

Thank you for the opportunity to comment on the Request for Comments on a Proposed Revision of OMB Circular A-119. GTW Associates is a consulting firm specializing in international trade, standards policy and conformity assessment matters.

GTW recommends that elements and wording from the October 2011 document "Federal Engagement in Standards Activities to Address National Priorities Background and Proposed Policy Recommendations by the Subcommittee on Standards of the Technology Committee of the National Science and Technology Council (see at http://www.whitehouse.gov/sites/default/files/microsites/ostp/federal_engagement_in_standards_activities_october12-final.pdf) serve as the basis for rewording some of the text of the proposed revision addressing intellectual property rights (IPR) policies so as to more closely reflect the recommendations of the Subcommittee on Standards.

For example the paragraph below in italics appears on page 22 of 59 elaborating considerations an agency should include in an evaluation of the economic effects of an organization's intellectual property rights (IPR) policy.

This evaluation should include consideration of the economic effect of the intellectual property rights (IPR) policies of the voluntary consensus standards bodies on standards implementers, such as the extent to which entities practicing the standards may obtain licenses to patented technology incorporated into the standard on a non-discriminatory and reasonable royalty or royalty-free basis. This evaluation should also include consideration of whether such IPR policies bind subsequent transfers of patented technology incorporated into the standard.

A difficulty with the text above is that the economic evaluation of the IPR policy to be completed addresses only the effects on implementers and there is not included the thought from page 10 of the October 2011 document below in italics that reflects the important positive role of contributors of IP to standards processes in innovation and global competitiveness of US business. Some foreign governments promote adoption of standards embedding Intellectual property of local businesses in order that such local businesses might gain royalty income deriving from such IP. This is not to recommend that the Government of the United States adopt this strategy, rather that the Government of the United States factor the global competitiveness of US enterprises into their evaluation of the economic effect of intellectual property rights policies.

Agencies should take into account the impact of their standards choices on innovation and the global competitiveness of U.S. enterprises, including the impact of intellectual property incorporated in standards

This thought from the October 2011 document should be added to the paragraph. Substitute wording for consideration might be:

Agencies should take into account the impact of their standards choices on innovation and the global competitiveness of U.S. enterprises, including the impact of intellectual property incorporated in standards. Intellectual property rights (IPR) policies of voluntary consensus standards bodies should assure that entities practicing the standards may obtain licenses to patented technology incorporated into the standard on a non-discriminatory and reasonable royalty or royalty-free basis. This evaluation should also include consideration of whether such IPR policies bind subsequent transfers of patented technology incorporated into the standard.

On page 30 of 59 the paragraph below appears with additional considerations an agency should take with regard to intellectual property and the development of standards.

j. What should my agency consider with regard to intellectual property and the development of standards? Many standards developing bodies have policies which require participating IPR holders to commit to license any patented technology incorporated into a standard on reasonable and non-discriminatory terms. Such policies often take into account the interests of both the IPR holders and those seeking to implement the standard. Such policies should be easily accessible and the rules governing the disclosure and licensing of IPR should be clear and unambiguous.

A problem with the paragraph above is the use of the phrase “Such policies often take into account” in contrast to the phrase in a comparable paragraph below on page 11 of the October 2011 document “policies should take into account”

Clear Intellectual Property Rights (IPR) Policies: standards organization IPR policies should take into account the interests of both IPR holders and those seeking to use or implement the IP included in the standard or standards. These policies should be easily accessible and the rules governing the disclosure and licensing of IPR should be clear and unambiguous.

The word “often” should be replaced by the word “should” There is a significant difference in the message.

Thank you again for the opportunity to contribute these thoughts.

Sincerely,



George T. Willingmyre, P.,E.

President, [GTW Associates](#)

1012 Parris Ridge Drive

Spencerville, MD 20868