

Responses to Questions for the Record

Submitted to the House Judiciary Committee, Subcommittee on Courts, Intellectual Property, Artificial Intelligence, and the Internet

Hearing: “Protecting U.S. Leadership in Codes Development and Enhancing Public Access”

Hearing Date: April 21, 2026

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1. ASME has drawn a distinction between standards development organizations (SDOs) that advocate for adoption or incorporation by reference (IBR) versus those that do not. Outside of the litigation context (at present), why does this distinction matter for purposes of Congressional action like the Pro Codes Act or related legislation?

Organizations that draft standards and affirmatively seek to have those standards adopted word for word as law have been forced to address an argument posed by opponents in litigation that, once incorporated, their standard constitutes the text of the law rather than a separately copyrighted work. This is the problem that proponents of the Pro Codes Act have asked Congress to address.

As a policy matter, Congress must decide whether the benefit of protecting a segment of the SDO community outweighs the potential consequences that the Pro Codes Act will have on the balance of the SDO community, including impacts on the continued development and maintenance of technical standards, American competitiveness, and longstanding copyright principles.

Legislation in this area should also take into account differences in the subject matter of the standard, whether the standard covers everyday conduct of average citizens or highly technical industrial activities, whether there are compelling national security or public safety considerations relevant to public posting, and the extent to which an SDO affirmatively sought to have its standard adopted as the text of the law.

1(a). What instances are you aware of in which ASME standards have been incorporated by reference into federal, state, or local law?

ASME standards have been incorporated by reference in a number of regulatory contexts. One well-known example on the federal level is the Nuclear Regulatory Commission’s incorporation of provisions of the ASME Boiler and Pressure Vessel Code and related Code Cases in 10 CFR 50.55a. ASME standards are also incorporated by reference in various state and local regulatory frameworks involving boilers, pressure vessels, piping, and other applications such as elevators and cranes.

1(b). What has ASME's response been in those cases?

ASME has not responded in those cases because incorporation by reference by a federal, state or local government does not currently carry with it an obligation to post its standards online for free on penalty of loss of copyright. The Pro Codes Act would fundamentally change the legal and practical consequences of incorporation by reference.

1(c). Would you consider ASME's October 23, 2023 statement in a public comment to the Nuclear Regulatory Commission's proposed rulemaking (Docket ID NRC-2018-0289) that, "[ASME's] BPV III [Committee] supports the NRC's endorsement of later editions, addenda, and revisions to the ASME Boiler and Pressure Vessel Code, Section III and Section III Code Cases in the Code of Federal Regulations in 10 CFR 50.55a," to be an example of ASME advocating for or taking a supportive position of the practice of IBR of its standards?

No. The Nuclear Regulatory Commission initiated a rulemaking to determine whether and how to incorporate specific editions of ASME codes into its regulations, and ASME responded to that request for comment. That type of response is routine participation in a government-initiated process and reflects technical input on a specific rulemaking. It materially differs from an SDO initiated action affirmatively seeking that a legislative or regulatory body adopt its standard as the text of the law.

2. Other SDOs have filed lawsuits to address the unauthorized posting of its standards online. Can you clarify whether ASME been involved in any litigation involving similar claims and issues and whether ASME would ask Congress to act to restore its copyright protections if it loses one or more cases on similar grounds in the future?

ASME has not participated in any such litigation, though it is aware of litigation in this area. ASME does not believe that legislation in this area should be driven by an effort to undue the results of any specific litigation. ASME does believe that the law related to governmental use of privately developed standards warrants careful consideration and is willing to assist Congress in drafting a legislative solution that protects the entire SDO community.