

April 29, 2019

ANSI ExSC
25 West 43 Street, 4th Floor
New York, NY 10036

Dear ANSI Executive Standards Council,

Since 1999 the A92 Main Committee (consensus body) has promoted the use of a unique document known as the A92 Manual of Responsibilities to the industry it serves. This manual provides an exact copy of the copyrighted content in the standard(s) language and is required to be on every machine in operation as an integral part of the machine and ensure users and operator have access to and are aware of their responsibilities defined in the standard. These are a fraction of the cost of an actual standard and place the required language developed in the standard in the hands of users/operators. It is impossible to provide a “equivalent” without violating copyright laws.

In addition, allowing a third party to paraphrase or otherwise alter the manufactures operation, maintenance and repair manuals is a receipt for disaster. It is a well-established in industry and the safety community that the manufacture’s warnings and instructions are inviolable. Likewise, the warnings contained on labels and other markings are also inviolable and must never be substituted with a third party’s idea of what “equivalent” may be. Allowing license with these articles is courting disaster and flying in the face of established safety principles.

Proposed Language

3.2 Commercial terms and conditions

Except as otherwise permitted by these Essential Requirements, new or revised ANS shall not include terms or conditions that are purely commercial in nature, such as contractual requirements (3.2.1); endorsements of brand-name or proprietary products or services (3.2.2); or use of particular conformity-assessment bodies, testing facilities or training organizations (3.2.3).

Rational

It is essential that this section is not interpreted to read that all standards currently in effect must be reopened for commercial terms review, changes in language, public comment etc. Existing standards must be taken as produced in good faith and were approved at the time of their publication by the ANSI Board of Standards Review. Changes in section 3.2 would appropriately be addressed in the next standards revision cycle or with new ANS.

Proposed Language

3.2.2 Endorsements of Products or Services

ANS shall not endorse, or require the purchase or use of, brand-name or proprietary products or service providers as a condition of implementing the standard. For example, an ANS may not

endorse or require the purchase or use of brand-name tools or ~~components, copyrighted user manuals, labels or~~ licenses. Nor may an ANS include manufacturer lists, service provider lists, and the like.

However, where a sole source exists for products or services necessary to comply with the standard, it is permissible to supply the name and address of the source in a footnote as long as the source is reasonably available and the words “or the equivalent” are added to the reference. If the products or service are unique, vital and only a verbatim copy would suffice, then there is no equivalency and no need for a footnote.

Rational

The prior language was intended to avoid a mandate or endorsement of a product or service that would demand a competitive advantage or disadvantage to be in compliance with the standard. At the same time, ANSI must recognize that there are certain circumstances where “the equivalent” is not an option.

The term or equivalent is ill defined and liable to misinterpretation or misuse. There are at least two meanings of the term: Identical and Correspondence in Function.

It is essential that the manufacturer of a product be recognized as the expert in how the product is to be used safely. For the safe use and maintenance of a machine, certain items, although not mechanical, are integral parts of the machine design and its operation. Chief among such items are the warnings and instructions issued by the manufacturer. There is no such thing as an equivalent operation, service or maintenance manual. There is no such thing as an equivalent warning label. Information from the manufacturer has no equivalent. It must be exactly as the manufacturer prescribes.

There may be instances when “equivalent” is not acceptable, for example, product manufacturers make changes to their products that are reflected in their manuals. There is no obvious way for third parties to know about or incorporate those changes. As a result, the safe operation and use of a product may be affected.

As a further example of “non equivalency” certain replacement parts, as a matter of safety, must be exactly as original equipment in one or more important respects. The requirement of strict adherence to manufacturer’s warning and instructions is embodied in industry practice, industry standards and government regulations including OSHA. Information from the manufacturer is sacrosanct and there is no equivalent.

If equivalent means “identical” then things like manuals, labels, replacement parts etc. would only have verbatim copies as equivalencies. The trouble comes in if equivalent is taken to mean correspondence in function. Then we could expect someone to, for example, take a 50-page operation manual and boil it down to a single page of cartoon drawings. This could conceivably be called equivalent since the function remains the same—to instruct someone how to operate the machine safely. The liability

ramifications of equivalency used in this manner should be obvious. Product OEM's, dealers and owners are ultimately responsible for the products they produce, distribute and use.

Thank you,

Dave Merrifield
ASC A92 Chairman
Merrifield Safety Consulting LLC

DeAnna Martin
Associate Director/ANSI Liaison
Scaffold & Access Industry Association