



NATIONAL
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May 18, 2015

Via E-Mail: carl@media.org
Mr. Carl Malamud
President & CEO
Public.Resource.org

Re: Freedom of Information Act Request NGC15-166

Dear Mr. Malamud:

This is in response to ten (10) separate Freedom of Information Act (FOIA) requests, all dated April 1, 2015, nine of which are addressed to the “FOIA Officer, Office of the Federal Register (OFR),” and the tenth of which is addressed to the “FOIA Officer, National Archives and Records Administration,” through which you seek access to specified material all of which has been incorporated by reference in several different parts of the Code of Federal Regulations (C.F.R.). Specifically, you seek access to:

1. *NFPA 221, Standard for Fire Walls and Fire Barrier Walls, 1994 Edition*, which is incorporated by reference into 36 CFR 1234.3 and 1234.4.
2. *ASTM F 1447-94, Standard Specification for Protective Headgear Used in Bicycling 1994 Edition* which is incorporated by reference in 16 CFR 1203.53(b) and used in 16 CFR 1203.53(a).
3. *ASME A17.1-2000, Safety Code for Elevators and Escalators, including ASME A17.1a-2002 and ASME A17.1b-2003 Addendums*, which is incorporated by reference in 36 CFR 1191, Appendix B, § 105.2.2 and used in 36 CFR 1191, Appendix D, § 407.1 *et. seq.*
4. *ANSI/RESNA Standard WC/Vol. 1-1998, Section 13, “Wheelchairs: Determination of Coefficient of Friction of Test Surfaces”* which is incorporated by reference in 49 CFR 571.5 and used in 49 CFR 571.403.
5. *American Association of Railroads AAR Manual of Standards and Recommended Practices, Section C—Part III, Specification for Tank Cars, Specification M-1002, December 2000*, which is incorporated by reference in 49 CFR 171.7 and used in 49 CFR 179.100-9 *et. seq.*
6. *ANSI B175.1-1991, Safety Requirements for Gasoline-Powered Chain Saws*, which is incorporated by reference in 29 CFR 1910.6 and used in 29 CFR 1910.266(e)(2).
7. *Underwriters’ Laboratories UL 181-2003, Standard for Safety Factory-Made Air Ducts and Air Connectors* which is incorporated by reference in 24 CFR 3280.4 and used in 24 CFR 3280.702.

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8. American Conference of Governmental Industrial Hygienists *Threshold Limit Values for Substance in Workroom Air (1972)*, which is incorporated by reference in 30 CFR 70.1900(c).
9. American Bureau of Shipping *Rules for Building and Classing Steel Vessels for Service on Rivers and Intracoastal Waterways, 1995*, which is incorporated by reference in 46 CFR 114.600 and used in 46 CFR 116.300.

All ten (10) of your above-cited requests have been assigned a single tracking number – **NGC15-166**.

Your requests for copies of the above standards are not subject to the request for records provisions of Section (a)(3) of the FOIA, 5 U.S.C. § 552(a)(3), subsection (A) of which states that “[e]xcept with respect to the records made available under paragraphs (1) and (2) of this subsection . . . each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules . . . shall make the records promptly available to any person”), inasmuch as they are subject to Section (a)(1) of the FOIA, 5 U.S.C. § 552(a)(1), which states that technical standards that are “reasonably available to the class of person affected thereby [are] deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.”

In short, all nine of the standards to which you seek access, and which were deemed published in the Federal Register when the Director approved the agencies’ incorporation by reference requests, are fully compliant with the provisions of Section (a)(1) of the FOIA, 5 U.S.C. § 552(a)(1), and are available to you for review in one of three locations.

First is the reading room of the Office of the Federal Register (OFR). The Federal Register regulations require that agencies provide OFR with the materials they wish to incorporate by reference. *See* 1 C.F.R. § 51.5(b)(5). Once the Director of the Federal Register approves an agency’s incorporation by reference request, OFR maintains that material in its library/reading room until it is accessioned to the National Archives and Records Administration (NARA) under OFR’s records schedule. The OFR’s records schedule, as well as detailed instructions on how to request an appointment to examine materials incorporated by reference, and the locations where the materials are housed, are available at <http://www.archives.gov/federal-register/cfr/ibr-locations.html#find>. If you have questions regarding where specific standards are stored, please contact the OFR Legal Affairs and Policy staff by telephone 202-741-6030 or email fedreg.legal@nara.gov for further assistance. That office maintains box indices of accessioned standards incorporated by reference into the CFR.

Second, to the extent that the standards to which you seek access may have been accessioned to NARA as permanent Federal records, they may be available for examination and copying in the research room at NARA’s College Park, Maryland facility. Please note that although most of our archival holdings are in the public domain as products of employees or agents of the Federal Government, some documents incorporated by reference may have copyright protection. You are responsible for obtaining any necessary permission for further use, copying, and publication from copyright holders in accordance with the Copyright Act, 17 U.S.C. Chapters 1-13.

Third, the agencies associated with the standards to which you seek access maintain their own reading rooms. As a result, it may be possible for you to examine this material at each agency. We understand that you have already sent the other involved agencies separate FOIA requests. In addition, some of the standards may be available on the Internet in various forms, e.g., the National Fire Protection Association (NFPA) *FPA 221, Standard for Fire Walls and Fire Barrier Walls, 1994 Edition*, incorporated by reference into 36 C.F.R. §§ 1234.3 and 1234.4, is available on their webpage, <http://www.nfpa.org/codes-and-standards/free-access>.

Because this concludes the processing of your request, there is no need to adjudicate your request for a fee waiver.

If you are not satisfied with our action on this request, you have the right to file an administrative appeal in writing via regular U.S. mail or email, or if you submitted your initial request through *FOIAonline*, you may submit your appeal through that web portal. If you submit your appeal in writing please address it to the Deputy Archivist of the United States (ND), National Archives and Records Administration, College Park, Maryland 20740. If you submit your appeal by email please send it to FOIA@nara.gov, also addressed to the Deputy Archivist of the United States. Please follow the instructions in *FOIAonline* to appeal any decisions. Your appeal should be received within sixty (60) calendar days from the date of this letter and it should explain why you believe this response does not meet the requirements of the FOIA. Both the letter and the envelope, or your email, should be clearly marked "Freedom of Information Act Appeal." All correspondence should reference tracking number *NGC15-166*.

Sincerely,



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