



**American Water Works
Association**

The Authoritative Resource on Safe Water®

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June 1, 2012

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AWWA Response to Request for Comments on Incorporation by Reference

1 CFR Part 51 [NARA 12-0002]

National Archives and Records Administration, Office of the Federal Register

Thank you for the opportunity to comment on the petition submitted by Professor Peter Strauss et al. to the Office of the Federal Register (OFR), regarding the availability of material incorporated by reference (IBR) in the Code of Federal Regulations (CFR).

The American Water Works Association (AWWA) respectfully submits the following comments.

Questions from the *Federal Register* notice:

- 1) *Does “reasonably available”:*
 - a. *Mean that the material should be available:*
 - i. *For free*
 - ii. *To anyone online?*
 - b. *Create a digital divide by excluding people without Internet access?*

AWWA Comments: AWWA feels that “reasonably available” should be defined to mean that Standards Developing Organizations (SDOs) have an obligation to publish this sort of information—i.e. they can’t just keep it locked in a vault and not tell the world. That shouldn’t mean the content has to be free. It should mean that SDOs need to fix the information in a tangible form (which could mean simply virtually) and make it available through commercial transactions, including to libraries. Individuals/corporations who do not wish to purchase the content, or who have no Internet access, can access the document through a library.

- 2) *Does “class of persons affected” need to be defined? If so, how should it be defined?*

AWWA Comments: Depending on the situation, the class of persons affected may vary significantly. Therefore, any definition will fail because it is either too broad to be meaningful, or too restricted to capture the total class.

- 3) *Should agencies bear the cost of making the material available for free online?*

AWWA Comments: Consensus documents are costly to create. If organizations cannot monetize their documents, some SDOs, if not all, will have to discontinue creating them. To move science forward, government would need to underwrite these efforts. Given the constrained budgetary environment and the movement toward less government, a vacuum in standards development could occur, a vacuum that could potentially be filled by SDOs based in other countries. Is the US comfortable outsourcing standards development?

4) *How would this impact agencies' budgets and infrastructure, for example?*

AWWA Comments: Government agencies would have to take on much more of the burden of standards development, adding significant cost and requiring significant infrastructure. Moreover, if US companies and government agencies had to license information from SDOs based outside the US, there would be added pressure to the current trade imbalance.

5) *How would the Office of the Federal Register (OFR) review of proposed rules for incorporation by reference (IBR) impact agency rulemaking and policy, given the additional time and possibility of denial of an IBR approval request at the final rule stage of the rulemaking?*

AWWA Comments: The time required for review and enforcement would delay and impede rulemaking and policy.

6) *Should OFR have the authority to deny IBR approval requests if the material is not available online for free?*

AWWA Comments: Consistent with our comments above, we do not think that incorporation by reference should be denied for documents that are not free.

7) *The Administrative Conference of the United States recently issued a Recommendation on IBR. 77 FR 2257 (January 17, 2012). In light of this recommendation, should we update our guidance on this topic instead of amending our regulations?*

AWWA Comments: No comments.

8) *Given that the petition raises policy rather than procedural issues, would the Office of Management and Budget be better placed to determine reasonable availability?*

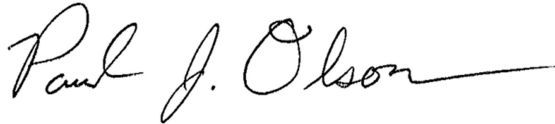
AWWA Comments: No comments.

9) *How would an extended IBR review period at both the proposed rule and final rule stages impact agencies?*

AWWA Comments: The time required for review would delay and impede rulemaking and policy.

We thank you for this opportunity to provide comments.

Sincerely,

A handwritten signature in black ink that reads "Paul J. Olson". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Paul J. Olson, PE
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