

Incorporation by Reference

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Remember!

Do I need to
IBR?

- Are you including material not already published in the CFR?
- Are you requiring use of that material?

When do I
need to
request
approval?

- At least 20 working days before you want to send in the final rule for publication
- 20 working days for a complete request – if there are problems, the approval could take longer

Legal authority

- Freedom of Information Act
 - 5 U.S.C. 552(a)
- Office of the Federal Register regulations
 - 1 CFR part 51
- National Technology Transfer and Advancement Act of 1995
 - 15 U.S.C. 272 note (Pub. L. 104-113)

Guidance

- OFR's Document Drafting Handbook
 - Chapter 6
- Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities
 - OMB Circular A-119

What it does

- Allows Federal agencies to comply with the requirement to publish rules in the *Federal Register* by referring to materials already published elsewhere.

Legal Effect

- The publication:
 - Is treated as if it were published in the *Federal Register*
 - Has the force and effect of law

Eligible Standards

- Include published data, criteria, standards, specifications, techniques, illustrations, or similar material;
- are reasonably available to and usable by the class of persons affected by the publication;
- do not reduce the usefulness of the *Federal Register* publication system;
- benefit the federal government and members of affected classes;
- substantially reduce the volume of material published in the *Federal Register*.

Ineligible Standards

- Standards that do not exist.
 - Future versions of existing standards
 - Standards being developed but not yet issued.
- Agency created material.
 - Unless:
 - it possesses other unique or highly unusual qualities; or
 - It is impossible or impractical to print using the *Federal Register/Code of Federal Regulations* printing system.
- Material published in the *Federal Register*.
- Material published in the United States Code.

Drafting regulation text

■ Dates section must:

– Include an approval statement

- DATES: This regulation is effective July 3, 20XX. 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.

■ Preamble must:

– Contain the terms “incorporation by reference” in the List of Subjects

Drafting

The regulatory text must:

- include the words “incorporation by reference.”
- Identify the standard and/or material to be incorporated,
 - by title, date, edition, author, publisher, and identification number of the publication.
 - This must EXACTLY match the title page or cover sheet of your document.

Drafting

Regulatory text must contain statements of availability stating where:

- The document can be inspected at your agency
 - Agency address where the public can view the material,
 - AND Agency phone number for questions from the public regarding the material;
- Copies can be purchased from the publisher.
 - Publisher address, phone number, email, and internet

Format

- One standard incorporated in one section.
- Multiple standards in one section.
- One standard in multiple sections.
- Multiple standards in multiple sections.

Format

- Using a separate paragraph.
 - the paragraph must be either the first or last paragraph within the section.

Format

- Using a separate section (Centralized IBR section).
 - If you are incorporating multiple standards by reference in a part or subpart, you can create a separate incorporation by reference section.
 - A centralized IBR section allows you to publish the standard approval language and list the publisher information only once for a group of sections.

Submission

- When you reach the final rule stage, at least 20 working days before publication of the final rule, send us:
 - A request letter
 - The final rule document
 - The standards

Submission

- Legible;
- Complete; and
- the standard clearly identified by the:
 - title,
 - date,
 - edition,
 - author,
 - publisher, and
 - identification number

Remember

- Assemble your IBR approval request package, including:
 - One copy of your unsigned DRAFT final rule;
 - A signed IBR approval request letter (including the CFR title and ALL affected CFR sections); and
 - Complete copies of all standards-including title pages.
- Submit the package at least 20 working days before you want to have the final rule published.

Questions?