

**AMENDMENT TO RULES COMMITTEE PRINT**

**118–36**

**OFFERED BY MR. ISSA OF CALIFORNIA**

At the end of subtitle C of title XVII insert the following:

1 **SEC. \_\_\_\_.** **WORKS INCORPORATED BY REFERENCE INTO**  
2 **LAW.**

3 (a) **IN GENERAL.**—Chapter 1 of title 17, United  
4 States Code, is amended by adding at the end the following:  
5

6 **“§ 123. Works incorporated by reference into law**

7 **“(a) DEFINITIONS.**—In this section:

8 **“(1) CIRCULAR A–119.**—The term ‘Circular A–  
9 119’ means Circular A–119 of the Office of Management and Budget entitled ‘Federal Participation in  
10 the Development and Use of Voluntary Consensus  
11 Standards and in Conformity Assessment Activities’,  
12 issued in revised form on January 27, 2016.

14 **“(2) INCORPORATED BY REFERENCE.**—

15 **“(A) IN GENERAL.**—The term ‘incorporated by reference’ means, with respect to a  
16 standard, that the text of a Federal, State,  
17 local, or municipal law or regulation—  
18

1 “(i) references all or part of the  
2 standard; and

3 “(ii) does not copy the text of that  
4 standard directly into that law or regula-  
5 tion.

6 “(B) APPLICATION.—The creation or pub-  
7 lication of a work that includes both the text of  
8 a law or regulation and all or part of a stand-  
9 ard that has been incorporated by reference, as  
10 described in subparagraph (A), shall not affect  
11 the status of the standard as incorporated by  
12 reference under that subparagraph.

13 “(3) STANDARD.—The term ‘standard’ means a  
14 standard or code that is—

15 “(A) a technical standard, as that term is  
16 defined in section 12(d) of the National Tech-  
17 nology Transfer and Advancement Act of 1995  
18 (15 U.S.C. 272 note); or

19 “(B) a voluntary consensus standard, as  
20 that term is used for the purposes of Circular  
21 A-119.

22 “(4) STANDARDS DEVELOPMENT ORGANIZA-  
23 TION.—The term ‘standards development organiza-  
24 tion’ means a holder of a copyright under this title  
25 that plans, develops, establishes, or coordinates vol-

1        untary consensus standards using procedures that  
2        incorporate the attributes of openness, balance of in-  
3        terests, due process, an appeals process, and con-  
4        sensus in a manner consistent with the requirements  
5        of Circular A–119.

6            “(5) PUBLICLY ACCESSIBLE ONLINE.—

7            “(A) IN GENERAL.—The term ‘publicly ac-  
8        cessible online’, with respect to material, means  
9        that the material is displayed for review in a  
10       readily accessible manner on a public website  
11       that is compliant with section 508 of the Reha-  
12       bilitation Act of 1973 (29 U.S.C. 794d), includ-  
13       ing the regulations implementing that section  
14       as set forth in part 1194 of title 36, Code of  
15       Federal Regulations, or any successor regula-  
16       tion.

17           “(B) RULE OF CONSTRUCTION.—If a user  
18       is required to create an account or agree to the  
19       terms of service of a website or organization in  
20       order to access material online, that require-  
21       ment shall not be construed to render the mate-  
22       rial not publicly accessible online for the pur-  
23       poses of subparagraph (A), if—

24           “(i) there is no monetary cost to the  
25       user to access that material; and

1                   “(ii) no personally identifiable infor-  
2                   mation collected pursuant to such a re-  
3                   quirement is used without the affirmative  
4                   and express consent of the user.

5           “(b) STANDARDS INCORPORATED BY REFERENCE  
6 INTO LAW OR REGULATION.—A standard to which copy-  
7 right protection subsists under section 102(a) at the time  
8 of its fixation shall retain such protection, notwithstanding  
9 that the standard is incorporated by reference, if the appli-  
10 cable standards development organization, within a rea-  
11 sonable period of time after obtaining actual or construc-  
12 tive notice that the standard has been incorporated by ref-  
13 erence, makes all portions of the standard so incorporated  
14 publicly accessible online at no monetary cost and in a  
15 format that includes a searchable table of contents and  
16 index, or equivalent aids to facilitate the location of spe-  
17 cific content.

18           “(c) BURDEN OF PROOF.—In any proceeding in  
19 which a party asserts that a standards development orga-  
20 nization has failed to comply with the requirements under  
21 subsection (b) for retaining copyright protection with re-  
22 spect to a standard, the burden of proof shall be on the  
23 party making that assertion to prove that the standards  
24 development organization has failed to comply with those  
25 requirements.”.

1 (b) TECHNICAL AND CONFORMING AMENDMENT.—

2 The table of sections for chapter 1 of title 17, United

3 States Code, is amended by adding at the end the fol-

4 lowing:

“123. Works incorporated by reference into law.”.

