



National Fire Protection Association

1401 K Street, NW, Suite 500, Washington, DC 20005
Phone: 202-898-0222 • Fax: 202-898-0044 • www.nfpa.org

September 15, 2011

Administrative Conference of the United States
Committee of Administration and Management
1120 20th Street, NW, Suite 706
Washington, DC 20036

Dear Members of the ACUS Committee on Administration and Management:

Thank you for the opportunity to provide comments for your upcoming September meeting on the topic of Incorporation by Reference in Federal Regulations. The National Fire Protection Association (NFPA) also welcomes the opportunity to review Emily Bremer's report on the same topic and provide these comments. Established in 1896, NFPA is a consensus codes and standards development organization (SDO) whose mission is to reduce the burden of fire and other hazards on the quality of life of those in the U.S. and worldwide.

NFPA strongly supports the conclusion drawn in Ms. Bremer's report that private sector standards developers offer a positive contribution to the federal regulatory process. NFPA also commends the report for its comprehensive and balanced treatment of issues regarding the public accessibility of private sector standards adopted by reference. We urge the Conference to adopt her recommendation that determinations about providing reasonable public access to private sector standards should be approached flexibly and that federal agencies should make such assessments, in cooperation with standards developers and based on an analysis of multiple considerations. Ms. Bremer rightly points to the "public safety implications" of standards as one factor that should be considered. NFPA wishes to stress, however, that not all safety standards are alike and that many are highly technical and of little direct use beyond the professionals that use them or the businesses that incorporate them into products, installations and services. Flexibility of approach should remain the byword and the public safety implications of standards should not be considered a unitary, rigidly applied factor.

Indeed, in approaching questions of availability of safety related standards, consideration should be given to the fact that the safety standards that are most desirable for government use and adoption are frequently developed by a small but very significant class of SDO's, including the NFPA, that are nonprofit educational organizations and professional societies with a public service, mission orientation. Such organizations are heavily represented among the top ten organizations referenced in the CFR, cited at p. 9 of the Draft Report. The safety related standards developed by such SDO's are especially relied upon by governments because of the independence and nonprofit, mission orientation of these organizations. These organizations are able to maintain their independence by relying on copyright-derived revenues from the sale of their codes and standards as a means of funding their standards development activities. Governments, including federal agencies, rely on and prefer safety standards developed by mission-driven organizations such as the NFPA because they do not represent the interests of any

trade or industry and, thanks to the independent funding source that copyright provides, do not rely on fees or contributions from business, industry or commercial enterprises that might have an interest in the outcome of standards development. The safety implications of standards, therefore, is not a uniformly reliable factor in assessing questions of availability, and militates in favor of approaches that carefully balance considerations of reasonable access against the needs of the standards developer to effectively fund its activities. It is especially important in the area of safety regulation to observe Ms. Bremer's recommendation that any solutions to the issues of availability should "preserve and improve – not undermine – the valuable public-private partnership in standards." Draft Report at p. 20.

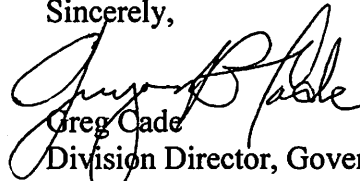
As Ms. Bremer amply demonstrates in her report, there are many ways and approaches to providing reasonable access to standards incorporated by reference, and NFPA supports the public policy goal of ensuring contemplated or incorporated standards are reasonably accessible during and after rulemaking. As the nation's leading fire and life-safety organization, NFPA is committed to working with federal agencies to meet their regulatory needs and explore means to expand access to its standards, consistent with its need to fund its activities. NFPA was the among the first standards developers to experiment with offering of free, read-only online access to its standards, and over five years ago, it extended that experiment to make all of its standards available in this manner. Federal agencies are among the beneficiaries of this offering, and NFPA works with them to provide links to NFPA's free online offerings as a way to provide reasonable access to NFPA standards that have been incorporated by reference. This approach, in keeping with another of Ms. Bremer's recommendations, provides a solution that involves no cost to the agencies and does not require agencies to obtain a license from NFPA to achieve their regulatory goals. The ability of NFPA to continue to experiment and to work with agencies to meet regulatory needs for access to standards is critical to the sustenance of its standards activities, and illustrates the importance of Ms. Bremer's recommendation that "agencies should work with copyright holders and use available technological solutions to strike an appropriate balance between the public interest in access and the copyright holder's need to fund its standard-development activities." Draft Report at 44.

Finally, on a separate issue, NFPA highly supports Ms. Bremer's conclusion that regulators should participate in standards development processes. Active involvement in the standards development and revision process is one of the best ways to ensure that both government regulators and standards developers are up to date on the current challenges in a given field. Indeed, as noted in the report, SDOs can help agencies address new challenges. NFPA's response to recent Chemical Safety Board's recommendations provides one such example. After the tragic accidents involving gas purging operations at a ConAgra Facility in Garner, North Carolina in 2009 and an explosion at the Kleen Energy plant in Middletown, Connecticut, in 2010, NFPA swiftly responded to CSB recommendations by issuing an emergency interim amendment to NFPA 54, *National Fuel Gas Code*, and then to developing a new standard to comprehensively address gas process safety. NFPA, with active participation and input from the CSB and OSHA, was able to develop and issue this new standard, NFPA 56(PS), *Standard on Gas Process Safety*, in approximately 6 months, providing a rapid response to an urgent need through a consensus standard that is now available for private self-regulations as well as federal agency use. See attached Statement of Manuel Gomez, Director of Recommendations, U.S. Chemical Safety Board in Support of Issuance of NFPA 56, Provisional Standard. We would be

happy to provide you or Ms. Bremer with more information on this example of both the usefulness of participation of government regulators in voluntary consensus standards activities and the effectiveness of such standards activities in responding to important regulatory needs.

Thank you again for this opportunity to provide comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Cade", written in a cursive style.

Greg Cade
Division Director, Government Affairs
National Fire Protection Association

Enclosure

**Statement of Dr. Manuel Gomez, Director of Recommendations, U.S. Chemical Safety Board
in support of issuance of the NFPA 56 Provisional Standard
NFPA Standards Council Meeting
August 10, 2011**

Thank you for the opportunity to urge the NFPA Standards Council to approve issuance of the NFPA 56 Provisional Standard: *Standard for Fire and Explosion Prevention During Cleaning and Purging of Flammable Gas Systems*.

The CSB has been very vocal in our support for the NFPA's development of this standard. As Council members are doubtless aware, our agency investigated two deadly explosions which resulted from the release of large quantities of flammable gas in the vicinity of workers and ignition sources. One occurred on June 9, 2009, during a gas line purging operation at the ConAgra SlimJim facility in Garner, North Carolina. The other incident occurred less than a year later on February 7, 2010, during a pipe cleaning operation at Kleen Energy, a combined-cycle, natural gas-fueled power plant under construction in Middletown, Connecticut.

Pursuant to the ConAgra and Kleen investigations, the CSB issued two recommendations concerning gas process safety to the NFPA, whose consensus standards play a pivotal role in promoting public health and safety around the world. Our agency has since applauded the August 2010 actions of the NFPA 54/National Fuel Gas Code Committee to promulgate a Tentative Interim Amendment (TIA) addressing gas purging operations, and we hope that the 54 Committee will make these new requirements permanent during the Code's next revision cycle. The CSB has also thanked, and today I reiterate our thanks, to the NFPA Standards Council for its March 2011 approval of the establishment of the NFPA 56 Committee in response to the CSB's recommendation that the NFPA address the safe conduct of fuel gas pipe cleaning operations.

Today, as the staff of the CSB, we strongly urge the Council to issue the NFPA 56 Provisional Standard developed and approved by the Technical Committee. We sincerely appreciate the excellent work of the Committee members, who have generously volunteered their own time to develop this standard via an expedited development process. We would also like to extend our thanks to NFPA's Guy Colonna and Denise Beach, who also have contributed their efforts to the development of this important document. In short, I think we can safely speak on behalf of the CSB when we say that we sincerely appreciate NFPA's taking expedited action to secure the health and safety of workers involved in cleaning and purging flammable gas systems.

In our opinion—and we are confident that our Board will agree—the proposed provisional standard fulfills the fundamental intent of the CSB's recommendation to the NFPA from the Kleen Energy Investigation by explicitly prohibiting the unsafe practice of using flammable gases to clean piping and requiring, instead, the use of non-flammable alternatives such air, inert gas, steam, or water. The standard also prescribes important safety precautions for pipe cleaning

operations as well as for gas purging operations which are not covered under the scope of NFPA 54/the National Fuel Gas Code.

The CSB was originally concerned that this standard would permit the use of flammable gas to propel multiple cleaning pigs through piping; however, as CSB staff understand it, the finalized standard appropriately restricts that practice to prevent large quantities of flammable gas being released to the atmosphere. We also understand that the standard permits flammable gas to propel a cleaning pig, but only in a closed system and under very restricted circumstances—for example, where the pig is being used to accomplish both cleaning and purging into service, or where the flammable gas in the piping system is consumed by end-use equipment or flares. We also understand that the standard requires that pigs be appropriately sized to prevent comingling of flammable gas and air, that residual gas in the pig receiver be vented to a safe outdoor location and that the discharge area be monitored continuously to ensure adequate dissipation of flammable vapors. These safeguards, we believe, will sufficiently address the Board's concerns regarding the explosive hazards associated with the practice of pigging piping using flammable gas.

In closing, I again thank the Standards Council on behalf of the Chemical Safety Board for this opportunity to share our views in support of the NFPA 56 Provisional Standard. I urge the Committee to approve this standard, and to support its incorporation into other pertinent NFPA codes and standards. Finally, we hope that the NFPA will reaffirm its commitment to promoting the safety of pipe cleaning and purging operations by ensuring the eventual promulgation of NFPA 56 as a permanent standard.