



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

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Information Interchange Bulletin No. 008

Incorporation by Reference

What is incorporation by reference?

Incorporation by reference (IBR) is a term of art for the practice of codifying material published elsewhere by simply referring to it in the text of a regulation. The law treats material incorporated by reference as if it were set out fully in the regulation incorporating it.

Why do agencies use IBR?

IBR reduces the size and improves the readability of the Code of Federal Regulations (C.F.R.) and allows agencies to benefit from collaborative governance through public-private partnerships without violating copyright laws.

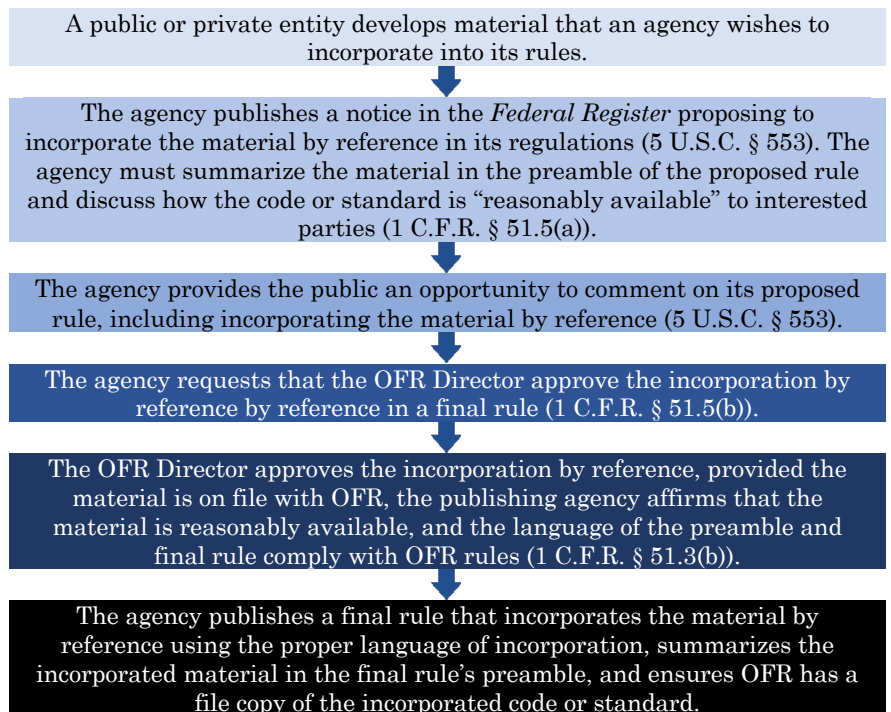
When is IBR allowed?

Agencies may incorporate by reference material that is “reasonably available to the class of persons affected” by the regulation and the promulgating agency secures the “approval of the Director of the Federal Register.” 5 U.S.C. § 552(a)(1). The Office of the Federal Register (“OFR”) has regulations governing the process agencies must complete to secure the Director’s approval to incorporate materials by reference in the C.F.R. See 1 C.F.R. pt. 51.

What kinds of materials do agencies incorporate by reference?

The C.F.R. contains thousands of incorporations by reference. Many are voluntary consensus standards — technical standards developed by private sector organizations using an open process that results in a consensus among participants representing a balance of interests. But IBR is also frequently used to incorporate things like state regulations, maps, and manuals.

How does an agency incorporate materials by reference?



How do agencies update incorporations by reference?

Incorporation of material by reference is “limited to the edition of the publication that is approved” and does not include amendments or revisions. 1 C.F.R. § 51.1(f). One potential downside of IBR is that confusion may result when a regulation continues to incorporate a code or standard developed by a private-sector organization that has become outdated or that the private-sector organization has replaced with an updated edition. Agencies must follow the process in 1 C.F.R. § 51.11 to change or remove an approved incorporation.

Additional Resources

Emily S. Bremer, [Incorporation by Reference in an Open-Government Age](#), 36 HARV. J.L. & PUB. POL’Y 131 (2013)
ACUS Rec. [2011-5](#), *Incorporation by Reference*
OMB Circular [A-119](#), Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities, 63 Fed. Reg. 8546 (Feb. 19, 1998)