



**David Miller, PE, F.ASCE**  
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Raymond A. Mosley  
Acting Director  
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National Archives  
and Records Administration  
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**Via First Class and Electronic Mail**

January 30, 2014

**Re: Incorporation by Reference (78 Fed. Reg. No. 222, Nov. 18, 2013).**

Dear Acting Director Mosley:

API appreciates the opportunity to comment on the Office of the Federal Register's ("OFR") partial grant of petition and notice of proposed rulemaking on the issue of Incorporation by Reference (IBR). API is a nationwide, non-profit, trade association that represents over 550 member companies that are engaged in all aspects of the petroleum and natural gas industry, including exploration, production, refining, transportation, and distribution of petroleum products. API's member companies engage in exploration, production, refining, transportation, and construction projects that routinely trigger federal regulatory and permitting regimes that incorporate industry standards by reference. API itself publishes more than 600 industry standards applicable to all aspects of the oil and natural gas industry, over 100 of which are incorporated by reference more than 350 times by six federal agencies' regulations.

As API commented on in its June 1, 2012 letter, API noted that in its opinion; (1) it does not appear that the director of the OFR is authorized to amend the regulations at 1 CFR Part 51, (2) if the authorized agencies undertake a change to 1 CFR Part 51, they should follow the procedure outlined by law for this rulemaking to ensure they are considering the impacts of any changes to other agencies and the public, and (3) the changes contemplated by the petition are likely to impose significant burdens on the federal agencies and the regulated public, with little or no actual corresponding benefit.

Therefore, we were encouraged with the National Archives and Records Administrations statement that "We agree with the petitioners that our regulations need to be updated, however the petitioners proposed changes to our regulations that go beyond our statutory authority. In this document, we propose that agencies seeking the Director's approval of their incorporation by reference requests add more information regarding materials incorporated by reference to the preambles of their rulemaking documents. We propose that they set out in the preambles a discussion of the actions they took to

ensure the materials are reasonably available to interested parties or summarize the contents of the materials they wish to incorporate by reference.”

In 2010 API established an IBR policy that all its standards incorporated by reference in Federal Regulations along with all safety-specific standards be made available on API’s website for free viewing. We believe this IBR policy fully meets the intent of the proposal that “...agencies seeking the Director’s approval of their incorporation by reference ...set out in the preambles a discussion of the actions they took to ensure the materials are reasonably available to interested parties...”

Additionally, API would like to provide perspective on several items in the “Discussion of Comments” section:

In the “3. *Should agencies bear the cost of making the material available for free online?*” section the OFR made the comment that “We note that API did not offer to make all of its IBRed standards available.” It has been API’s IBR policy since 2010 to make all its standards incorporated by reference in Federal Regulations be made available on API’s website for free viewing.

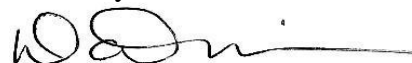
In the “10. *Other Issues e. Concerns regarding the misuse of the IBR process*” section it was stated that “At least 2 commenters raised concerns about the IBR of API’s RP/1162 entitled *Public Awareness*. They claim that IBR’ing this standard was a misuse of the IBR process because this standard is not technical in nature. These commenters assert that the NTTAA and OMB Circular A–119 envision that IBR will be limited to technical standards or specifications. They suggest that by IBR’ing this standard on developing a public awareness program to increase public awareness of pipeline operations and safety issues, the agency effectively transferred its authority to issue regulations to the private organization.”

While we support the OFR’s comments that “FOIA and the regulations in 1 CFR part 51 do not limit IBR approval to only technical standards. We don’t have the resources to determine what types of standards are appropriate for an agency to IBR. We assume that agencies have fully considered the impact of any documents they wish to IBR, including whether they are in fact delegating their rulemaking authority to a third-party. We do not review material submitted for IBR to determine if it is technical in nature or is a performance-based requirement; we leave that determination to the agency subject matter experts. We review the IBR’d material to ensure it meets the requirements set out in part 51.”

We would also like to point out that API’s American National Standards Institute accredited standards development process calls for a balance of interest on API’s standards committees, allowing for participation by including industry, government, and the public.

In conclusion, API thanks the OFR for its thorough and thoughtful analysis of the comments submitted to this notice and looks forward to working with the affected agencies to ensure that the Federal Government has access to the best and safest technologies through the use and incorporation by reference of API standards.

Sincerely,



David Miller, PE, F.ASCE  
Director, Standards

Cc: The Honorable Eric Holder, Attorney General, U.S. Department of Justice, Robert F. Kennedy Building, 950 Pennsylvania Avenue, N.W., Room 5111, Washington, DC 20530-2000

The Honorable Cass Sunstein, Director, Office of Information and Regulatory Affairs, Office of Management and the Budget, Eisenhower Executive Office Building, 1650 Pennsylvania Avenue, N.W., Room 262, Washington, DC 20503

The Honorable David S. Ferriero, Archivist of the United States, National Archives and Records Administration, 8601 Adelphi Road, Room 4200, College Park, MD 20740-6001

Davita Vance-Cooks, Acting Public Printer of the United States, Government Printing Office, 732 North Capitol Street, NW, Washington, DC 20401-0001

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Helen R. Kanovsky, General Counsel, U.S. Department of the Interior, 451 Seventh Street, S.W., Mail Stop C, Washington, DC 20410

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