



Incorporation by Reference Handbook

Chapter

Office of the Federal Register
National Archives and Records Administration

II. Legal Authority for IBR and Related Guidance

A. What Is the OFR's Legal Authority?

1. Freedom of Information Act (FOIA)

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

1. The FOIA allows agencies to incorporate material by reference that is “reasonably available to the class of persons affected” into the CFR.
2. The FOIA requires that agencies receive approval to incorporate material by reference from the Director of the Federal Register.

2. Regulations

The OFR has issued regulations governing the technical requirements for IBR approval. The ACFR regulations governing requirements for publication also apply.

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.

B. What Other Statutory Authority Applies Generally?

IBR gives agencies an efficient way to use voluntary consensus standards, as provided for in the NTTAA.

The NTTAA directs agencies to use voluntary consensus standards, instead of government-unique publications, when it is practical and consistent with law. It can be helpful to consult with voluntary, private sector, consensus standards bodies, also known as standards development organizations (SDOs), if you intend to use their material for IBR. You are also encouraged to participate in the development of technical standards when such participation is in the public interest and compatible with your agency's mission, priorities, and resources.

C. What Federal Policy Applies?

1. The Office of Management and Budget (OMB)

OMB issued two documents that provide valuable information to agencies who work with standards and are considering incorporating standards by reference 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.

2. 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 material incorporated by reference is 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.