



National Technology and Transfer Advancement Act of 1995 (NTTAA) – What the Law Says and How OGC Can Help

Enacted in March of 1996 as Section 12(d) of Public Law 104-113

OMB Circular A-119 – establishes policies on Federal use and development of voluntary consensus standards

Basic Provisions of the NTTAA

- Federal agencies must use voluntary consensus standards ("VCS") in their procurement and regulatory activities unless to do so would be "inconsistent with applicable law or otherwise impractical"
- When the agency does not use an available, potentially-applicable VCS, it must provide an explanation which is included in the annual report to Congress submitted by the Agency's Standards Executive to OMB through NIST
- Agencies shall consult with and, when compatible agency missions, authorities, priorities and budget resources, shall participate in the standards-developing activities of voluntary consensus standards bodies ("VCSBs")



Voluntary Consensus Standard

- VCSs are "technical standards"
 - Examples include: materials specifications, test methods, sampling protocols, business practices, and management systems
- OMB Circular A-119 defines VCSs as "standards developed or adopted by voluntary consensus standards bodies, both domestic and international"

Example VCS

- ASTM E2686 - 09 Standard Test Method for Volatile Organic Compound (VOC) Solvents Absorbed/Adsorbed By Simulated Soil Impacted by Pesticide Emulsifiable Concentrate (EC) Applications
 - This test method simulates the application of an emulsion of a pesticide emulsifiable concentrate (EC) to soil with high organic matter (corn cob granules) and to soil with high inorganic matter (clay granules) and determines the amount of solvent retained by the granules, and withheld from the atmosphere, before and after exposure to 40°C in a vented oven.
- <http://www.astm.org/Standards/E2686.htm>



Voluntary Consensus Standards Body

- OMB Circular A-119 defines VCSBs as domestic or international organizations which plan, develop, establish or coordinate VCSs using agreed-upon procedures and as having the following attributes:
 - Openness
 - Balance of interests
 - Due process, including an appeals process
 - Consensus



Example VCS Body - ASTM

- Standards developed at ASTM are the work of over 30,000 ASTM members. These technical experts represent producers, users, consumers, government and academia from over 120 countries. Participation in ASTM International is open to all with a material interest, anywhere in the world.



Scope of NTTAA

- The requirements apply to the use of VCSs in “regulatory and procurement activities”
- Regulations which do not establish or involve technical standards do not trigger the NTTAA requirements, but we generally provide a brief explanation (usually in the preamble);



What is OGC's role?

- OGC can help you consider all relevant factors before deciding whether or not to use a VCS
- Please contact your OGC attorney if you want to vary from a VCS

Frequently Asked Questions

- Can I use appropriated funds to pay for a membership on a VCS body?
 - Most likely yes, but please consult with your supervisor and OGC.
- Can we write the regulation so that it automatically updates to VCS released after the regulation is final?
 - Unfortunately, no. We are required to go through notice and comment to amend our regulations and cannot do so automatically.
- Do I *have* to use VCS if they are available?
 - Yes, unless to do so would be impractical or inconsistent with law and you provide that reasoning to the public (and OMB).
- I know what I want to say about the NTTAA, but is there a template I can use?
 - Yes. Contact your OGC attorney or Regulatory Steering Committee Representative.

In a nutshell....

- Basic idea: reduce reliance on government-unique standards and save time and resources by taking advantage of existing consensus-building processes
- The NTTAA requires agencies to give first consideration to VCSs where they exist
- Agencies retain broad discretion to reject VCSs, if they don't meet our needs (with an explanation)
- Agencies retain the exclusive authority to determine **substantive standards**, i.e. the mandatory limits, quantities, measures etc.

Questions?

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