



Incorporation by Reference Handbook

Chapter I

Office of the Federal Register
National Archives and Records Administration

I. Incorporation by Reference (IBR), Generally

A. What Is IBR?

Incorporation by reference (IBR) allows Federal agencies to comply with the requirement to publish rules in the *Federal Register* and the CFR by referring to material already published elsewhere. You must have permission from the Director of the Federal Register to incorporate material by reference.

ONLY THE DIRECTOR OF THE FEDERAL REGISTER CAN APPROVE *IBR* REQUESTS.

- The Director of the Federal Register decides when an agency has completed the process and met the requirements in [1 CFR part 51](#) for incorporating material by reference in its regulations.
- A *Federal Register* document containing reference(s) to incorporated material does not have legal approval, even if it has the proper language of incorporation, if the material has not been formally approved by the Director.

Note: You may not use the phrase “incorporate by reference” when referring to a cross-reference or when referencing a statutory or other regulatory provision in your own regulation. In that case, use “adopt”, “include”, or another, similar term (for example, “adopt by reference”).

B. What Is the Legal Effect of IBR?

The legal effect of IBR is that the referenced material is treated as if it were published in the *Federal Register* and the CFR. When incorporated by reference, this material has the force and effect of law, just like all regulations published in the *Federal Register* and the CFR.

C. What Is the Purpose of IBR?

IBR allows agencies to include technical and complex requirements in regulations even when those requirements cannot be published in the *Federal Register* and CFR. The Administrative Conference of the United States (ACUS) has recommended that agencies use IBR because “IBR furthers important, substantive regulatory policies, enabling agencies to draw on the expertise and resources of private sector standard developers to serve the public interest. IBR allows agencies to give effect to a strong federal policy, embodied in the National Technology Transfer and Advancement Act of 1995 (NTTAA; [Pub. L. 104-113](#)) and [OMB Circular A-119](#), in favor of agency use of voluntary consensus standards.”¹ Congress authorized the Director of the Federal Register to normalize the IBR process in the Freedom of Information Act (FOIA; [5 U.S.C. 552\(a\)](#)), part of the Administrative Procedure Act (APA; [5 U.S.C. 551 et. seq.](#)).

¹ [Administrative Conference Recommendation 2011-5](#), Incorporation by Reference, Adopted December 8, 2011, 77 FR 2257, January 17, 2012 (ACUS Recommendation 2011-5)

D. How Do I Know if I Must Use IBR?

Anytime you refer to material in your regulations (it doesn't matter if the material is printed or online or who produced the material) instead of including the content in your regulations, you need to ask two questions: 'Does it have a legal citation?' and, if not, 'Is it required to understand or comply with the regulations?'

1. Does it have a legal citation²?
 - If the reference is to the U.S. Code (U.S.C.), simply reference or adopt the statutory material without incorporating it by reference.
 - If the reference is to a different CFR section, cross-reference the material as provided by [1 CFR 21.21](#) (see sections 2.16 and 3.16 of the [Document Drafting Handbook](#)) and [1 CFR 21.51](#), [21.52](#), and [21.53](#). If you cross-reference a CFR provision, then you are not incorporating anything by reference (see [section III.A of this handbook](#)).
 - If the material has a different legal citation, or if it does not have a legal citation, ask the next set of questions.
2. Is it required to understand or comply with the regulations? Do your regulations require that a party "resort to"³ material that is not published in the *Federal Register*?
 - If the material is required and it has a legal citation not covered by [1 CFR part 21](#), contact us.
 - If the material is required and does not have a legal citation, then you must seek IBR approval.
 - If the material is agency-produced material, then you must overcome the presumption that the agency-produced material should be included in full in your regulations (see [section III.A of this handbook](#)).
 - If the material is ineligible for IBR approval, then you will need to include the material in your regulations if you want to require it.

E. When Can I Use IBR?

IBR is only available if the applicable regulations are published in the CFR. You must have formal approval of your IBR request before you may publish a final rule document with IBR within one or more amendatory instructions.

We review preambles and regulatory text (if present) of proposed rules to ensure you have discussed any material you are proposing to IBR into the CFR. However, you will not request or receive formal approval for any potential IBR material referenced in a proposed rule. The formal review and approval process is a pre-publication requirement for the final rule.

² Legal citations include CFR, U.S.C., and Pub. L. citations. They do not include FR citations without an accompanying CFR citation. ³ [5 U.S.C. 552\(a\)](#).

You cannot incorporate material by reference into documents that publish in the Notices sections of the *Federal Register* or that contain no regulatory text (for example, guidance documents).

F. Is There Material I Cannot Use for IBR?

You cannot incorporate material by reference that has already been published in the *Federal Register*, regardless of the agency that published it. This means that you cannot remove codified material from your regulations, create a new publication, and then incorporate that new publication by reference.

If any already-published material is included in the CFR, use a cross-reference (see section I.D of this handbook). If there is no current CFR citation, then you must include the material in full in your regulations.

There is a presumption that agency-produced material is not eligible for IBR. If you want to require use of that material, you have two options:

1. Overcome the presumption and show that it cannot be published in the FR/CFR system; or
2. Include the material in full in your regulations (see section III.A of this handbook).

G. Who Should I Contact When I am Considering IBR?

If you are considering using IBR in a regulation, your regulation drafters and agency liaisons should contact us as early as possible if you have questions not answered by this handbook. Contacting us during the drafting process avoids common drafting problems. It can also prevent additional delays in the review and approval of your request.⁴ However, we cannot advise you if your agency should incorporate a publication or which publication to incorporate.

Remember: We can only work with Federal employees. If you have contractors helping to draft your regulations, you must work with us on their behalf.

⁴ It will not prevent delays caused by a backlog in the request process. We process requests in the order in which they are received, so if your request is #15, it can take 3-4 weeks before we start reviewing it.