



May 30, 2012

Submitted Via *Regulations.Gov*

Michael White, Acting Director
Office of the Federal Register (NF)
The National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740-6001

Re: Docket ID: NARA-12-0002

Dear Acting Director White:

I am writing in reference to the petition on the availability of agency materials incorporated by reference in the *Federal Register* that was submitted on February 13, 2012, by Peter Strauss and other administrative law scholars. I wholeheartedly support the petition's spirit and urge you to update your regulations about what now constitutes the reasonable availability of incorporated materials.

As someone who has studied and written about the use of information technology in the rulemaking process for more than a decade, I can unequivocally affirm the clear shift described in the February 13th petition in what constitutes "reasonably available" government information related to rulemaking. In recent years, the internet has made possible a dramatic expansion in the ease of access to government rules and supporting materials, as well as a substantial shift in both legal norms and public expectations about access to rulemaking information. Petitioners are well-founded in characterizing as "antiquated" the Office's existing regulations implementing 5 U.S.C. § 552(a)(1).

As I wrote in a 2011 report to the Administrative Conference, "in a democracy few tasks compare in significance with the ability of government agencies to create binding law backed up with the threat of civil, and even criminal, penalties" (<http://www.acus.gov/wp-content/plugins/download-monitor/download.php?id=448>). The ability of members of the public to read and understand the rules imposed by their government has long been a hallmark of democracy. Accordingly, both Congress and every President over the last twenty years have adopted laws, policies, or initiatives directing agencies to make regulatory and other information more readily available to the public on the internet.

Today, the relatively minimal costs of making government information available online have eliminated major barriers in allowing the public to access, to review, and if so motivated to comment on the rules that affect them. With most members of the public

using websites as their primary point of contact with their government, even seemingly small and subtle barriers that inhibit fair public access to government information take on significance.

For the foregoing reasons, and in light of current e-rulemaking practices across the federal government, I support the call for your Office to review and update its regulations on materials incorporated by reference.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Coglianese', with a long horizontal stroke extending to the right.

Cary Coglianese
Edward B. Shils Professor of Law
Professor of Political Science
Director, Penn Program on Regulation
University of Pennsylvania Law School

Note: Titles and affiliations listed for identification purposes only. This comment has been submitted in an individual capacity and does not imply endorsement by any affiliated institution.