



U.S. CONSUMER PRODUCT SAFETY COMMISSION
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June 24, 2015

Carl Malamud
President & CEO
Public.Resource.Org
1005 Gravenstein Highway North
Sebastopol, CA 95472

Re: *U.S. Consumer Product Safety Commission
FOIA Appeal 15-F-00342
ASTM F 1447-94 (Standard Specification for Protective Headgear Used in
Bicycling, 1994 Edition)*

Dear Mr. Malamud:

By letter dated May 28, 2015 and received on that day, you appealed the May 18, 2015 response of the U.S. Consumer Product Safety Commission's ("CPSC") Freedom of Information Officer to your Freedom of Information Act ("FOIA") request dated April 1, 2015 (FOIA No. 15-F-00342) ("FOIA Request"). The FOIA Request sought a copy of ASTM F 1447-94, *Standard Specification for Protective Headgear Used in Bicycling, 1994 Edition* ("ASTM F 1447-94"). The Freedom of Information Officer denied your request because the records are copyrighted materials that must be purchased from the American Society for Testing and Materials (ASTM).

I have reviewed your appeal. For the reasons described below, under authority delegated to me by the Commission, 16 C.F.R. § 1015.7, I am denying your appeal. ASTM F 1447-94 is a standard incorporated by reference in the CPSC's regulations and, thus, is not subject to the records request provisions of the FOIA.

BACKGROUND

The FOIA Request sought from CPSC a copy of ASTM F 1447-94. CPSC's regulations state that ASTM F 1447-94 is an interim safety standard incorporated by reference in 16 C.F.R. § 1203.53(a)(2). The regulations also state that the Director of the *Federal Register* approved the incorporation by reference of ASTM F 1447-94 in accordance with 5 U.S.C § 552(a) and 1

C.F.R. part 51. 16 C.F.R. § 1203.53(b). The regulations advise that copies of ASTM F 1447-94 may be: (1) obtained from ASTM directly at 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959; or (2) inspected at CPSC, 4330 East-West Highway, Bethesda, MD 20814, or at the National Archives and Records Administration. The referenced regulation also provides additional information on how to contact NARA about the availability of the standard. *Id.*

LEGAL ANALYSIS

The records request provisions of the FOIA do not apply to *Federal Register* publications, including daily *Federal Register* notices and the Code of Federal Regulations. See 5 U.S.C. §§ 552(a)(1) (listing the type of information that agencies must publish in the *Federal Register*, including substantive rules of general applicability and statements of general policy or interpretations); 552(a)(3) (exempting records made available in the *Federal Register* from the FOIA request provisions). The FOIA further states that “matters reasonably available to the class of persons affected...is deemed published in the *Federal Register* when incorporated by reference therein with the approval of the Director of the Federal Register.” 5 U.S.C. § 552(a). To incorporate a publication by reference, an agency’s regulation must, in part, (1) state certain publication information; and (2) make an “official showing” that the publication is available by advising where and how copies may be examined and readily obtained with maximum convenience to the user. 1 C.F.R. § 51.9(b).

The Director of the *Federal Register* approved ASTM F 1447-94 for incorporation by reference in the Code of Federal Regulations. 16 C.F.R. § 1203.53(b). See also 63 Fed. Reg. 11712 (noting the incorporation by reference of the publications listed in 16 C.F.R. part 1203, including ASTM F 1447-94, is approved as of March 10, 1999). Because ASTM F 1447-94 is incorporated by reference, the standard is deemed published in the *Federal Register* and, therefore, is not subject to the records request provisions of the FOIA.

In addition, in accordance with the regulations governing incorporation by reference at 1 C.F.R. part 51, 16 C.F.R. § 1203.53 provides enough information for interested parties to obtain or inspect the standard in order to comply with the regulation. First, 16 C.F.R. § 1203.53(a)(2) states the title, publisher, and identification number of the standard. Second, 16 C.F.R. § 1203.53(b) lists the contact information for at least three entities from which the standard may be purchased or examined: ASTM (for purchasing) and CPSC and the National Archives and Records Administration (for inspecting). Although 16 C.F.R. § 1203.53 does not include the full text of ASTM F 1447-94, the regulation nevertheless provides enough information for interested parties to access or examine the standard in order to comply with the regulatory requirements.

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For all of the reasons set forth above, Public.Resource.Org’s appeal of CPSC’s response to the FOIA Request is denied. Because ASTM F 1447-94 is incorporated by reference in 16 C.F.R. § 1203.53(a) and, thus, is deemed published, the standard is not subject to the records request provisions of the FOIA. Moreover, 16 C.F.R. § 1203.53(b) lists three entities from which an interested party may obtain or inspect the standard.

Mr. Carl Malamud
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You have the right to seek judicial review of this decision, as provided by 5 U.S.C.
§ 552(a)(4)(B).

Very truly yours,

U.S. Consumer Products Safety Commission

By: 
Stephanie Tsacoumis