



# Incorporation by Reference Handbook

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## Chapter IV

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Office of the Federal Register  
National Archives and Records Administration

## IV. Rulemaking Documents

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### A. What Must My Document Contain for IBR Approval?

#### 1. Advance notices of proposed rulemaking

For advance notices of proposed rulemaking (ANPRM), you do not request formal approval for IBR. If you propose to incorporate specific material in the ANPRM, follow the steps for a proposed rule in section A.2 (below).

Contact us if you have questions about how to include IBR in an ANPRM.

#### 2. Proposed rules

For a proposed rule (also known as a notice of proposed rulemaking or NPRM), you do not request formal approval for IBR.

1. The Director will informally approve the proposed IBR, as part of the publication process, as long as:
  - a. The preamble of the proposed rule includes an **easily identifiable** section that does three things (see [Example 2-2](#), [Example 2-3](#), [Example 2-5](#), and [Example 2-6](#) in Appendix A.D.2 and Boilerplate 1 - Discussion for currently-approved IBR material in Appendix A.C of this handbook):
    - i. Identifies and individually summarizes the material that you propose to incorporate;
    - ii. Identifies any currently-approved IBR material, if that material (i.e. same designation, title, and publication date) is unchanged but appears as part of revised or republished amendatory text (see [Flowchart 1](#) in Appendix A.B of this handbook to determine status of IBR material); and
    - iii. Discusses the ways that the proposed IBR material is reasonably available to interested parties, or how you worked to make that material reasonably available to interested parties for the purposes of the proposed rule; and
  - b. For documents with regulatory text, the document:
    - i. Includes the term “Incorporation by reference” in the List of Subjects for the relevant part; and
    - ii. Contains the proper IBR structure and language in the regulatory text of your proposed rule.
2. If the document does not meet these requirements, the Director will return the proposed rule to the agency.

3. If you include IBR language in the amendatory text of your proposed rule, you must follow the drafting procedures described in section B.3.b (below).

If a proposed rule document comes in for publication and includes any IBR element, we review the document before the Scheduling unit starts its publication review. Make sure to budget time for extra review, especially if your document is time-sensitive.

**Remember:** ONLY include "Incorporation by reference" in the List of Subjects of documents when there is at least one IBR reference in the amendatory text for that part. Do NOT include "Incorporation by reference" in the List of Subjects if IBR is not referenced in the amendatory text for a part in your document, even if the part includes IBR in the CFR, unless IBR material is updated by an amendment to a centralized IBR section even if no amendments are necessary for the outlying sections.

### 3. Final rules

1. You must request approval for each publication you wish to incorporate by reference, and you may not send the final rule requiring use of those publications for publication before you receive the Director's approval.

The Director will formally approve the IBR request when it meets the content and format requirements in sections IV.B3 and IV.C.3 of this handbook (see also examples in appendix A.D.2 and A.D.3 of this handbook).

2. If you send a final rule for publication without formal IBR approval, the Director will kill the document and return it to your agency.

## B. What IBR Language Is Required in My Document?

### 1. Advance notices of proposed rulemaking

We review IBR language set out in the amendatory text section in ANPRMs, if you have included such text. If you include IBR language in your ANPRM, follow the drafting procedures described in section 3.b., below (in addition to the content described in A.2, above).

### 2. Proposed rules

We review IBR language set out in the amendatory text section of proposed rules or in supplemental proposed rules, if you have included such text. If you include IBR language in your proposed rule, follow the drafting procedures described in section 3.b., below (in addition to the content described in A.2, above).

### 3. Final rules

#### *a. Preamble text*

The language required for DATES and the easily identifiable IBR section depends on the approval status of the IBR material:

- new IBR material (material that is not approved for incorporation anywhere that you are aware of)
- existing IBR material (material that is approved but for a different location than where you intend to reference it)
- currently-approved IBR material (material that is already approved for the section or appendix where it appears in your proposed or final amendatory text)

Existing IBR material is treated just like new IBR material, with one exception: you do not have to provide us with a copy of the material. Use Flowchart 1 in Appendix A.B.1. of this handbook.

The preamble must include language as follows:

1. The DATES caption (see [Boilerplate 1 - DATES caption in Appendix A.C of this handbook](#))
  - a. DATES must include an approval statement that indicates the date the Director of the Federal Register approved the IBR. Do not name each approved publication in the DATES section. The effective date of the final rule and the approval date of the incorporation by reference are always the same date (see [Boilerplate 1 - DATES caption in Appendix A.C of this handbook](#)).
  - b. DATES must also include the approval date of any currently-approved IBR material, if that material appears as part of revised or republished amendatory text (see [Flowchart 3, Boilerplate 1 - DATES caption, and Example 2-1 in Appendix A.B.1, C, and D.2 of this handbook](#)).
2. An **easily identifiable** section (see [Flowchart 2 in Appendix A.B.1 of this handbook](#)) that:
  - a. Identifies and individually summarizes the new IBR material that you are incorporating (see [Example 1-1, Example 2-2, Example 2-3, and Example 2-4, in Appendix A.D.1 and D.2 of this handbook](#));
  - b. Identifies any currently-approved IBR material, if that material appears as part of revised or republished amendatory text (see [Example 2-6 in Appendix A.D.2 of this handbook](#)); and
  - c. Discusses the ways that the IBR material is reasonably available to interested parties (see [Example 2-2, Example 2-3, and Example 2-4 in Appendix A.D.2 of this handbook](#)). Do **not** include OFR availability language in the preamble.
3. The List of Subjects at the end of the preamble must include the term “Incorporation by reference” in alphabetical order.

#### *b. Regulatory text*

The amendatory text must (see section C, below, for formatting and structure guidance):

1. Include the words “incorporation by reference” or a form of that phrase, such as “IBR”.
2. Identify the material to be incorporated,
  - a. Including:
    - designation of the publication,
    - title,
    - date,
    - version (if any), and author (if any); and
  - b. Organized alphabetically by publisher, then alpha-numerically by publication.

This must **EXACTLY** match the title page, cover sheet, transmittal letter, or other front matter of the publication you give us (see [Example 1-1](#) and [Example 1-2](#) in [Appendix A.D.1](#) of this handbook).

**Remember**, even if the publication’s designation contains a partial date, for example ASTM F1234-12, that designation does not eliminate the requirement to include a date. You must include the date in addition to the designation.

3. Contain statements of availability stating where:
  - a. The publication(s) can be inspected at your agency; and
  - b. Copies can be obtained from the publisher, design or copyright holder, or other distributor.
4. Include in the statements of availability:
  - a. Agency’s street or internet address<sup>8</sup> where the public can inspect the material;
  - b. Agency’s phone number or email address for questions from the public regarding the material; and
  - c. Publisher’s street address, and at least two of the following: phone number, email, and internet address.
5. Refer to [5 U.S.C. 552\(a\)](#) and include a statement that the Director of the Federal Register approves the incorporation by reference (see [Option 1](#), [Option 2](#), and [Option 3](#) in [Appendix A.D.3](#) of this handbook ).

**Remember**, you must include a reference to the material in at least one location other than a centralized section or paragraph.

## C. How Do I Format Regulatory Text that Contains an IBR?

### 1. Advanced notices of proposed rulemaking

We review IBR language set out in the amendatory text section in ANPRMs if you have included such text. If you include IBR language in your ANPRM, follow the drafting procedures described in section 3, below.

### 2. Proposed rules

<sup>8</sup>You cannot use a website or domain that is not owned by your agency.

We review specific IBR language set out in the amendatory text section of proposed rules, or in supplemental proposed rules, if you have included such text. If you include IBR language in your proposed rule, follow the drafting procedures described in section 3, below.

### 3. Final rules

Formatting the IBR language in your amendatory text depends on how many publications are referenced in the same section and whether or not the part (or subpart) has (or needs) a centralized IBR structure. Regardless of the number of publications, if a section is within a CFR part or subpart covered by a centralized IBR section, you must use that section. The three possible structures (see [Flowchart 4](#) and [Flowchart 5](#) in [Appendix A.B.2](#) of this handbook):

1. Option 1: *Single IBR publication section* – a single publication is incorporated into a single section, but can be referenced once or multiple times within that section. Place the required IBR language immediately after the first reference to the publication or in the last paragraph in the section (see [Boilerplate 2 -Final rule](#), [Multiple currently-approved publications in Appendix A.C](#) and [Option 1 in Appendix A.D.3](#) of this handbook);
2. Option 2: *Dedicated IBR paragraph* – more than one publication is incorporated into a single paragraph. Include the IBR language for each publication referenced in a section in a designated paragraph in that section; the paragraph should be the first<sup>9</sup> or last paragraph in the section (see [Option 2 in Appendix A.C.](#) and [Option 2 in Appendix A.D.3](#) of this handbook); or
3. Option 3: *Centralized IBR section* – a designated section that serves as an index for all the IBR material in or across an identified CFR unit(s), regardless of quantity. Include a cross-reference to a separate section designated for IBR material immediately after the first reference and add the IBR language for the publication into the centralized IBR section; the centralized section should be at the beginning or the end of the applicable part<sup>10</sup> or subpart (see [Option 3 in Appendix A.C](#) and [Option 3 in Appendix A.D.3](#) of this handbook).

#### a. Options for IBR structure

Even though each rulemaking is unique and the circumstances driving the rulemaking will help determine which publication(s) to use, the structure you use depends on your existing CFR content and IBR structure (if any), as well as any future plans or possible future outcomes. Before you begin drafting, determine (see [Flowchart 4.](#) and [Flowchart 5](#) in [Appendix A.B.2](#) of this handbook):

1. Whether you are including (and how many) new IBR publications in the rulemaking;
2. Whether you are including (and how many) currently-approved IBR publications in the rulemaking;
3. The number of publications you are incorporating within each affected section; and
4. The IBR structure that works best from the options available<sup>11</sup>.

<sup>9</sup> The OFR prefers that you include dedicated IBR paragraphs as paragraph (a); however, we recognize that many times it is simpler and more efficient to add the dedicated paragraph as the last paragraph – especially when adding the paragraph to an existing section.

<sup>10</sup> A centralized section that spans multiple parts is possible only under very limited circumstances. Before adopting a multi-part model, contact us.

<sup>11</sup> If the rule amends more than one part, choose one structure for each part. The end result may be different structures in different parts.

Make sure you understand how the section fits into the CFR structure. For example, if a section already has one publication and you are adding a second publication, then even if you only have one publication in the rule, you cannot use the Single IBR publication section option (option 1) because the end result is more than one publication in the section. If this happens, you will have to restructure the section.

**Remember:** Option 3 is always acceptable but you may have to consolidate existing IBR material from other sections in the part or subpart when adding a centralized IBR section to a part that already has incorporated material.

### ***b. Structure of IBR language***

The only structural difference between option 2 (Dedicated IBR paragraph) structure requirements and option 3 (Centralized IBR section) structure requirements is that option 2 starts at the second paragraph level (e.g. (a)(1)) while option 3 starts at the first paragraph level (e.g. (a)).

1. (Option 1) *Using a single paragraph for the reference and all elements* (see Boilerplate 2 -Final rule, Multiple currently-approved publication in Appendix A.C and Option 1 in Appendix A.D.3 of this handbook) Include the IBR approval language, availability boilerplate, and information about the publication and publisher, immediately following the first reference to the material or as the last paragraph of the section.
2. (Option 2) *Using a dedicated IBR paragraph* (see Option 2 in Appendix A.C. and Option 2 in Appendix A.D.3 of this handbook). When including the IBR approval language for more than one publication in a separate paragraph, the paragraph must be either the first or last paragraph within the section and must contain all the elements described below for Option 3, except for 3c. (since there are no outlying sections).
3. (Option 3) *Using a centralized IBR section* (see Option 3 in Appendix A.C. and Option 3 in Appendix A.D.3 of this handbook). A centralized IBR section allows you to publish the IBR approval language and list the publisher information once for a part instead of repeating it in each section, and does not interfere with the regulatory text of any individual section.
  - a. A centralized IBR section must contain the following:
    - i. Required approval language in the first paragraph;
    - ii. Required availability boilerplate; and
    - iii. Required information for each publisher and each publication by:
      - 1) Listing each publisher along with its address information in 1st level paragraphs (e.g. (a)) in alphabetical order. Include at least two (2) of the following elements in addition to the publisher's address: phone, email, website.
      - 2) Listing the publisher's incorporated publications separately in 2nd level paragraphs (e.g. (a)(1)) under the publisher's information paragraph in alpha-numeric order (see Option 3 in Appendix A.C. and Option 3 in Appendix A.D.3 of this handbook).
      - 3) ). For each separate paragraph include:

- a) The description of each publication as required by [1 CFR 51.9\(b\)\(2\)](#) (see [Example 1-1](#) and [Example 1-2](#) in [Appendix A.D.1](#) of this handbook); and
  - b) All sections that require the use of each publication, including the first paragraph level of the section.
- b. A centralized IBR section only contains information related to the incorporated publications. It does not contain instructions for using the material, the process the agency follows to change the publications, alternatives to using the incorporated publications, or other information unrelated to identifying the incorporated publications or the availability of that material.
- c. The sections that require use of the publication(s) must include the following phrase after the publication's designation, "(incorporated by reference, see [INSERT THE CENTRALIZED IBR SECTION NUMBER])". The cross-reference back to the centralized IBR section allows the reader to find the approval language and information regarding the publication's publisher quickly.

A poorly drafted centralized IBR section may create problems for you. It can be difficult to amend, especially if the centralized IBR section and the section that requires the use of the publication do not cross-reference each other. Contact us if you have questions about how to craft a well-drafted centralized IBR section.