

# **IME**

**institute of makers of explosives**

---

*The safety and security institute of the commercial explosives industry since 1913*

May 23, 2012

National Archives & Records Administration  
Office of the Federal Register  
800 North Capitol Street, NW  
Suite 700  
Washington, DC 20001

**Via Electronic Delivery**

**Re: Incorporation by Reference (“IBR”) Notice and Request for Comments; 1 CFR Part 51**  
**[NARA 12-0002]**

The Institute of Makers of Explosives (“IME”) appreciates the opportunity to file comments on the above-captioned Notice and Request for Comment.

### Interest of IME

IME is a nonprofit association founded in 1913 to provide accurate information and comprehensive recommendations concerning the safety and security of commercial explosive materials. Our mission is to promote safety and the protection of employees, users, the public and the environment; and to encourage the adoption of uniform rules and regulations in the manufacture, transportation, storage, handling, use and disposal of explosive materials used in blasting and other essential operations.

IME represents U.S. manufacturers and distributors of commercial explosive materials and oxidizers as well as other companies that provide related services. Over 2.5 million metric tons of high explosives, blasting agents, and oxidizers are consumed annually in the U.S. Of this, IME member companies produce over 95 percent of the high explosives and a great majority of the blasting agents and oxidizers. These products are used in every state and are distributed worldwide.

IME is a voluntary non-consensus standard-setting organization. We have developed a comprehensive set of 15 Safety Library Publications (“SLP’s”). In addition, IME publishes various guidance documents designed to assist manufacturers and users of explosives products. IME’s publications are authored by professional mining and explosives engineers and other explosives and technical specialists employed by our member companies. These professionals have extensive theoretical and practical knowledge and experience in the explosives field. Accordingly, our publications are highly valued across the U.S. and by international commercial explosives industries. In addition, IME recommendations and guidance have been incorporated into multiple

U.S. federal and state statutes and regulations. Our publications are reviewed and updated on a regular basis and serve as a reliable source for state-of-the-art information and best practices for the manufacture, storage, transportation, use and disposal of commercial explosives.

Accordingly, the above-captioned Notice is of interest to IME. Our comments are as follows:

As noted in the request for comments, OFR received a petition to revise its regulations at [1 CFR part 51](#) on February 13, 2012. The petition specifically requested that OFR amend its regulations to define “reasonably available” and to include several requirements related to the statutory obligation that material incorporated by reference (“IBR”) be reasonably available. The petition did not specifically request that OFR define “class of persons affected”; however, it assumed that the term encompasses anyone who is interested in reviewing the material that agencies intend to IBR into their regulations.

Accordingly, the above-captioned notice is centered on the question of whether IBR standards should be made available free of charge (e.g., should agencies bear the cost of making the material available for free online? Should OFR have the authority to deny IBR approval requests if the material is not available online for free?).

As explained above, IME is a voluntary non-consensus standard-setting organization. For decades we have published a series of technical publications (SLPs) establishing standards for the manufacture, transportation, storage, use, and disposal of commercial explosives products. Historically, these publications have been made available in printed form to IME members (who participate in their development and revision), non-members, and the public for a nominal fee. The publications have also been available on IME’s website since the site was established.

In 2007, a policy decision was made by the organization to make all SLPs available free of charge via download from our website at [www.ime.org](http://www.ime.org). Three key factors informed this decision: (i) IME standards were increasingly being IBR’d by federal, state, and local agencies, and they were widely accepted by the commercial explosives industry both in the U.S. and internationally as best practice principles; (ii) many of the standards in the SLPs cross-referenced standards in other SLPs. This, conceivably, could have required users to purchase multiple SLPs or an entire set of SLPs in order to effectively make use of one publication. IME considered this an unacceptable cost burden to prospective users; and (iii) IME is a safety and security association dedicated to ensuring that commercial explosives products are used safely, securely, and effectively. In furtherance of this mission, it was decided that all impediments to the widespread availability and dissemination of IME standards should be removed to the extent practicable.

We realize that the commercial explosives industry is a discrete, highly specialized, and relatively small industry sector. We acknowledge also that our membership size and organizational structure is distinct from many other established and well respected standard-setting organizations. Accordingly, we are not suggesting that other voluntary consensus or non-consensus organizations

should adopt our policy of providing standards free of charge. We offer the above information only to provide OFR with one perspective in the complex arena of standards development.

\*

\*

\*

Thank you for the opportunity to participate in OFR's consideration of this important issue. If you have any questions concerning these comments, please feel free to contact us.

Respectfully Submitted,

*Susan JP Flanagan*

Susan JP Flanagan  
Counsel, Environment, Safety & Health  
Institute of Makers of Explosives  
202.674.7123  
[www.ime.org](http://www.ime.org)