



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

**Comments of Consumers Union and Consumer Federation of America
To the Office of the Federal Register
National Archives and Records Administration
On
Incorporation by Reference
Docket No. OFR-2013-0001; NARA 12-0002**

Consumers Union (CU)¹ and Consumer Federation of America (CFA)² appreciate the opportunity to comment regarding the proposed rule in the above-referenced matter. As each of our organizations stated previously, in comments submitted regarding the petition that resulted in this proposed rule, we strongly believe that when standards are incorporated by reference into regulations, they become an integral part of the law, and should be widely and easily accessible to the public, without charge.

Our organizations work regularly within voluntary standards organizations to ensure that the voluntary standards they develop appropriately reflect the interests of consumers, and we regularly participate in agency rulemaking proceedings where voluntary standards are considered for incorporation into mandatory rules. And on a number of occasions, in the course of monitoring the marketplace, we have discovered products that are not in compliance with applicable standards, and have notified the relevant agency and alerted consumers. Our experience has made us keenly aware of the critical importance of transparency to the success of these efforts in protecting consumers.

¹ Consumers Union is the public policy and advocacy division of Consumer Reports. Consumers Union works for a fair, just, and safe marketplace for all consumers, and to empower consumers to protect themselves, in the areas of telecommunications reform, health reform, food and product safety, financial reform, and other consumer issues. Consumer Reports is the world's largest independent product-testing organization. Using its more than 50 labs, auto test center, and survey research center, the nonprofit rates thousands of products and services annually. Founded in 1936, Consumer Reports has over 8 million subscribers to its magazine, website, and other publications.

² Consumer Federation of America is a non-profit association of approximately 280 pro-consumer groups, with a combined membership of 50 million people that was founded in 1968 to advance the consumer interest through advocacy and education. CFA has participated in numerous voluntary standards activities for many years through participation in ASTM, UL and ANSI and in the policy arena.

When voluntary, privately-developed standards are adopted by a regulatory agency and take on the force of law, they enter into the public domain and lose their private, proprietary status. The public becomes legally entitled to protection under those standards, and regulated parties become legally required to comply with them. It is essential to our democratic system and the rule of law, as a matter of fundamental fairness and due process, that both groups have ready access to the laws under which they live.

Similarly, when an agency is considering the adoption of voluntary standards into law, it is essential that affected parties – both those whom the standards would protect and those who would be subject to them – have ready access to those standards, to enable full informed participation in their consideration.

1 CFR part 51 requires that any private standards incorporated by reference must be “reasonably available to and usable by the class of persons affected by the publication.” Whatever justification there might have been in a bygone era to read this requirement to allow imposition of a reasonable fee to cover printing costs, it no longer applies when the technology now enables the storage and retrieval of vast amounts of data for access through the Internet, at virtually no cost. In today’s Digital Age, it simply no longer makes sense to force the public to pay in order to be able to read a law.

Some private standards development organizations have suggested that giving the public free access to voluntary standards, even after they have been incorporated into regulation and given the force of law, would undermine incentives to participate in the voluntary standards development process. We believe any such concern is misplaced. Private parties participate in the voluntary, consensus-driven process because they benefit from doing so, in the results achieved. They just as surely benefit when an agency developing mandatory standards opts to use those results, rather than starting anew from scratch. Indeed, companies participating in voluntary standard-setting bodies have widely welcomed and encouraged this approach.

The proposed rule would be a helpful, if limited, step toward ensuring that voluntary standards given the force of law are more readily available to the public. But we urge you to go further, and more fully exercise your legal authority, commensurate with the importance to our democracy of having an informed public. We urge you to require that standards incorporated by reference into final rules, or being considered in proposed rules, be made available to the public on the Internet, without charge.

Respectfully submitted,

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