



Incorporation by Reference Public Workshop

Pipeline & Hazardous Materials Safety Administration

U.S. Department of Transportation

West Building, Media Center

Friday, July 13, 2012



Greeting and Introduction

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Jeannie Layson



Emily Bremer

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Mary Saunders

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Public Workshop Incorporation by Reference Office of Pipeline Safety

Linda Daugherty
Deputy Associate Administrator
July 13, 2012



SEC. 24. LIMITATION ON INCORPORATION OF DOCUMENTS BY REFERENCE

“Beginning 1 year after the date of enactment of this subsection, the Secretary may not issue guidance or a regulation pursuant to this chapter that incorporates by reference any documents or portions thereof unless the documents or portions thereof are made available to the public, free of charge, on an Internet Web site.”



Pipeline SDOs

- American Gas Association
- American National Standards Institute
- American Petroleum Institute
- American Society of Civil Engineers
- American Society for Testing and Materials
- American Society of Mechanical Engineers International
- Gas Technology Institute
- National Association of Corrosion Engineers
- National Fire Protection Agency
- Manufacturers Standardization Society of the Valve and Fittings Industry, Inc.
- Plastics Pipe Institute
- Pipeline Research Council International



Related Facts

- PHMSA's Office of Pipeline Safety (OPS) has used national consensus standards as the foundation for pipeline safety regulations beginning with the first rules in 1970
- 20 OPS subject matter experts participate in developing and updating standards covered by over 25 committees
- It takes an average of 2 years to promulgate a rule
- A number of new standards are currently being considered for adoption in draft regulatory proposals



Related Facts (cont.)

- 65 standards are IBR
- 20 are currently available for free on the internet
- Most have secondary references
 - e.g. ASME B31.8 – 102; B31.8S – 42; NFPA 59 – 19
- The length of each standard varies
 - 4 pages (ASTM A372)
 - 1042 pages (ASME - BPV Sec VIII div2)
- A total of 7500+ pages are IBR
- The standards cost \$8500 - \$9500/set



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Ryan Posten
Deputy Associate Administrator
July 13, 2012



49 CFR Parts 171-180

Hazardous Materials Regulations

- Hazardous Materials Classifications
- Packaging
- Hazard Communication
- Emergency Response Information
- Training



Hazmat SDOs

- Air Transport Association of America
- The Aluminum Association
- American National Standards Institute
- American Petroleum Institute
- American Pyrotechnics Association
- American Society of Mechanical Engineers
- American Society for Testing and Materials
- American Water Works Association
- American Welding Society
- Association of American Railroads
- Canadian General Standards Board
- Chlorine Institute, Inc.
- Compressed Gas Association
- Department of Defense
- Department of Energy
- General Services Administration



Hazmat SDOs

- Institute of Makers of Explosives
- International Atomic Energy Agency
- International Civil Aviation Organization
- International Electrotechnical Commission
- International Maritime Organization
- International Organization for Standardization
- National Board of Boiler and Pressure Vessel Inspectors
- National Fire Protection Association
- National Institute of Standards and Technology
- Organization for Economic Cooperation and Development
- Transport Canada
- Truck Trailer Manufacturers Association
- United Nations
- United States Enrichment Corporation, Inc.

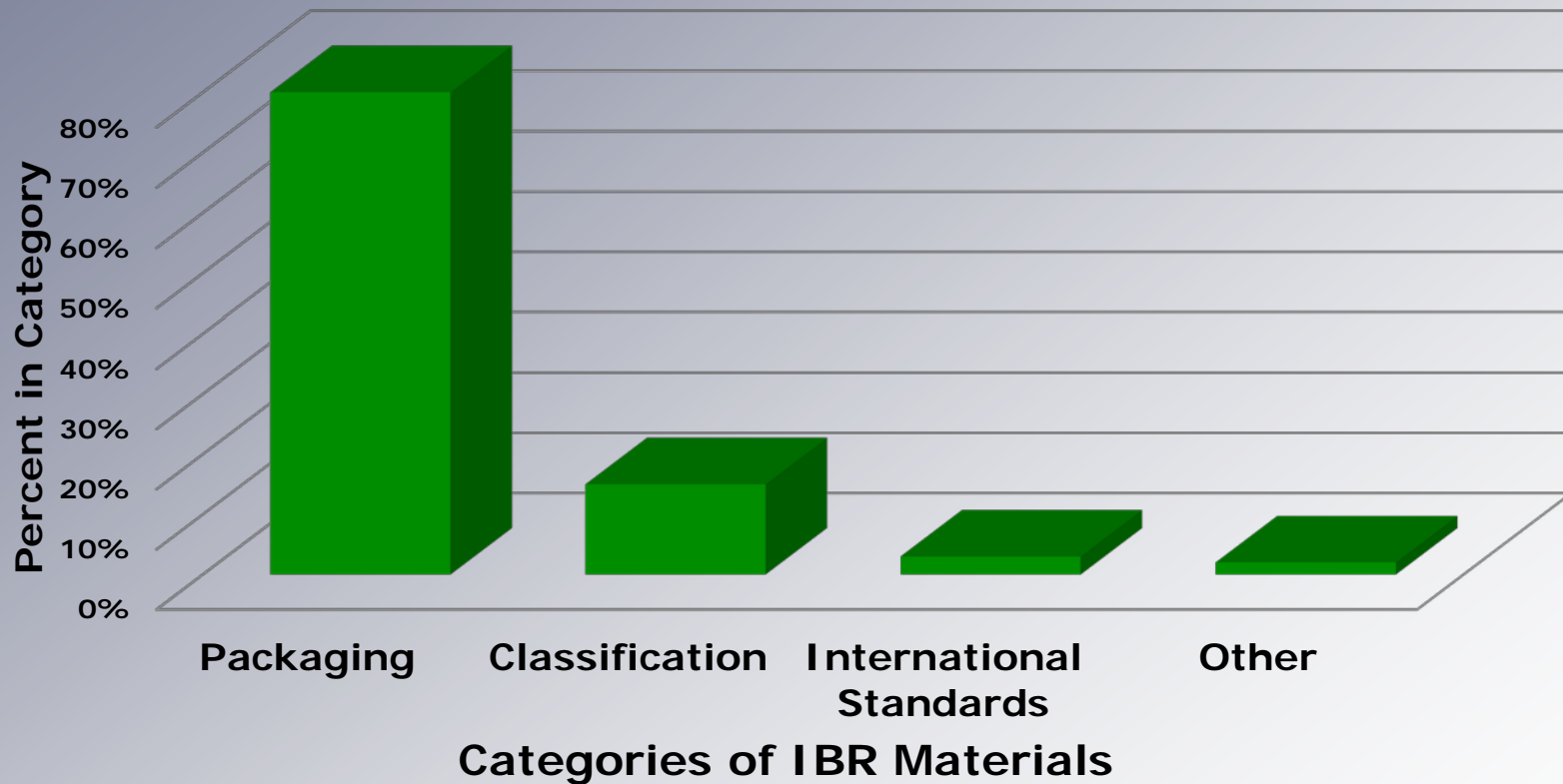


Related Facts

- 174 standards are IBR
- 13 are currently available for free (11 on the internet)
- 57 have secondary references
- The length of each standard varies
 - 2 pages
 - 1,750 pages
- A total of 14,411 pages are IBR
- The standards cost \$15 - \$700/set



What We IBR





Thank You



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Scott Cooper

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PHMSA Public Workshop: Implementing the Incorporation by Reference Requirements of the Pipeline Safety Act of 2011

Jeff Grove
Vice President
Global Policy & Industry Affairs
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Standards Worldwide

July 13, 2012

ASTM International

Established in 1898

- Private sector, not for profit organization
- Venue for the development of voluntary, consensus standards
 - Enhance health, safety and quality of life
 - Ensure reliability of materials and products
 - Facilitate trade worldwide



Standards Worldwide

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PHMSA/ASTM Standards

- A106/A106M
- A333/A333M
- A372/A372M
- A381
- A53/A53M
- A671
- A672
- A691
- D2517
- D638
- F1055
- D2513



Standards Worldwide

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Technical Knowledge

- The references are highly technical specifications, requirements, and methods of testing for things such as
 - Carbon and alloy steel pipe at various temperatures
 - Epoxy resins and plastics in pipes
- Limited value to the general public

Access During Rulemakings

- ASTM provides public access to standards incorporated by reference during public review periods of PHMSA rulemakings
- Consistent with Sec 24 as access is provided at no cost on a website
- Currently providing access to ASTM D2517 as part of a PHMSA NPRM



Sec 24 Impacts ASTM

- Sec 24 conflicts with goals of the NTTAA and OMB Circular A119 which have been effective in utilizing standards in support of regulations
- Threatens public-private collaboration that has worked for over 100 years
- Underestimates the costs and process of developing high quality standards



Reasonable Access

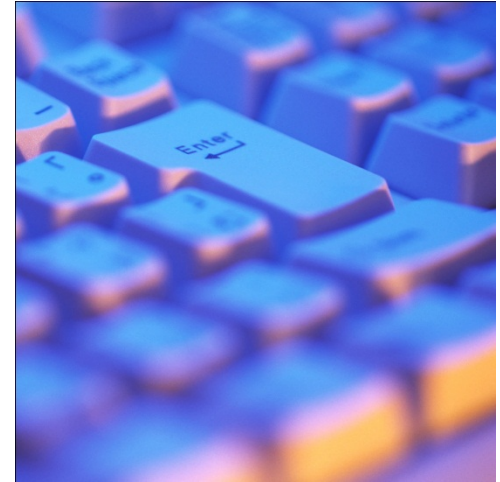
- ASTM strives to provide reasonable access to standards incorporated by reference by PHMSA
- The list price for these 12 standards range from \$40 to \$57 each which is a fair price for the technical knowledge
 - Many of the producers, users and inspectors of pipeline materials and products access these standards at no cost as a benefit of their ASTM membership.
 - Many others access the documents far-below the list prices through commercial agreements and site-license agreements
- Our approach is to be flexible, reasonable and fair, and to work with stakeholders to find an access model that works





Costs of Standards Development

- Investment in technology
 - Electronic standards templates
 - Electronic balloting and editing
 - On-line collaborative platform
 - Virtual meeting technology
 - Web-based resources
- Supporting programs/products
 - ILS, PTP, Symposia/Workshops, Certification, Training, Videos
- ANSI Accreditation
- Maintain offices worldwide and a professional staff to support standards development and distribution



Development Models

- What model works best to pay for the production of standards?
- Under the ASTM model
 - Costs are spread amongst thousands of users
 - \$75 annual membership gives access to many who need it
 - No projects fees or front-loaded costs



ASTM Model Works

- Produces high-quality standards
- Provides value to ASTM members, the public and the government
 - Particularly benefits SME's and individuals who engage on a volunteer basis without corporate funding
- Difficult for the government to replicate
 - Costly to government to duplicate efforts
 - Public/Private collaboration may be chilled
 - Quality and Efficiency could be at risk



Summary/Pathway Forward

- We are sensitive to the challenges Sec 24 places on PHMSA.
- We already provide public access during rulemakings and make standards available on a reasonable basis.
- To implement Sec 24, one pathway is to collaborate on an agreement that provides public access without fundamentally changing the core of our existing model.

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Thank you

31

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www.astm.org

Standards Worldwide

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Oliver Moghissi

Vice President, Det Norske Veritas

Pipeline Standards Developing Organizations Coordinating
Council

PHMSA Public Workshop on Incorporation by Reference (IBR) Requirements of Section 24

Oliver Moghissi
Pipeline Standards–Developing
Organizations Coordinating Council
(PSDOCC)
July 13, 2012



PSDOCC Charter

- ▶ Group of association, government, and industry representatives focused on technical pipeline standards
- ▶ Communication, cooperation, and dissemination of new technology
- ▶ Transfer of results of research to standards
- ▶ Helping PHMSA comply with Public Law 104-113, the National Technology Transfer Advancement Act



PSDOCC SDO Members

- ▶ American Gas Association (AGA)
- ▶ American Petroleum Institute (API)
- ▶ American Public Gas Association (APGA)
- ▶ ASTM International
- ▶ ASME
- ▶ NACE International
- ▶ National Fire Protection Association (NFPA)
- ▶ NIST



PHMSA Partners with SDOs

- ▶ OMB Circular A-119 requires government use of industry standards when possible
 - Save government agencies money
 - Use expanded technical knowledge of industry experts
 - Encourage government employees' participation in standards development

- ▶ PSDOCC agreement with PHMSA (2006)
 - Transfer results of research to standards
 - Document use of research



Incorporation of Standards by Reference

- ▶ Benefits public, government, and industry
 - Consensus standards
 - Open, transparent process
 - Participation by interested parties

- ▶ Public comment periods on proposed rules
 - Government agencies take comments into consideration
 - Stakeholders comment on how proposed incorporation may affect them



Incorporation of Standards by Reference

- ▶ How should standards be available?
 - Accessible during rulemaking comment period
 - Reasonably available when incorporated
 - Access for those who must abide by regulations

- ▶ What is reasonable?
 - Free?
 - Access to read-only copy?
 - Access to printed copy?
 - Changing nature of standards development and business is not the answer.



Incorporation of Standards by Reference

- ▶ Most SDOs “Nonprofit Organizations”
 - Volunteers develop standards
 - Standards available on Internet
 - Does Internet = Free?

- ▶ SDO Business Models Vary
 - Even nonprofit organizations must have revenue
 - Some depend on standards revenue for operations
 - Some have other major sources of revenue



The Common Good

- ▶ All working toward same objective
 - Most technically sound standards available
 - Input from affected stakeholders
 - Results of latest research incorporated

- ▶ Respect for intellectual property rights
 - Each SDO owns the product of its work
 - Circular A-119 affirmed respect for copyright ownership
 - “Reasonable” doesn’t necessarily mean free



The Cost of Doing Business

- ▶ Cost to Develop Standards
 - SDO staff administrative and editorial support
 - SDO staff information technology (IT) support
 - Web site maintenance, servers
 - Building maintenance, utilities, and/or office rent
 - Hosting meetings of standards committees
 - Staff travel to standards meetings
 - Government relations staff meetings and communication with government agencies



The Common Good and Cost of Doing Business

- ▶ PSDOCC agrees that standards should be available to all during rulemaking
 - After rule effective, companies bear the cost of obtaining standards
 - Reasonable cost of doing business
 - Neither SDOs nor government agencies should bear cost
- ▶ SDOs in PSDOCC support one another
 - Balancing PHMSA's needs for rulemaking, need for access during rulemaking, and access for general public later



The Common Goal

- ▶ Pipeline safety is common goal
 - Consensus standards = best solution
 - Government and industry-sponsored research part of the solution
 - Together we can achieve the goal
- ▶ PSDOCC doesn't have the answer to this challenge, but would be happy to help PHMSA address it.
 - PHMSA may need more time to look at this issue.
- ▶ To contribute,
 - Get involved in standards development!

<http://www.psdocc.org>



Joseph Wendler, P.E.

Director of Standards and Certification Initiatives
American Society of Mechanical Engineers

U.S. Pipeline and Hazardous Materials Safety Administration (PHMSA)



Incorporation by Reference (IBR) Workshop

July 13, 2012

About ASME

- Founded in 1880
- First standard published in 1884
- Today: 120,000 members; 4,900 standards writing volunteers (over 700 non-US)
- Publishes over 550 standards – used in over 100 countries
- Shared interest /mission in protecting public safety, health, and environment



ASME's Standards Developing Process

- Standards are developed in an open, inclusive, and transparent process
- Standards developing committees are balanced based on industry stakeholders
- Standards are continuously reviewed to ensure technical and commercial relevance
- Public input – anyone can comment; all comments addressed and afforded due process

Why Fund Standards Development via the Sale of Standards?

- Saves government (taxpayers) from bearing the cost
- Prevents standards development process from being overly influenced by commercial or political interests
- No cost for participation – helps ensure robust input (e.g. small and medium sized businesses)
- Costs are borne by those who benefit most from the use of standards

How Does Section 24 of P.L. 112-90 Impact ASME?

ASME Standards Referenced by Existing Office of Pipeline Safety Regulations

B16.1-2005 – Gray Iron Pipe Flanges and Flanged Fittings, Classes 25, 125 and 150

B16.5-2003 – Pipe Flanges and Flanged Fittings, NPS ½ to NPS 24

B16.9-2007 – Factory-Made Wrought Buttwelding Fittings

B31G-1991(R2004) – Manual for Determining Remaining Strength of Corroded Pipelines

B31.4-2006 - Pipeline Transportation Systems for Liquid Hydrocarbons and Other Liquids

B31.8 – Gas Transmission and Distribution Piping Systems

B31.8S-2004 – Managing System Integrity of Gas Pipelines

BPV Section I-2007 – Power Boilers

BPV Section VIII Div. 1-2007 – Rules for Construction of Pressure Vessels

BPV Section VIII Div. 2-2007 – Alternative Rules for Construction of Pressure Vessels

BPV Section IX-2007 – Welding and Brazing Qualifications

ASME's Position on Section 24 of P.L. 112-90

- January 17, 2012 coalition of nine SDOs submitted letters requesting repeal of Section 24
 - Places practical barriers on Federal agencies
 - Undermines the financial ability of standards developing organizations to develop and make their standards available for government use

ASME's Position on Section 24 of P.L. 112-90

- Does not align with existing Federal policy (NTTAA, OMB A-119) or recent reviews within Federal government (e.g. NSTC, ACUS, OMB/OSTP/USTR Memo) which support:
 - the continued leverage of private sector standards by Federal agencies
 - the collective understanding that access and availability on a “reasonable basis” may include monetary compensation

ASME's Position on Section 24 of P.L. 112-90

Implementation of Section 24 may result in:

- duplicative and potentially conflicting regulations and industry practices (contrary to intent of NTTAA and OMB-A119)
- reduced responsiveness, resulting in gaps and barriers to technology commercialization
- reduced stakeholder diversity in standards development
- increased in risk for people and environment
- increased burdens on businesses

Moving Forward

- The issue of accessibility (and reasonable availability) is separate from the issue of cost
- ACUS Recommendation:
 - Consideration should be given to “the types of parties that need access to the material, and their ability to bear the costs of accessing such materials”
- Access determined on a case-by-case basis by the responsible agency



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Pipeline Safety Trust

Implementing Incorporation By Reference (IBR) Requirements



Credible.
Independent.
In the public interest.

Carl Weimer

Executive Director

<http://www.pstrust.org>

Why the public (including local government) cares about access to incorporated pipeline standards

How Else Would They Know What The Law Says?

Examples



Why it is important that the public be given free and easy access to standards

- Because they are part of the federal laws
- Because they are sometimes created by groups with potential conflicts of interest to the public interest
- Because the industry consensus based standards process may not lead to the best standards

Because they are part of the federal laws

Extent of Problem

Standards Incorporated by Reference in 49 CFR Parts 192, 193, 195 (As of 6/9/2010)

CFR Part	Topic	Standards*
192	Natural and Other Gas	39
193	Liquefied Natural Gas	8
195	Hazardous Liquids	38

Total 85

*Note: Some standards may be incorporated by reference in more than one CFR Part.

**Sample Cost of Pipeline Safety Standards Incorporated by Reference Into Federal Regulations
(As of 6/8/2010)**

Standard	Organization	Code of Federal Regulations (Incorporated by Reference)	Cost
ANSI/API Spec 5L/ISO 3183 "Specification for Line Pipe"	API	49 CFR §192.55, §192.112, §192.113, §195.106	\$245.00
ASME B31.4 -2002 "Pipeline Transportation Systems for Liquid Hydrocarbons and Other Liquids"	ASME	49 CFR §195.452	\$129.00
GRI 02/0057 (2002) "Internal Corrosion Direct Assessment of Gas Transmission Pipelines Methodology"	GTI	49 CFR §192.927	\$295.00
NACE Standard RP0502–2002 "Pipeline External Corrosion Direct Assessment Methodology"	NACE	49 CFR §192.923, §192.925, §192.931, §192.935, §192.939, §195.588	\$83.00
A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe,"	PRCI	49 CFR §192.933, §192.485, §195.452	\$995.00

Because they are created by some groups with potential conflicts of interest to the public interest

AGA – “Focuses on the advocacy of natural gas issues that are priorities for the membership and that are achievable in a cost-effective way.” “Delivers measurable value to AGA members.”

PRCI – “PRCI is a community of the world’s leading pipeline companies, and the vendors, service providers, equipment manufacturers, and other organizations supporting our industry.”

API – “We speak for the oil and natural gas industry to the public, Congress and the Executive Branch, state governments and the media. We negotiate with regulatory agencies, represent the industry in legal proceedings, participate in coalitions and work in partnership with other associations to achieve our members’ public policy goals.”

PPI – “PPI members share a common interest in broadening awareness and creating opportunities that expand market share and extend the use of plastics pipe in all its many applications.” “the mission of The Plastics Pipe Institute is to make plastics the material of choice for all piping applications.”

The consensus based standards process may not lead to the best standards

Without all stakeholders a consensus based process
“does not lead to the best standard but to the best
standard everyone will agree to.”

In other words the lowest common denominator

Possible solutions for implementation of the Congressional mandate

- API Model
- PHMSA could develop it's own standards
- PHMSA could pay SDOs to develop standards for them.

Ways to potentially pay for changes to standard access

- Increase user fees to cover costs
- Industry cover costs from savings they get from use of such standards

The Benefits of Consensus Standards – A Pipeline Case Study

www.p-pic.com/files/conferencereports/IPC_paper_benefits.pdf

“The timely publication of B31.8S is expected to save the industry \$4.2 Billion over a 20 year period.”



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John Conley

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Roberta Winters

Vice President for Issues and Action
League of Women Voters of Pennsylvania



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Working Session: Implementation Strategies Incorporation by Reference Public Workshop

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Working Session: Implementation Strategies

- Based on today's discussion, were any issues or topics omitted or overlooked?
- Based on what you have heard today, what are the best ways to implement Section 24 in light of some of the competing issues and challenges that were presented?
- How can the government accommodate the Section 508 requirements, which govern the accessibility of government documents for those with disabilities? (safety, technological?)



Working Session: Implementation Strategies

- As a result of likely inconsistencies in U.S. and international standards resulting from the inability to incorporate voluntary consensus standards what, if any, impact will there be on safety, businesses and trade, and on the increased reliance on international standards?
- If the government were to write its own unique standards, we would be interested to know what the audience thinks about whether safety, compliance, or enforcement would be affected as a result



Working Session: Implementation Strategies

- What are the best ways to reconcile the NTTAA, OMB Circular A119, Section 24, intellectual property laws and the general policy of government transparency?