



June 1, 2012

Office of the Federal Register  
The National Archives and Records  
Administration  
8601 Adelphi Road  
College Park, MD 20740-6001

**Via Electronic Delivery**

**Subject: Incorporation by Reference (IBR) Notice and Request for Comment; 1  
CFR Part 51  
[NARA 12-0002]**

To whom it may concern:

The American Foundry Society (AFS) appreciates the opportunity to submit comments in response to the Office of the Federal Register (OFR) regarding the above-captioned Notice and Request for Comment.

AFS is the major trade and technical association representing the North American metalcasting industry with over 7,000 members from over 2,100 metalcasting facilities. Metal castings are the foundation for all other manufacturing, and have been a vital building block in every sector that relies on castings; 90 % of all manufactured goods incorporate engineered castings into their makeup. Foundries are predominantly small businesses, with 80% having less than 100 employees. In fact, many of these facilities are still family-owned.

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.

Accordingly, the notice is centered on the question of whether IBR standards should be made available free of charge. In addition, 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?

AFS submits the following comments on this important subject:

**Availability:** Obtaining IBR material can add several thousands of dollars of expenses per year to a small business, particularly manufacturers. These facilities are not only responsible for IBR standards that are referenced directly since there are many more standards that are indirectly enforced or used for interpretation. For example, the Occupational Safety and Health Administration (OSHA) National Emphasis Program for Combustible Metals references 14 National Fire Protection Association (NFPA) standards; 2 ASTM standards; and, 2 non-consensus documents. All of these materials may be enforced under its general duty clause.

\$75 is not much for a standard, but a typical small manufacturer, including a foundry, may be subject to as many as 1000 standards. The ASTM foundry safety standard alone cross references 35 other consensus standards and that is just the tip of the iceberg on safety standards. Add other standards on metallurgy specifications; quality; product identification, packaging and shipping; machinery and process equipment specifications; fire and building codes; etc. and you can get to a considerable cost. And that is just for consensus standards.

In addition, it is common for OSHA machine guarding citations to reference various ANSI standards to determine the adequacy of guarding. These “indirect” IBR standards are not addressed by the notice, but OFR should be aware of them and costs associated for their purchase.

**Out of Print Materials:** Some standards have become out-of-date and/or out of print and they are not easily available. Some of the OSHA IBR material consists of consensus standards that date from the 1950s. Some of the standards have undergone multiple revisions. The current version may contain valuable information while the historical IBR version still is of use for regulatory purposes. Sales of the historical document are not related to support of current new standards development. Those historical-only documents should be available for free from the agency and/or standards group. Standards development organizations should charge only for the current version. Employers should not have to purchase two versions of the same standard.

**Consensus vs. Non-Consensus:** The notice does not distinguish between consensus and non-consensus material, but there is a difference. Consensus standards when developed properly allow for participation and presumably represent the interests of producers, users and the general public. Although there are occasional questions related to representation or barriers to participation, for the most part IBR using the consensus standards development process can be efficient and effective.

In regards to non-consensus materials, there are additional factors that must be

considered. While the cost of consensus standards is generally related to development costs, non-consensus materials may not be.

Some agencies may require that material is available for free, such as OSHA's Hazard Communication Standard which requires suppliers to provide safety data sheets for chemicals. If users had to pay for data sheets the cost could be problematic. It seems reasonable that non-consensus IBR material used to advance the sale or use of a product or service (i.e. data sheets, safety or service manuals, etc.) should be free to the user. This issue could be addressed during individual rulemaking as question 9 asks [9) How would an extended IBR review period at both the proposed rule and final rule stages impact agencies?].

We offer the above information to provide OFR with the perspective of an industry with many small manufacturers 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.

Sincerely,

A handwritten signature in cursive script that reads "Jerry Call".

Jerry Call  
Executive Vice President  
American Foundry Society