

Sirs,

During my working career over the past 45 years I have worked in many areas where the product was governed by regulations that contained 'Incorporation by Reference' notices to various industry developed specifications. I have seen first hand the detrimental effect of this system. The worst effect is when work is done improperly because the worker can't afford to purchase the standard that applies and guesses what is correct. This extends to the employer in many cases as the cost of various standards is prohibitively expensive to small business.

I firmly believe that once a standard has been proposed as part of a regulation it should be freely available electronically to all citizens. Initially during the review and development of the regulation then in the final form as part of the regulation that follows.

The cost of developing the standard should be born by the members of the industry that benefit from the standard usually by membership in the standards making body. The cost of disseminating the final standard and regulation electronically should be born by the government.

In re the above:

1. Does "reasonably available"

a. Mean that the material should be available:

i. For free and

ii. To anyone online?

Yes - "reasonably available" should be interpreted to mean freely available online to all citizens of the U.S.

b. Create a digital divide by excluding people without Internet access?

no - there is no digital divide as long as libraries provide access.

2. Does “class of persons affected” need to be defined? If so, how should it be defined?

"class of persons affected" should include all citizens as most if not all regulations potentially affect everyone. Either the worker or business providing the product/service or the purchaser/user of the product/service.

3. Should agencies bear the cost of making the material available for free online?

Yes, the government agencies should bear the cost of providing the material online as a basic part of their responsibility. The development cost of the standard should continue to be borne by the industry that benefits from the standard.

4. How would this impact agencies budget and infrastructure, for example?

Minimally, as the incremental cost of providing a link to a pdf is negligible to an organization with an existing site online such as the government.

5. How would OFR review of proposed rules for IBR impact agency rulemaking and policy, given the additional time and possibility of denial of an IBR approval request at the final rule stage of the rulemaking?

If a link to freely available IBR material is not included in the materials submitted to the OFR then the submission should be deemed incomplete.

6. Should OFR have the authority to deny IBR approval requests if the material is not available online for free?

If the IBR material is approved by the agency that writes the regulation then it is the agencies responsibility to ensure that a link to the material is included in the submission to the OFR. If the submission is incomplete the OFR should not publish it.

7. The Administrative Conference of the United States recently issued a Recommendation on IBR. [77 FR 2257](#) (January 17, 2012). In light of this recommendation, should we update our guidance on this topic instead of amending our regulations?

The committee recognized that there is a problem “There is some ambiguity in current law regarding the continuing scope of copyright protection for materials incorporated into regulations,<sup>[3]</sup> as well as the question of what uses of such materials might constitute “fair use” under section 107 of the Copyright Act.<sup>[4]</sup>

The final resolution needs to come from congress but the implementation of existing rules can come from the agencies and any IBR needs to be incorporated in the published record. In lieu of reprinting the entire standard a link to freely available material would suffice.

8. & 9. Not addressed