



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

April 9, 2015

Mr. Michael Merker
Managing Dir., Publishing
and Conformity Assessment
ASME
Two Park Avenue
New York, NY 10016-5990

SUBJECT: PUBLIC ACCESS TO MATERIAL THE NRC SEEKS TO INCORPORATE BY
REFERENCE INTO ITS REGULATIONS

Dear Mr. Merker:

The purpose of this letter is to request that the American Society of Mechanical Engineers (ASME) consider enhancing public access to Sections III and XI, 2009-2013 editions, of the Boiler and Pressure Vessel Code (B&PVC), and related documents, during the public comment period for the Nuclear Regulatory Commission's (NRC's) proposed rule related to the ASME code in § 50.55a of Title 10 of the *Code of Federal Regulations* (CFR), "Codes and standards." This request helps the NRC satisfy Office of the Federal Register (OFR) requirements regarding agency requests for approval to incorporate by reference into the code of Federal Regulations materials already published elsewhere. The NRC requests that you respond within 2 weeks of receiving this letter; your prompt reply is required to support the rulemaking schedule for the upcoming revision to 10 CFR 50.55a.

In the near future, the NRC will propose to incorporate by reference Sections III and XI, 2009-2013 editions, of the B&PVC, and the related documents listed in Enclosure 2 of this letter, into 10 CFR 50.55a. The NRC wants to enhance access to this material by members of the general public during the comment period for the proposed rule. The NRC's goal is to ensure that the public has a fair opportunity to comment on the NRC's proposed rule, as well as to obtain OFR approval to incorporate by reference the referenced standards.

The NRC, like all other Federal agencies, is required by law to obtain approval for incorporation by reference from the OFR. The OFR's requirements for incorporation by reference are set forth in 10 CFR Part 51. On November 7, 2014, the OFR adopted changes to its regulations governing incorporation by reference (79 FR 66267). In proposed and final rules, an agency must now include a discussion of the ways that the materials the agency proposed to incorporate by reference are reasonably available to interested parties or how it worked to make those materials reasonably available to interested parties. The proposed and final rule must also summarize the material the agency proposes to incorporate by reference.

In past rulemakings involving incorporation by reference, it has been the NRC's procedure to place a copy of all draft and final rules, along with materials incorporated by reference, in the NRC's Public Document Room (PDR) for examination by any member of the public. The NRC will continue to provide the public access to proposed rules and supporting documentation in this manner. Proposed rules will continue to be published by the Federal Register on its website, and also posted to the Government-wide website Regulations.gov. The full text of materials incorporated by reference will continue not to be published by the NRC at these websites; this material will be available only in paper copy at our PDR.

The OFR's requirements for incorporation by reference, set forth in 1 CFR Part 51, state that a publication eligible for incorporation must be "...reasonably available to and usable by the class of persons affected." In past rulemakings, for the documents listed in Enclosure 2, the class of persons affected has been assumed to be primarily large organizations, including power utilities, insurance companies, and government authorities. By contrast, the new OFR regulations cited above state that materials incorporated by reference should be available to all "interested parties," which includes members of the general public. ASME currently would charge about \$9,000 for a copy of each of the documents listed in Enclosure 2. Given the broadened scope of "interested parties," this cost could mean that these documents are not reasonably available, particularly for members of the general public.

Therefore, to fulfil the NRC's obligations under 1 CFR 51.5(a)(1), the NRC requests that the ASME consider enhancing the general public's access to the B&PVC, Sections III and XI, 2009-2013 editions, and related documents, during the public comment period for the proposed rule. One way to do this would be for the ASME to provide the public with limited-time, read-only electronic access to the B&PVC, Sections III and XI, 2009-2013 editions, and related documents. This access could be provided only from the time the proposed rule is published in the *Federal Register* until publication of the final NRC action adopting (or rejecting) the regulation.

For comparison, we note that several other standards organizations, including voluntary consensus standards organizations, are providing the general public with free, either read-only or unrestricted electronic access to their standards that are incorporated by reference or otherwise referenced by a governmental agency, while maintaining the copyrights for those standards. Enclosure 1 provides a sampling of public access provided by some standards organizations to their standards.

The NRC is not asking your organization to waive its intellectual property rights to the B&PVC, Sections III and XI, 2009-2013 editions. Nor does the NRC seek to undermine or impair your organization's business model with respect to the development and publication of the B&PVC, Sections III and XI, 2009-2013 editions. The NRC recognizes the value of your organization's efforts to develop and update the B&PVC, Sections III and XI, 2009-2013 editions, and related documents. Reliance on these standards substantially reduces the amount of resources and time it would otherwise take for the NRC to address design, inspection, and repair of systems, structures and components in nuclear power plants.

The NRC requests that the ASME, in its response to this request, describe what, if any, action the ASME plans to take to enhance public access to the B&PVC, Sections III and XI, 2009-2013 editions, and related documents listed in Enclosure 2. The NRC is particularly interested in how members of the general public could be provided additional access beyond that which the NRC has provided for past rulemakings, if some form of read-only public access during the proposed rulemaking period is not provided. If the ASME determines that it will not take any additional action, the NRC would appreciate an explanation of the bases for your determination.

If your organization has decided not to provide, for example, read-only access for free (or at a nominal cost) for the limited period of time needed to support public participation in the rulemaking process, please explain what considerations have led to your decision, including why restricted access does not provide appropriate protection to your organization's intellectual property rights or undermines or impairs your organization's business model. Your response will be summarized in the NRC's proposed rule that will be published in the *Federal Register* and available online at the Federal rulemaking Web site, www.regulations.gov, in the docket folder established for this rulemaking (Docket ID NRC-2011-0088.) Your letter also will be made available to the public in this docket folder, and in the NRC's Agencywide Documents Access

and Management System (ADAMS) at <http://www.nrc.gov/reading-rm/adams.html>, as well as at the NRC's public document room at the NRC Headquarters in Rockville, Maryland.

We look forward to your response to this request. If you have questions or concerns, please contact me, Brian Thomas, at Brian.Thomas@nrc.gov, or 301-251-7619.

Sincerely,

/RA/

Brian E. Thomas
NRC Standards Executive

Enclosures:
As stated

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We look forward your response to this letter. If you have questions or concerns, please contact me, Brian Thomas, at brian.thomas@nrc.gov, or 301-251-7619.

Sincerely,

/RA/

Brian E. Thomas
NRC Standards Executive

Enclosures:
As stated

CC:
Dan Doyle
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ADAMS Accession No.: ML15085A186

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DATE	4/ 8 /15	4/ 9 /15			

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