

From: Gary Valasek
To: Assembly of the Administrative Conference
Re: Comments on Proposed Incorporation by Reference Recommendation
Date: December 1, 2011

Ladies & Gentlemen of the Administrative Conference of the United States:

We appreciate your efforts and agree with your objectives of these proposed recommendations, especially "to ensure that private rights may be fully protected and regulatory activities and other Federal responsibilities may be carried out expeditiously in the public interest, to promote more effective public participation and efficiency in the rulemaking process, reduce unnecessary litigation in the regulatory process, improve the use of science in the regulatory process, and improve the effectiveness of laws applicable to the regulatory process."

My particular experience with federal regulations involve the study, review and research into them for applicability with our company's interests and possible activity in the marketplace where goods or services have proven or could prove beneficial in our free-market economy. The fact that the extent of governmental intrusion is a matter of question does not mean that we can't do business to not only please our customers but also live peaceably within the regulations imposed on us. We, especially as a small business enterprise, desire all the internal assistance possible to assure a thorough understanding of the regulation and its incorporated references while maintaining our own confidentiality. Usually, the availability of such references is the chief problem. They have to be obtained through a annual subscription or membership with several organizations or through direct payment for specific documents from a high-priced source like the NTIS (National Technical Information Service). The variety of references needed for a short time of review can be cumbersome to accumulate and would have to be accessed again whenever the regulation (typically) would change to an updated version.

From this background and in this light, accordingly, here are some comments and observations on the Recommendation #4 "Incorporation by Reference":

A.

References that are incorporated into regulations should be hotlinked from the document from which they appear. Since the regulation should already be available in a digital format, then a further hotlink, weblink or IP address should be available for accessing the contents of the reference directly from that original regulation.

B.

There should be a time-dated event that marks the chosen reference as to when it was accessed (via hotlink) and what version of the reference is being provided. There could be an admonition to the reader that reminds the reader to note which update to the reference was provided and what previous editions existed for further historical availability if necessary.

C.

It follows that the regulation should specify which version or parts of the incorporated reference are applicable for compliance if not already contained in the regulation itself. If only parts of a reference are cited, then those parts should be provided in a separate document available via a hotlink.

D.

There should be a consideration in the regulation that when an updated reference mandates new requirements to those affected, then the public should be notified in an appropriate manner and a suitable timeframe be provided for compliance.

E.

References that are incorporated into regulations should be in the public domain and available to the public for free.

F.

In a background to your recommendation, you state that your policy issues builds upon Recommendation 78-4, "Federal Agency Interaction with Private Standard-Setting Organizations in Health and Safety Regulation," adopted by the Conference in 1978. However, when attempting to find on your acus.gov website this 78-4 source (that you have ironically "incorporated by reference" in your Recommendation #4 explanation), only Recommendations as early as 1988 were found as the oldest ones available. A general web search came up with a reference as " 1 C.F.R. 305.78-4", however, when attempting to locate this Code of Federal Regulation at the e-cfr website - [http://ecfr.gpoaccess.gov/cgi/t/text{text-idx?c=ecfr;rgn=div5;view=text;node=1%3A1.0.3.6.5;idno=1;sid=88bcef3077fd65b8f2be7b35b83ceac2;cc=ecfr}](http://ecfr.gpoaccess.gov/cgi/t/text{text-idx?c=ecfr;rgn=div5;view=text;node=1%3A1.0.3.6.5;idno=1;sid=88bcef3077fd65b8f2be7b35b83ceac2;cc=ecfr), it only covered 1CFR §304 and section 305 does not exist as shown via the subsequent hotlink. So, the question arises as to exactly where is this Recommendation 78-4? Do you plan to provide an online hotlink or a paper reproduction of this 78-4? How can a small company study and understand the recommendation if references are not in the public domain?

G.

In regulations that regard specific chemicals and, relatively speaking, just as the dollar sign \$ is placed with numerical dollar amounts, so should the CAS Registry Number* be placed with every chemical that is mentioned in regulations. This would efficiently accomplish the task of "Incorporation by Reference" for each chemical since it would be marked under a specific identity for directly referencing additional published information. Also, it would help to better understand where that chemical is utilized and regulated in all areas of appropriate legislation.

Thank you for the opportunity to solicit such information to the ladies & gentlemen of the Administrative Conference of the United States.

Respectfully submitted,

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* CAS REGISTRY is the most comprehensive collection of disclosed chemical substance information in the world. It contains more than 60 million unique organic and inorganic substances, such as alloys, coordination compounds, minerals, mixtures, polymers, and salts, and more than 62 million sequences. [Some examples of chemicals with their CAS Registry Numbers are:

acetaminophen 103-90-2, tetracycline 60-54-8, mercury 7439-97-6, carbon dioxide 124-38-9, vitamin C 50-81-7].

CAS has been around since 1907 [for more history see

<http://www.cas.org/aboutcas/cas100/annivhistory.html>]. Chemical Abstracts was first published at the U. S. Bureau of Standards. Later, the offices moved to the University of Illinois, Urbana. Now located as Chemical Abstracts Service, 2540 Olentangy River Road, Columbus, Ohio 43202 with phone: 800-848-6538, 614-447-3600, Fax: 614-447-3713 and website: <http://cas.org>