

From: [Scott Cooper](#)
To: [Emily Bremer](#)
Subject: A-119 RFC (Round Two)
Date: Thursday, February 20, 2014 2:51:15 PM
Attachments: [NARA NPRM summary language.docx](#)

Hi Emily,

Some interesting proposed changes in this second iteration...

I am intrigued by the language ["Policy" question p. iv. page 34] dealing with the creation of a "non-technical summary" in an agency's determination of "reasonable availability".

"In determining whether a standard is "reasonably available" to regulated and other interested parties, agencies should take into account the following factors, given that reasonable availability is context-specific.

iv. Whether the standards developer can provide a freely available, non-technical summary that generally explains the content of the standard in a way that is understandable to a member of the public who lacks relevant technical expertise"

This seems to be a variation (ie SDO not agency creates summary) on the NARA NRPM language:

51.5 How does an agency request approval?

(a) In a proposed rule, the agency does not request formal approval but must either:

(1) Discuss the ways in which it worked to make the materials it proposes to incorporate by reference reasonably available to interested parties in the preamble of the proposed rule, or Show citation box

(2) *Summarize the material it proposes to incorporate by reference in the preamble of the proposed rule* [emphasis added]

Interesting...

Just me speaking, I think this is a great step forward in capturing the middle ground on the IBR dispute. Judging from the Judiciary hearing, IBR is seen by policymakers as either: 1) All About Copyright; or b) All About Public Right to Know the Law. IE no middle ground. The fact that attempts to read your average standard from cover-to-cover will make your eyes glaze over and your brain addled does not seem to matter. Or the fact that 2-3 sentences into the standard is the first of many cites to a secondary level of standards, and so on.

A "freely available, non-technical summary that generally explains the content of the standard in a way that is understandable to a member of the public who lacks relevant technical expertise", is a gift. A gift to the citizen who really wants to know how a standard impacts public policy issues of health and safety and *parens patriae*; and a gift to SDOs who don't want their standard divested of copyright protections when it is incorporated. I hope others see it that way.

Is this something you-all looked at in developing the ACUS Recommendation?

Best

Scott