



PASMA

PUBLIC AGENCY SAFETY MANAGEMENT ASSOCIATION

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May 23, 2012

Office of the Federal Register (NF)
The National Archives and Records Administration
8601 Adelphi Road
College Park, Maryland

Subject: Incorporation by Reference: NARA 12-0002

Dear Sirs;

Pursuant to the National Archives and Records Administration (NARA) Announcement which was published in the February 27, 2012 Federal Register, the Public Agency Safety Management Association-South Chapter (PASMA) provides these comments in support of the petition to revise the regulations governing incorporation by reference (IBR). PASMA agrees with the petition and comments from the National Rural Electric Cooperative Association that the IBR regulations must be amended in light of the changed circumstances of the digital age, as well as the need to ensure that mandatory regulations are readily accessible to all persons and entities affected by the regulations. In summary, persons should not be forced to pay a fee in order to view government-imposed legal standards, and most especially not if violations of those standards may subject persons and entities to severe monetary penalties.

The Public Agency Safety Management Association-South Chapter's (PASMA) members include Safety and Health Professionals who are employed at over 75 public agencies in Southern California. These Safety and Health Managers work in municipal and county government agencies, water districts, and other special districts. Our members are very concerned about the burdens placed on their agencies as a result of incorporation by reference.

The announcement poses several questions for comment, including whether the requirement that material be "reasonably available" means that material to be incorporated by reference should be available for free and available to anyone online, as well as how an extended incorporation by reference review period at both the proposed rule and final rule stages would impact agencies. Rather than address each question separately, PASMA will comment on a few of the questions posed in the Announcement.

PASMA's membership include municipal and county government agencies, water districts, and other special districts that are subject to and/or affected by the regulations of the Occupational Safety and Health Administration (OSHA), and specifically the California Department of Occupational Safety and Health must adopt regulations which are at least as effective as those regulations adopted by OSHA.

Among the standards which OSHA incorporates by reference are certain standards adopted by the American National Standards Institute (ANSI) and the American Society for Testing Materials (ASTM). Similar to other voluntary standards organizations, ANSI is a private non-profit standards development organization which oversees the development of voluntary consensus standards for products, services, processes, systems, and personnel in the United States. The organization also coordinates U.S. standards with international standards so that American products can be used worldwide.

ANSI accredits standards that are developed by representatives of standards developing organizations, government agencies, consumer groups, companies, and others. These standards ensure that the characteristics and performance of products are consistent, that people use the same definitions and terms, and that products are tested the same way. ANSI also accredits organizations that carry out product or personnel certification in accordance with requirements defined in international standards.

OSHA frequently will adopt ANSI standards through incorporation by reference and they make them mandatory for compliance for public and private employers in the United States. State-OSHA plans such as Cal/OSHA are required to adopt a standard which is at least as effective as Fed/OSHA standard which often include ANSI standards. Because of copy right protections, ANSI standards must be purchased.

PASMA echoes the concerns of others who have objected to the regulations governing incorporation by reference because they allow such "pay to play" processes to satisfy the Administrative Procedure Act's "reasonably available" requirement. Absent a change to the regulations governing incorporation by reference (1 C.F.R. Part 51), OSHA and other agencies can be expected to continue their policy that any level of availability, even if for a fee or by limited waiver does not render as "reasonable available" regulations with which entities must comply under threat of enforcement actions and significant penalties. Given the public's reliance upon the internet in order to view agency postings and submit comments and other pleadings, it is patently unreasonable to consider hard copies available in agency offices in Washington D.C, as a contributor to meeting the "reasonably available" standard. PASMA members who are located in California, should not have their ability to participate in rulemaking processes and ensure compliance with mandatory regulations hinge upon being able to travel to Washington D.C to view proposed and adopted standards in hard copy.

Federal agencies routinely encourage electronic filings and submissions, even mandate that regulated entities make information available for free, via the internet, in certain circumstances. No less should be required of the government in adopting mandatory standards and regulations. Moreover, we concur with others who also believe that the laws and regulations of the federal government must not be tied to any fee whatsoever, particularly where compliance is not optional. Rather, we believe that "reasonably available" means that material should be available for free and to anyone online. By revising the incorporation by reference regulations they would be more in line with the policies of transparency in government and the regulated public's reliance upon the internet should greatly reduce the number of affected persons who currently do not have access to such material.

In regards to the “pay to play” aspect of the incorporation by reference regulations, it creates a substantial burden on smaller public agencies who may not be able to participate in the time and resource-intensive development of material which will be incorporated by reference, but nevertheless will be expected to comply with the regulations or be subject to severe monetary penalties. Given the focus on small business and smaller entities by Congress and the Current Administration, the restricted ability to access materials subject to incorporation by reference runs counter to national policy.

We appreciate the opportunity we have been provided to communicate our concerns regarding incorporation by reference. PASMA supports the petition and urges NARA to revise the regulations at 1 C.F.R. Part 51 to require that material to be incorporated by reference must be made available online, to anyone, without any fee or limitation on access.

If you have any questions please contact me at (714) 765-4399.

Sincerely,



Bill Taylor, CSP
Public Agency Safety Management Association-South Chapter, Legislative and Regulatory Representative

cc: Ken Erwin, Public Agency Safety Management Association-South Chapter, President