



IBR HANDBOOK

updated: April 2016

Office of the Federal Register
OFR-Legal@gpo.gov | 202-741-6030

Overview

Incorporation by reference (IBR) allows Federal agencies to comply with the requirement to publish rules in the Federal Register and the Code of Federal Regulations (CFR) by referring to materials already published elsewhere. This makes IBR an efficient way for agencies to maximize their reliance on voluntary consensus standards and minimize their reliance on government-unique standards. When Federal agencies use such standards, it saves taxpayer money, encourages efficiency, and promotes economic competition.

When an agency proposes to incorporate material by reference, the agency must balance the following:

- Its statutory obligations regarding reasonable availability of the standards,
- U.S. copyright law,
- U.S. international trade obligations, and
- The agency's ability to substantively regulate under its own authorizing statutes.

This handbook will highlight the issues agencies should consider when thinking about IBR'ing materials into the CFR. The handbook describes the purpose and legal effect of IBR and provides guidance to Federal agencies on the following:

- The factors that agencies should consider when incorporating standards by reference into the CFR;
- The types of materials that are eligible for IBR;
- How an agency can request approval for an IBR;
- Using the right IBR language in a rulemaking document;
- Removing the IBR from the CFR.

Where possible, the Legal Affairs and Policy Division of the Office of the Federal Register (we) have included examples and templates, so that the procedures will be as clear as possible.

If your agency is considering using IBR in a regulation, your regulation drafters and agency liaisons should contact us as early as possible (OFR-Legal@gpo.gov). Agencies must follow the approval process in order to properly IBR material into the CFR, and we want to ensure that your document will be reviewed and approved without delay.

| | |
|--|----|
| I. Introduction..... | 1 |
| A. What is Incorporation by Reference (IBR)? | 1 |
| B. What is the Legal Effect of IBR?..... | 1 |
| C. What is the Purpose of IBR? | 1 |
| D. How Do I Know if I Must Use IBR? | 1 |
| E. When Can I Use IBR? | 2 |
| F. Is There Material I Cannot IBR?..... | 3 |
| G. Who Should I Contact When I am Considering IBR?..... | 3 |
| II. What Is the Legal Authority for IBR and the Related Guidance? | 4 |
| A. Freedom of Information Act..... | 4 |
| B. Regulations | 4 |
| C. National Technology Transfer and Advancement Act of 1995 (NTTAA)..... | 4 |
| D. Office of Management and Budget (OMB) | 5 |
| E. Administrative Conference of the United States (ACUS)..... | 5 |
| III. Who Approves IBR Requests? | 6 |
| IV. What Types of Materials May be Approved for IBR? | 6 |
| V. When Deciding to Use a Standard, What Should My Agency Consider?..... | 7 |
| A. Consider Using Standards on a Case-by-Case Basis | 7 |
| B. Determine Which Version of the Standard to Use..... | 7 |
| VI. What is the Required Availability for IBR Material?..... | 8 |
| A. Incorporated Material Must Be Reasonably Available..... | 8 |
| B. Ways to Make Incorporated Material Reasonably Available..... | 8 |
| C. Balancing Procedural Requirements and Substantive Statutory Authority | 9 |
| D. Web-based Materials | 10 |
| E. Electronic Materials | 10 |
| F. Software Applications | 10 |
| VII. When Do I Request Approval for an IBR?..... | 11 |

| | |
|---|----|
| VIII. How Do I Request Approval for an IBR? | 12 |
| A. Review Your IBR Materials | 12 |
| B. Send an IBR Request Package to the Director of the Federal Register..... | 12 |
| C. How do I draft the IBR request letter and Who Can Sign It? | 13 |
| D. How Long Will It Take for the OFR to Process My IBR Request? | 14 |
| IX. IBR Language in your Rulemaking Document | 14 |
| A. Advance Notice of Proposed Rulemaking | 14 |
| B. Proposed Rules..... | 15 |
| C. Final Rules..... | 15 |
| X. How Do I Draft IBR Language for the Regulatory Text? | 16 |
| A. Advance Notices of Proposed Rulemaking | 16 |
| B. Proposed Rules..... | 16 |
| C. Final Rules..... | 16 |
| XI. How Do I Format Regulatory Text that Contains an IBR? | 18 |
| A. Advanced Notices of Proposed Rulemaking..... | 18 |
| B. Proposed Rules..... | 18 |
| C. Final Rules..... | 18 |
| XII. When and How Do I Make Changes to Incorporated Standards? | 20 |
| A. Agencies, not the OFR, Determine Whether to Update Incorporated Standards | 20 |
| B. If Your Agency Withdraws the Final Rule containing the IBR or the Final Rule Does Not Go into Effect..... | 21 |
| XIII. How Do I Remove IBR Material from the Code of Federal Regulations (CFR)? | 21 |
| XIV. IBR Checklist for Final Rules | 22 |
| XV. EXAMPLES..... | 23 |

I. Introduction

A. What is Incorporation by Reference (IBR)?

Incorporation by reference (IBR) allows Federal agencies to comply with the requirement to publish rules in the Federal Register and the Code of Federal Regulations (CFR) by referring to materials already published elsewhere.

B. What is the Legal Effect of IBR?

The legal effect of IBR is that the material is treated as if it was published in the Federal Register and the CFR. 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 (you) 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) 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 ([5 U.S.C. 552\(a\)](#)).

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

Anytime you refer to material (it doesn't matter if it is printed or online and it doesn't matter who produced the material) rather than including the content in your regulations, you need to

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

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 a different CFR section or to the U.S. Code, simply cross-reference the material as provided by [1 CFR 21.21](#) (see Chapters 1 and 2 of the [Document Drafting Handbook](#)) and [1 CFR 21.51](#), [21.52](#), and [21.53](#). If you cross-reference to a statute or CFR section, then you are not incorporating anything by reference (see section [IV](#)).
- If you have a legal citation that is not covered by [1 CFR part 21](#), or if you do not have a legal citation, move to the second question.

2. Is it required to understand or comply with the regulations?

- If the material is required and it has a legal citation not covered by [1 CFR part 21](#), contact us (OFR-Legal@gpo.gov).
- 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 (by your agency or by another agency), then you must overcome the presumption that agency-produced material should be included in full in your regulations (see section [IV](#)).
- If the material is ineligible for IBR approval (see section [IV](#)), then you will need to include the material in your regulations if you want to require it.

E. When Can I Use IBR?

Incorporation by reference is only available if the regulations are published in the CFR.

We review preambles of proposed rules to ensure you have discussed any materials you are proposing to IBR into your CFR provisions. You cannot IBR material into documents that publish in the notices sections of the daily Federal Register.

² Legal citations include CFR, U.S.C. and Pub.L. citations.

F. Is There Material I Cannot IBR?

You cannot IBR material 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 document, and then IBR the document.

If any of that material was actually included in the CFR, use a cross-reference as discussed above. If there is no 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 include that material as a requirement, you have two options: overcome the presumption and show that it cannot be published in the CFR; or include the material in full in your regulations (see section [IV](#) for more information).

You cannot IBR material in a Notice document, in a proposed rule³, or in guidance.

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. Since this is a technical subject area, contacting the OFR during the drafting process avoids common drafting problems. It also reduces delay of the review and approval of your request. You can contact the Legal Division at (202) 741-6030 or OFR-Legal@gpo.gov. However, the OFR cannot advise if your agency should IBR a standard or which standard to IBR.

³ Although the Director doesn't formally approve IBR for proposed rules, we still informally review the proposal to make sure it meets the requirements of 1 CFR part 51 (see [Section VII](#)).

II. What Is the Legal Authority for IBR and the Related Guidance?

A. Freedom of Information Act

The Freedom of Information Act (FOIA) authorizes the use of IBR ([5 U.S.C. 552\(a\)](#)).

1. The FOIA allows agencies to incorporate by reference materials “reasonably available to the class of persons affected” into the CFR.
2. The FOIA requires the Director of the Federal Register to approve all IBR requests.

B. Regulations

1. You can find the OFR’s regulations on IBR at [1 CFR part 51](#).
2. ACFR regulations, specifically [1 CFR 2.4\(b\)](#), allow the Director to return documents if those documents don’t meet the publication requirements.

C. National Technology Transfer and Advancement Act of 1995 (NTTAA)

IBR gives agencies an efficient way to use voluntary consensus standards, as provided for in the [NTTAA](#) (Pub. L. 104-113).

The NTTAA directs agencies to use voluntary consensus standards instead of government-unique standards when it is practical and consistent with law. Agencies should consult with voluntary, private sector, consensus standards bodies. Agencies should also participate in the development of technical standards when such participation is in the public interest and compatible with agency missions, priorities, and resources.

D. Office of Management and Budget (OMB)

The OMB issued two documents that provide valuable information to agencies who work with standards and are considering IBRing standards into their regulations

1. [Circular A-119](#), “Federal Participation in the Development of Voluntary Consensus Standards and in Conformity Assessment Activities.” This Circular includes guidance on IBR.
2. [Memorandum M-12-08](#), “Principles for Federal Engagement in Standards Activities to Address National Priorities.” The Memorandum describes the five fundamental strategic objectives for Federal involvement in standards development and other activities related to standards.

E. Administrative Conference of the United States (ACUS)

[ACUS Recommendation 2011-5](#), Incorporation by Reference, focuses on three issues agencies frequently confront when incorporating by reference:

1. Ensuring materials incorporated by reference are reasonably available to regulated and other interested parties;
2. Updating regulations that incorporate by reference; and
3. Navigating procedural requirements and resolving drafting difficulties when incorporating by reference. This recommendation identifies and encourages those approaches that have proven most successful.

III. Who Approves IBR Requests?

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](#) to incorporate material by reference in regulations.
- Publication in the Federal Register of a document containing reference(s) to incorporated material does not in itself constitute an approval of the IBR by the Director.

IV. What Types of Materials May be Approved for IBR?

- The Director may approve an IBR request if the material:
 - Is published data, criteria, standards, specifications, techniques, illustrations, or similar material;
 - Is reasonably available to and usable by the class of persons affected by the publication;
 - Does not reduce the usefulness of the Federal Register publication system;
- IBRing the material must also:
 - Benefit the Federal Government and members of affected classes; or
 - Substantially reduce the volume of material published in the Federal Register and the CFR.
- The Director will approve an agency-produced publication for IBR, only if:
 - The standard meets the requirements above and possesses other unique or highly unusual qualities; or

- It is impossible or impractical to print using the Federal Register/CFR printing system.
- The Director will not approve an IBR of any of the following materials:
 - Material published previously in the Federal Register or the CFR; or
 - Material published in the United States Code.

Remember: Non-approval does not mean that you can reference the material and leave out the IBR approval language. If you want to require the material and the Director does not approve the IBR, you must include the material in full in your regulations.

V. When Deciding to Use a Standard, What Should My Agency Consider?

A. Consider Using Standards on a Case-by-Case Basis

An agency should consider using a standard on a case-by-case basis. Agencies consider many factors, including how the use of the standard will affect the economy and existing laws. For more guidance, see [OMB Circular A-119](#) and [ACUS Recommendation 2011-5](#).

B. Determine Which Version of the Standard to Use

The agency determines which version of the standard it will incorporate. We cannot advise you on which version to IBR. We know from questions misdirected to our office that your regulated public has questions about why you chose a particular version. No matter what version of a standard you decide to IBR, we recommend discussing why you chose a particular version of a standard as part of your summary of the IBRed material in the preamble of your final rule.

VI. What is the Required Availability for IBR Material?

A. Incorporated Material Must Be Reasonably Available

1. Materials that are incorporated by reference must be “reasonably available” during the lifecycle of the relevant regulation and its regulatory programs. This can pose a challenge for agencies, especially when the material is copyrighted. We interpret “reasonably available” in a flexible, case-by-case manner that takes specific situations into consideration. However, the agency must provide the basis for a finding of “reasonably available.”
2. When necessary, the responsible agency should collaborate with the standards development organizations and other publishers of incorporated materials to ensure that the public has reasonable access to the incorporated documents.

B. Ways to Make Incorporated Material Reasonably Available

Agencies considering IBR need to determine if and how the material is available to both regulated and other interested parties. If more than one standard meets the agency’s need, the agency should consider availability of the standards when determining which standard it seeks to IBR.

Some agencies have successfully worked with copyright owners to further the goals of both transparency and public-private collaboration. For example, ACUS recommends agencies can consider obtaining permission from the copyright holder to:

- Make a read-only copy of the incorporated material available in the agency’s public electronic docket during the time that the rulemaking is under consideration; or
- Make the incorporated material publicly available in read-only form on the copyright owner’s website⁴.

⁴ [ACUS Recommendation 2011-5](#).

But remember, read-only access, on its own, may not meet the reasonable availability requirement at the final rule stage of rulemaking. If the regulated parties aren't able to use the material (which may be different than simply reading or accessing it) throughout the life of the rulemaking, this could lead to enforcement issues.

C. Balancing Procedural Requirements and Substantive Statutory Authority

1. When you propose to incorporate material by reference, under the [NTTAA](#), you must balance the following:
 - a. Statutory obligations regarding reasonable availability of the standards under [FOIA](#),
 - b. U.S. copyright law,
 - c. U.S. international trade obligations, and
 - d. The ability to substantively regulate under its own authorizing statutes.
2. When you decide to incorporate material, the preamble of your rulemaking document (proposed and final rules) must:
 - a. Discuss how the incorporated materials are available to parties,
 - b. Indicate where the incorporated materials are located, and
 - c. Summarize the incorporated materials.

The preamble requirements in [1 CFR part 51](#) ensure that readers can understand how the incorporated material fits into the regulation and where to find and review the standards. We will be able to review your request more quickly and efficiently if you draft the preamble so that this discussion is under a specific heading.

Some headings that agencies are using include:

- Incorporation by reference
- Analysis under 1 CFR part 51
- NTTAA and 1 CFR part 51

D. Web-based Materials

In some cases, the Director may approve web-based materials; however:

1. Web-based materials must meet all other IBR requirements.
2. When submitting web-based materials, you must clearly identify the materials, including a version number (when applicable) and a date. You must also provide a paper or read-only electronic copy for our records.

The Director will not approve a third-party website or a website with dynamically generated content. If you have questions about web-based materials, contact OFR-Legal@gpo.gov.

E. Electronic Materials

If you want to submit your IBR request electronically contact us for the proper procedure. We require that all material associated with an IBR request be provided as all paper copies or all electronic files.

Our regulations require that you make IBRed material available for examination by the public. We encourage you to establish a uniform means of storing and archiving IBRed material within your agency even if it is in a different format than you send to us. For example, if you send us a paper copy, you may still store and archive an electronic copy that matches the paper.

F. Software Applications

1. The Director may approve open-source code for applications. The Director will not approve software in application-form.
2. The application code must meet all other IBR requirements.
3. You must clearly identify the version and provide us a hard copy or read-only electronic copy of the code.

VII. When Do I Request Approval for an IBR?

Do NOT request approval for proposed rule documents. We review these documents after you send them in for publication but before the editing process begins.

Before you send your final rule in for publication, you must request formal IBR approval if you are:

1. IBRing a new standard
2. IBRing a different version of a standard
3. adding a current standard to a new section,
4. redesignating a section with IBR material, or
5. IBRing a standard already approved for another agency,

For items 3-5 (above), you do not have to give us another copy of the standard(s). You need to say in your request letter that you are not including that specific standard and you must specify the section and paragraph where the standard was already approved. This will reduce questions we have about your IBR request.

You may not send us the final rule for publication before receiving the Director's approval to publish.

Publication in the Federal Register of a document containing reference(s) to incorporated material does not in itself constitute an approval of the IBR by the Director. If the Director has not formally approved the IBR, the materials referenced are not IBRed.

VIII. How Do I Request Approval for an IBR?

For PROPOSED RULE documents (including ANPRMs), simply send in the document for publication.

For FINAL RULE documents, follow these steps:

A. Review Your IBR Materials

Before you submit a request, carefully review the IBR materials to make sure they are:

1. Legible;
2. Complete; and
3. Clearly identified by the title, date, edition, author, publisher, and identification number of the publication.

B. Send an IBR Request Package to the Director of the Federal Register

Your package must include:

1. A signed letter requesting approval of the incorporation;
2. A complete copy of the material(s) to be incorporated, and
3. One of the following:
 - a. A complete hard copy of your DRAFT final rule document that uses the proper language of incorporation; or
 - b. The first page(s) of your DRAFT final rule (through the SUMMARY) in hard copy. Then email the complete copy of the DRAFT final rule and the Word file of the request letter to OFR-Legal@gpo.gov. The draft document must be in a single file. We will not combine files to create a complete document.

4. If you send the complete hard copy of the DRAFT final rule, you must also email that file and the Word file of the request letter to OFR-Legal@gpo.gov

If sending your IBR request by U.S. mail, be sure to use the address found in the sample letter. (We strongly discourage this practice, however. U.S. mail is irradiated before it comes to us, which can damage the documents and delay delivery of the package. If there is too much damage, you will have to resend the IBR materials.)

You may hand deliver or courier your IBR package to our office in Washington, DC (see <http://www.archives.gov/federal-register/contact.html>.)

C. How do I draft the IBR request letter and Who Can Sign It?

Send a letter to the Director of the Federal Register specifically requesting IBR approval and including the following information (see [Example 1](#)):

1. The identification designation, usually an alpha-numeric designation⁵, title, date, version, and author of each standard you wish to IBR, grouped by publisher,
2. The title and section where you wish to IBR a standard, including any centralized IBR sections. Include references to the subparagraph level in the section that requires the use of the standard, for example 40 CFR 63.17(b)(1)(iii)(A). This is more detailed than what you include in centralized IBR section, and
3. Who to contact at your agency regarding your IBR request along with their phone number and email address.

We will accept signatures from OFR liaison officers, program staff, or agency attorneys, among others, so the request letter does not necessarily have to be signed by the head of your agency. To determine the person(s) in your agency who have the authority to sign an IBR request, ask your agency attorneys.

⁵ Even if the standard's designation contains a partial date, for example ASTM F1234-12, this is not the same as the date of the document. You must include the date in addition to the designation.

D. How Long Will It Take for the OFR to Process My IBR Request?

We will notify you of the decision to approve or disapprove an IBR request within 20 working days after you submitted the request and all required materials. If edits are required, we will contact you before the end of the 20-day period.

- The 20-day period begins when we receive legally sufficient material for all elements of the request.
- Failure to follow this procedure will delay the processing of your request.
- We do not offer expedited or emergency review of IBR requests.

Your agency has 2 years from the date of the approval letter to send in the rule for publication, unless you ask for an extension before that date. After 2 years, you will need to send in a new request for IBR approval.

IX. IBR Language in your Rulemaking Document

A. Advance Notice of Proposed Rulemaking

1. For advance notices of proposed rulemaking (ANPRs), you do not have to request formal approval of IBR. However, to promote transparency and consistency, you may wish to include IBR language in the regulation text of your ANPR.
2. The Director will approve the ANPRM IBR informally, as part of the publication process, as long as the term “Incorporation by reference” is included in the List of Subjects for the relevant part, and the preamble of the ANPRM includes an easily identifiable section that does two things:
 - a. Summarizes the material that you propose to IBR; and
 - b. Discusses the ways that the proposed IBR materials are reasonably available to interested parties, or how you worked to make those materials reasonably available to interested parties for the purposes of the proposed rule.
3. If the preamble of the proposed rule does not meet these requirements, the Director will return the proposed rule to the agency.

4. If you include IBR language in your regulation text, consider following the drafting procedures described in section [X.C.2](#).

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

B. Proposed Rules

1. For proposed rules, you do not have to request formal approval of IBR. However, to promote transparency and consistency, you may wish to include the IBR language in the regulation text of your proposed rule.
2. The Director will informally approve the proposed IBR, as part of the publication process, as long as the term “Incorporation by reference” is included in the List of Subjects for the relevant part, and the preamble of the proposed rule includes an easily identifiable section that does two things:
 - a. Summarizes the material that you propose to IBR; and
 - b. Discusses the ways that the proposed IBR materials are reasonably available to interested parties, or how you worked to make those materials reasonably available to interested parties for the purposes of the proposed rule.
3. If the preamble of the proposed rule does not meet these requirements, the Director will return the proposed rule to the agency.
4. If you include IBR language in the regulatory text of your proposed rule, you should follow the drafting procedures described in section [X.C.2](#).

C. Final Rules

1. You must request approval for each IBR before you publish the final rule, and you may not send us the final rule for publication before receiving the Director’s approval.
2. The Director will formally approve the IBR request when it meets the content and format requirements in sections [X.C.](#) and [XI.C.](#)
3. If you send a final rule for publication without formal approval, the Director will kill and return the document to your agency.

X. How Do I Draft IBR Language for the Regulatory Text?

A. Advance Notices of Proposed Rulemaking

We do not review specific IBR language set out in the regulatory text section in ANPRMs. However, to promote transparency and consistency, you may wish to include IBR language in your ANPRM. If you include IBR language in your ANPRM, you should follow the drafting procedures described in C.2 of this section (below). If you choose to include IBR language, you must follow the formatting requirements of section [XI.C.2](#).

B. Proposed Rules

We do not review specific IBR language set out in the regulatory text section of proposed rules or in supplemental proposed rules, unless you ask us to. However, to promote transparency and consistency, you should include IBR language in your proposed regulatory text. If you include IBR language in your notice of proposed rulemaking, you should follow the drafting procedures described in C.2 of this section (below). If you choose to include IBR language, you must follow the formatting requirements of section [XI.C.2](#).

C. Final Rules

1. The preamble text in your final rule must include language as follows:
 - a. The DATES section must include an approval statement that indicates the effective date of the IBR as approved by the Director of the Federal Register. It is not necessary to name each approved publication in the DATES section. The effective date of the final rule and the effective date of the incorporation by reference are always the same date (see [Example 2](#)).
 - b. The preamble of the final rule includes an easily identifiable section that:
 - i. Summarizes the material that you are IBR'ing; and
 - ii. Discusses the ways that the IBR materials are reasonably available to interested parties.

- c. The List of Subjects at the end of the preamble must include the term “Incorporation by reference.”
2. The regulatory text in your final rule must:
 - a. Include the words “incorporation by reference” or a form of that phrase, such as “IBR”.
 - b. Identify the material to be incorporated, by identification designation of the standard⁶, title, date, version, and author, organized by publisher. This must EXACTLY match the title page, cover sheet, transmittal letter, or other front matter of your incorporated document (see section [XI.C.](#) for formatting instructions).
 - c. Contain statements of availability stating where:
 - i. The document can be inspected at your agency, and
 - ii. Where copies can be obtained from the publisher.
 - d. Include in the statements of availability:
 - i. Agency address where the public can inspect the material;
 - ii. Agency phone number for questions from the public regarding the material; and
 - iii. Publisher address, phone number, email, and internet address
 - e. 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 [Example 3](#) and [Example 4](#)).

⁶ Remember, even if the standard’s designation contains a partial date, for example ASTM F1234-12, this is not the same as the date of the document. You must include the date in addition to the designation.

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

A. Advanced Notices of Proposed Rulemaking

We do not formally review specific IBR language in the text of ANPRMs. However, to promote transparency and consistency, you may wish to include IBR language in your ANPRM. If you include IBR language in your ANRPM, you must follow the formatting requirements of C.2 of this section (below).

B. Proposed Rules

We do not formally review specific IBR language in proposed regulatory text. However, to promote transparency and consistency, you may wish to include IBR language in your proposed regulatory text. If you include IBR language in your proposed rule, you must follow the formatting requirements of C.2 of this section (below).

C. Final Rules

Formatting your IBR text depends on how many standards you have and whether or not you have (or need) a centralized IBR structure.

1. Number of standards

(regardless of the number, if you have a centralized IBR structure in place, you must use that structure)

- a. One Standard IBRed into one section
 - i. Place the required IBR language immediately after the first reference that you make in the section (see [Example 5](#)); or
 - ii. Include a cross-reference to a separate section designated for IBR material (the “centralized IBR section”) immediately after the first reference and add the IBR language for the standard into the centralized IBR section (see [Example 7](#))
- b. One Standard IBRed into multiple sections
 - i. Use the format in a.i. (immediately above) for each section; or

- ii. Include the IBR language for each standard in a designated IBR paragraph in each section (see [Example 6](#)), or
 - iii. Include a cross-reference to a separate section designated for IBR material (the “centralized IBR section”) immediately after the first reference and add the IBR language for the standard into the centralized IBR section (see [Example 7](#)).
- c. Multiple Standards IBRed into a single section or into multiple sections
- i. Include the IBR language for each standard in a designated IBR paragraph in each section (see [Example 6](#)), or
 - ii. Include a cross-reference to a separate section designated for IBR material (the “centralized IBR section”) immediately after the first reference and add the IBR language for the standard into the centralized IBR section) (see [Example 7](#)).

2. Structure of IBR language for multiple standards or multiple sections

- a. Using a designated IBR paragraph (see [Example 6](#)). If you decide to include the IBR approval language in a separate paragraph, the paragraph must be either the first or last paragraph within the section.
- b. Using a separate section (the centralized IBR section) for a part or subpart (see [Example 7](#)).
 - i. 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. A centralized IBR section must:
 - 1) Contain the required approval language in the first paragraph.
 - 2) Contain the required information for each publisher and each standard by:
 - a) Listing each publisher along with its address information in “(a)” level paragraphs in alphabetical order.
 - b) Listing the publisher’s incorporated standards separately in “(1)” level paragraphs under the publisher’s information paragraph in alpha-numeric order (see [Example 7](#)). For each separate paragraph include:
 - i) The description of each the standard as required by [1 CFR 51.9\(b\)\(2\)](#), and

- ii) All sections that require the use of each standard, including the first paragraph level of the section.
- ii. The sections that require use of the standard(s) must include the following phrase after the standard's title, "(incorporated by reference, see [INSERT THE CENTRALIZED IBR SECTION NUMBER])." The cross-reference back to the centralized IBR section allows the reader to quickly find the approval language and information regarding the standard's publisher.

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 standard do not cross-reference each other. Contact OFR-Legal@gpo.gov if you have questions about how to draft a centralized IBR section.

XII. When and How Do I Make Changes to Incorporated Standards?

A. Agencies, not the OFR, Determine Whether to Update Incorporated Standards

1. Your agency must decide whether or not to incorporate a new version of a standard already IBRed. If you decide to use a new version of a standard, you must request new approval for:
 - a. Using a new, revised, or updated version of a standard,
 - b. Using a standard already approved for another agency,
 - c. Adding an already-IBRed standard to a new section, or
 - d. Redesignating a section that has standard that are IBRed.

The Director only approves specific versions of standards to a specific CFR section.

2. [OMB Circular A-119](#) recommends that your agency consider the following:
 - a. If updating or substituting a new standard would be non-controversial, consider publishing a standards-specific direct final rule or technical amendment.

- b. If updating or substituting a new standard might be controversial, consider publishing a standards-specific proposed rule.
- c. If updating or substituting a new standard would require a substantial re-opening of a rule, consider addressing these revisions in the context of a broader-scope “look-back” rulemaking (rather than a standards-specific proposed rule).

B. If Your Agency Withdraws the Final Rule containing the IBR or the Final Rule Does Not Go into Effect

If your agency withdraws the final rule containing the IBR or the final rule does not go into effect, you must notify the Director of the Federal Register in writing within 5 working days.

XIII. How Do I Remove IBR Material from the Code of Federal Regulations (CFR)?

If your agency needs to remove material incorporated by reference, you must:

1. Notify the Director of the Federal Register in writing (see [Example 8](#)); and
2. Provide a copy of the draft rule removing that material to the Office of the Federal Register before you submit the rule for publication. If you are removing material from a centralized IBR section, make sure you remove the affected paragraphs from that centralized section using the correct amendatory instructions (see [Example 9](#)).

XIV. IBR Checklist for Final Rules

- **Assemble your IBR approval request package, including:**
 - ✓ A signed IBR approval request letter (including the CFR titles and ALL affected CFR sections, including any centralized IBR sections);
 - ✓ Complete copies of all standards being requested for IBR—including title pages, cover sheets, transmittal letters, and other front matter; and
 - ✓ A complete DRAFT final rule either:
 - Included with the request package; or
 - Emailed to OFR-Legal@gpo.gov with the first page(s) through the SUMMARY included with the request package.

- **Submit the package at least 20 working days before you want to send the final rule for publication.**

XV. EXAMPLES

| | |
|---|----|
| Example 1: IBR APPROVAL REQUEST LETTER..... | 24 |
| Example 2: PREAMBLE DATES CAPTION–REQUIRED IBR LANGUAGE..... | 25 |
| Example 3: EXAMPLES OF IBR LANGUAGE IN REGULATORY TEXT..... | 26 |
| Example 4: OPTIONAL IBR LANGUAGE IN REGULATORY TEXT | 27 |
| Example 5: ONE STANDARD IBRED INTO ONE SECTION | 28 |
| Example 6: SEPARATE PARAGRAPH FOR THE IBR | 29 |
| Example 7: SEPARATE SECTION FOR THE IBR (“CENTRALIZED IBR”) | 30 |
| Example 8: NOTIFICATION OF THE REMOVAL OF MATERIAL IBRED INTO THE CFR | 32 |
| Example 9: REMOVE STANDARDS FROM A CENTRALIZED IBR SECTION | 33 |

Example 1: IBR APPROVAL REQUEST LETTER**AGENCY LETTERHEAD**

December 25, 20xx

[Insert full name of DIRECTOR], Director

Office of the Federal Register (F)
The National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740-6001

Dear Director [insert last name of DIRECTOR]:

In accordance with 1 CFR part 51, we request that you approve the incorporation by reference of the material listed below into Title(s) XX of the Code of Federal Regulations (CFR). An original copy of the material is enclosed. The following material will be referenced in § yy.zz [CENTRALIZED IBR SECTION] and as follows⁷:

NAME or ACRONYM of Publisher: [PUBLISHER CONTACT INFORMATION]

(For each standard) IDENTIFICATION DESIGNATION⁸, TITLE, VERSION (if any), DATE, AUTHOR (if applicable); LIST EACH SECTION WHERE THE MATERIAL WILL BE REFERENCED. THIS REFERENCE SHOULD INCLUDE DETAILS TO ANY SUBPARAGRAPH LEVELS, FOR EXAMPLE § 63.1234(c)(1)(ii)(B).

[IF MULTIPLE PUBLISHERS, GROUP ALPHABETICALLY BY PUBLISHER AND THEN BY STANDARD IN ALPHA-NUMERIC ORDER]

⁷ If you don't have a centralized IBR section, simply say "referenced as follows:"

⁸ Remember, even if the standard's designation contains a partial date, for example ASTM F1234-12, this is not the same as the date of the document. You must include the date in addition to the designation.

We have also enclosed a draft of the final rule that incorporates the material into the CFR.

[IF THE OFR ALREADY HAS A COPY OF A STANDARD, INCLUDE A STATEMENT THAT YOU ARE NOT INCLOSING A COPY OF THAT STANDARD BECAUSE IT IS ALREADY IRed IN xx CFR yy.zz]

Please contact [INSERT NAME] of my staff at [TELEPHONE NUMBER] or by email at [INSERT EMAIL ADDRESS] if you have any questions.

Sincerely,

[SIGN]

Type name,

Title

Example 2: PREAMBLE DATES CAPTION–REQUIRED IBR LANGUAGE

DATES: This regulation is effective July 3, 20xx.⁹ The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of July 3, 20xx.

Or

DATES: This regulation is effective [INSERT date 90 days after publication in the Federal Register]. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of [INSERT date 90 days after publication in the Federal Register].

⁹ No matter what the effective date is, the IBR approval date must match it. You can copy and paste the effective date.

Example 3: EXAMPLES OF IBR LANGUAGE IN REGULATORY TEXT**Single standard into a single section**

You must proceed in accordance with [INSERT THE IDENTIFICATION DESIGNATION, TITLE, VERSION (if any), DATE, AUTHOR (if applicable)]. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from [PUBLISHER CONTACT INFORMATION]. You may inspect a copy at [AGENCY CONTACT INFORMATION] or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to:

http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

IBR paragraph within a section

(a) The standards required in this section are incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at [INSERT NAME OF AGENCY, PROGRAM OFFICE OR DIVISION, AND PHONE NUMBER WHERE COPIES ARE ON FILE] and is available from the sources indicated below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030 or go to

http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(1) [PUBLISHER CONTACT INFORMATION]

(i) IDENTIFICATION DESIGNATION, TITLE, VERSION (IF ANY), DATE, AUTHOR (IF APPLICABLE)

(ii) [Repeat for each standard or reserve this paragraph]

Centralized IBR section

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at [INSERT NAME OF AGENCY, PROGRAM OFFICE OR DIVISION, AND PHONE NUMBER WHERE COPIES ARE ON FILE], and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030 or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(a) [PUBLISHER CONTACT INFORMATION]

(1) IDENTIFICATION DESIGNATION, TITLE, VERSION (IF ANY), DATE, AUTHOR (IF APPLICABLE)

(2) [Repeat for each standard or reserve this paragraph]

Example 4: OPTIONAL IBR LANGUAGE IN REGULATORY TEXT¹⁰

To enforce any edition other than that specified in this section, the [INSERT NAME OF AGENCY] must publish a document in the Federal Register and the material must be available to the public.

¹⁰ OFR does not require statements related to enforceability. You may use this language after the first sentence of the required text (see Example 5).

Example 5: ONE STANDARD IBRED INTO ONE SECTION

Title 33: Navigation and Navigable Waters

PART 1 01—MARITIME SECURITY: GENERAL

Subpart C—Communication (Port—Facility—Vessel)

§ 101.310 Additional communication devices.

(a) Alert Systems. Alert systems, such as the ship security alert system required in Safety of Life at Sea (“SOLAS”) Chapter XI-2, Regulation 6 may be used to augment communication and may be one of the communication methods listed in a vessel or facility security plan under part 104, 105, or 106 of this subchapter. SOLAS Chapter XI-2, Regulation 6 (2006) is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 5 1. To enforce any edition other than that specified in this section, the Coast Guard must publish a document in the Federal Register and the material must be available to the public. All approved material is available for inspection at [INSERT NAME, ADDRESS OF AGENCY, PROGRAM OFFICE OR DIVISION, AND PHONE NUMBER WHERE COPIES ARE ON FILE] and is available from the International Maritime Organization (IMO) Publications Section, 4 Albert Embankment, London SE 1 7SR, United Kingdom, [ADD PHONE NUMBER AND WEBSITE IF AVAILABLE]. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741 -6030 or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(b) Automated Identification Systems (AIS). AIS may be used to augment communication, and may be one of the communication methods listed in a vessel security plan under part 104 of this subchapter. * * *

* * * * *

Example 6: SEPARATE PARAGRAPH FOR THE IBR

Title 46: Shipping

PART 183— ELECTRICAL INSTALLATION

Subpart A— General Provisions

§ 183.130 Alternative standards.

(a) A vessel, other than a high speed craft, of not more than 19.8 meters (65 feet) in length carrying not more than 12 passengers, may comply with the following requirements instead of complying with the requirements of this part in their entirety:

(1) Section 183.420; and

(2) The following American Boat and Yacht Council (ABYC) Projects where applicable:

(i) E-8, “Alternating Current (AC) Electrical Systems on Boats;”

(ii) E-9, “Direct Current (DC) Electrical Systems on Boats;” and

(iii) A-16, “Electrical Navigation Lights.”

(b) A vessel with an electrical installation operating at less than 50 volts may meet the requirements in 33 CFR 183.430 instead of those in §1 83.340 of this part.

(c) The standards required in this section are incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at [INSERT NAME OF AGENCY, PROGRAM OFFICE OR DIVISION, AND PHONE NUMBER WHERE COPIES ARE ON FILE] and is available from the sources indicated below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030 or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(1) The following standards are available from the American Boat and Yacht Council (ABYC), 3069 Solomons Island Rd., Edgewater, MD 21037, [ADD PHONE NUMBER AND WEBSITE IF AVAILABLE].

(i) E-8, “Alternating Current (AC) Electrical Systems on Boats” (1994).

(ii) E-9, “Direct Current (DC) Electrical Systems on Boats” (2000).

(iii) A-1 6, “Electrical Navigation Lights” (2001).

(2) [Reserved]

Example 7: SEPARATE SECTION FOR THE IBR (“CENTRALIZED IBR”)

Title 46: Shipping

PART 107—INSPECTION AND CERTIFICATION

Subpart B—Inspection and Certification

§ 107.1 15 Incorporation by reference.

(a)¹¹ Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at [INSERT NAME OF AGENCY, PROGRAM OFFICE OR DIVISION, AND PHONE NUMBER WHERE COPIES ARE ON FILE], and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030 or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(b) The American Bureau of Shipping, ABS Plaza, 16855 Northchase Drive, Houston, TX 77060, [ADD PHONE NUMBER AND WEBSITE IF AVAILABLE].

(1) Rules for Building and Classing Mobile Offshore Drilling Units, 1978, IBR approved for § 107.205(b).

(2) U.S. Supplement to ABS Rules for Mobile Offshore Drilling Units, November 1, 1998, IBR approved for § 107.205(b). (c) The American Petroleum Institute, 1220 L Street NW., Washington, D.C. 20005-4070.

(1) API RP2D - Recommended Practice for Operation and Maintenance of Offshore Cranes, 1972 (“API RP2D”), IBR approved for § 107.259.

(2) API Spec 2C - Specification for Offshore Cranes, 1972 (“API Spec 2C”), IBR approved for § 107.309.

* * * * *

¹¹ You can designate this paragraph as (a) or you can leave it as the intro paragraph to the section.

Title 46: Shipping

PART 107—INSPECTION AND CERTIFICATION

Subpart B—Inspection and Certification

§ 107.259 Crane inspection and testing.

(a) Each crane must be inspected and tested in accordance with Section 3 of the API RP 2D (incorporated by reference, see § 107.1 15), except that the rated load test must be performed in accordance with § 107.260.

* * * * *

Example 8: NOTIFICATION OF THE REMOVAL OF MATERIAL IBRED INTO THE CFR

AGENCY LETTERHEAD

December 25, 20xx

[Insert full name of DIRECTOR], Director

Office of the Federal Register (F)
The National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740-6001

Dear Director [insert last name of DIRECTOR]:

In accordance with 1 CFR 51.11, we are removing the standards listed below as follows:

NAME or ACRONYM of Publisher: [PUBLISHER CONTACT INFORMATION]

(For each standard) IDENTIFICATION DESIGNATION¹², TITLE, VERSION (if any), DATE, AUTHOR (if applicable); LIST EACH SECTION WHERE THE MATERIAL WILL BE REFERENCED. THIS REFERENCE SHOULD INCLUDE DETAILS TO ANY SUBPARAGRAPH LEVELS, FOR EXAMPLE § 63.1234(c)(1)(ii)(B).

[IF MULTIPLE PUBLISHERS, GROUP ALPHABETICALLY BY PUBLISHER AND THEN BY STANDARD IN ALPHA-NUMERIC ORDER]

We have also enclosed a draft of the final rule that removes this [these] material(s) from the CFR.

¹² Remember, even if the standard's designation contains a partial date, for example ASTM F1234-12, this is not the same as the date of the document. You must include the date in addition to the designation.

Please contact [INSERT NAME] of my staff at [TELEPHONE NUMBER] or by email at [INSERT EMAIL ADDRESS] if you have any questions.

Sincerely,

[SIGN]

Type name,

Title

Example 9: REMOVE STANDARDS FROM A CENTRALIZED IBR SECTION

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

2. Amend § 63.14 by removing paragraphs (a)(5) and (e)(27) [and, if needed: redesignating subsequent paragraphs accordingly].