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FOIA 2015-CGFO-01413

Mr. Carl Malamud
President & CEO
Public.Resource.org

19 5 JUL 2015

Dear Mr. Malamud:

I am writing in response to your Freedom of Information Act (FOIA) request for a copy of the American Bureau of Shipping (ABS) *Rules for Building and Classing Steel Vessels for Service on River and Intracoastal Waterways*, 1995, because it is incorporated by reference into 46 CFR 114.600 and used in 46 CFR 116.300.

Under the FOIA, Federal Register publications, including the daily *Federal Register* and the CFR are not subject to the request for records provisions of the law. See 5 U.S.C. 552(a)(3)(A) (FOIA requests do not apply to records made available through the CFR under 5 U.S.C. 552(a)(1)). Additionally, the FOIA states 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." See 5 U.S.C. 552(a)(1). The publication you reference is not subject to the request provision of the FOIA because the Director deemed it published in the *Federal Register* when approving our incorporation by reference request.

The Director of the Federal Register established regulations in 1 CFR part 51 that govern the incorporation by reference approval process. As part of this process, the standard must be readily available and useable to the class of persons affected by the regulation. 1 CFR 51.7(a)(3). In addition, section 51.9(b)(4) requires that agencies "make an official showing" that the publication is available by setting out in the regulation text where and how copies of the standards may be inspected and obtained for the "maximum convenience of the user." 1 CFR 51.9(b)(4). As stated in the OFR regulations, agencies are to list the publisher information so that regulated entities can purchase a copy of the standard that has been incorporated by reference. 1 CFR 51.9. Additionally, agencies need to list contact information for the agency and for the OFR so that the class of affected parties may inspect the incorporated materials either at the agency issuing the regulation or at the OFR. See, 1 CFR 51.3(b)(4) and 51.9(b)(4). While the standards themselves are not set out in their entirety in the CFR text, there is enough information set out in the regulation text that affected parties can obtain or inspect these standards in order to comply with the regulation.

As discussed above, the FOIA provides that the materials approved for incorporation by reference into the CFR are "deemed published in the Federal Register." The requirements

for incorporation by reference approval clearly state that agencies must provide information for purchase or examination of the materials; under these requirements, publisher information, including phone numbers and web-sites, are set out in the regulation text. Additionally, agency contact information is provided in the regulation text so that affected parties can contact the agency directly regarding the incorporated standard. Thus, materials incorporated by reference are reasonably available to those affected by the regulations because the regulations clearly state at least three entities from which the materials can be either purchased or examined.

We do not distribute copies of materials incorporated by reference. We do allow people to examine these materials in our office and this can be arranged by contacting the Office of Operating and Environmental Standards as shown in 46 CFR 114.600.

The Coast Guard strives to ensure material incorporated by reference is accessible by the public, including urging the originating organizations to make documents available online for viewing whenever possible. We note the ABS posts their current rules and guides online at www.Eagle.org. We recommend you contact ABS to inquire about obtaining a copy the 1995 or newer version.

Sincerely,



Timothy M. Brown
U.S. Coast Guard
Chief, Office of Standards Evaluation and
Development
By Direction