

<https://www.federalregister.gov/articles/2012/02/27/2012-4399/incorporation-by-reference>

I would like to submit comments per the above Proposed Rule, revision to 1 CFR part 51

1 - Reasonably available

1.a - I think this certainly means free and online (the Internet), this is obviously the de facto standard for researching information, such as Libraries and Public Offices (e.g. courthouses) were 50 years ago.

1.b - As far as creating a 'digital divide', I think you'd have to consider if this is a transition from an existing, non-online system. So, in today's world how do non-Internet users get access to IBR material? Perhaps the above examples (Library, Courthouse)? So I'd suggest maintain the current IBR distribution method for a period (10-20 years) and supplement it with 'online, free'. I also believe that the cost incurred from 'online, free' is fractionally tiny compared to existing distribution methods. However, given the current state of the Internet where a majority of citizens have access, IBR distribution would be far more beneficial than previous systems.

2 - "class of persons affected"

Like the petitioners, I do not think 'class of persons affected' needs to be decided. It would seem that literally any citizen/person may be potentially affected by an IBR, and thus providing reasonable availability (e.g. online) will affect that super-class of all persons.

3 - Should agencies bear the cost of making available

Yes, see #4 for more details

4 - Impact to Agencies budgets

While I'm not in favor of more duties and costs associated with government, as mentioned in 1.b I think the cost of distribution of IBR via online method is fractionally so small it should be done by affected agencies. Compared to the cost of paper distribution (layout, printing, transportation, storage), online seems obvious. Most large Federal Agencies (e.g. IRS, Congress) have already realized this, and now provide most if not all of their material online. Additionally, online distribution is 'subsidized' by the fact that most often persons affected pay for their own (home or work) Internet connection. Also similar to 1.b I would suggest phasing out of legacy IBR distribution systems (paper), which might result in a net cost savings for affected agencies.

5 - Impact to agency rule making from IBR approval needed by OFR

This question was a bit unclear, I read it as: new rules about providing IBR online may need review by the Office of Federal Register (or even be denied), which may how agencies ability for rule making. If that is correct interpretation, I would see this as a nonsense. If the premise is that it is 'too much work' to disseminate standards (aka reasonably available) upon which agency rules are based, then the question must be clearly asked, why are the standards being used in the first place? To make an analogy, if a rule maker in an agency was fluent in Egyptian Hieroglyphics, and felt that they could best described or write that rule by Hieroglyphics, would that civil servant really be allowed to use that language?

6 - Should OFR deny rules if IBR isn't free

This question should have probably been broken into two parts; legacy and future. Clearly it's probably not possible or feasible to retroactively make all IBR publicly available; likewise an 'immediate' change is not possible. One suggestion may be a staged implementation. E.g. 1-

5years: agencies are suggested to either use IBR that is publicly available, or make efforts to make existing IBR publicly available ; 5-10yrs: OFR gives priority approval to rules from agencies with publicly available IBR, and rules with non-Public IBR have to go through a slower approval to determine if they could have used Public IBR ; 10+ years, all new rules have to use Public IBR.

7 - Is an amendment necessary given the Admin Conf of US Recommendation.

Given the nature of bureaucracy, it seems unlikely that many agencies will change 'business as usual' based simply on a recommendation, and would need a mandate. However, per the above 'staged' implementation which includes a 'recommendation' period, a sudden and unsettling amendment is probably not necessary. Giving agencies time to come into compliance would also lessen resistance to a amendment.

8 - Is this question more policy or procedure, perhaps should be addressed by OMB.

In most non-government businesses, Policies and Procedures (P&Ps) are usually considered in tandem. So a dual petition by someone at the OMB to implement a policy could be created, however I don't see that as supplanting the need for a procedural update at the OFR, which is desired by the petitioners.

9 - How would extended IBR period for proposed and final review impact agencies

Again, another somewhat ambiguous question. An 'extended IBR review period' in lieu of an amendment, or as a result of the amendment?

First, if the question is 'extended IBR review because of an amendment' (similar to question #5) , I think my intuition is that the additional time needed by the OFR to review whether IBR standards were available would be minimal. That is sort of the crux of 'standards', they are used because they are common (e.g. ISO, ANSI, JIS, etc). If an agency is using an obscure 'standard' and it takes the OFR longer to review, that may be an evolutionary way to prevent agencies from using poor 'standards'. As more agencies came in line with Public IBR sources, I could even see the needed time for OFR review decreasing.

Next, if the question was 'only a longer review, without an OFR amendment', that is also slightly nonsensical. There would be no impetus for agencies to change their treatment of IBR, and they would simply acclimate to a longer OFR review period, and there would be no benefit to affected persons.

Closing -

These are my opinions of this petition. I personally have felt the burden of the current IBR system at a local level...

While trying to meet city building codes I was referred to the International Building Code (IBC). When I asked where that was available, I was told there was one (1) copy at the local library, not available for checkout. Had this been 10yrs ago, I would have been resigned to either spending hours at the library or spending a few hundred dollars on my own copy for home use. However, thanks to the efforts of some NGO groups, these materials are now easily available via the Internet (e.g. <http://bulk.resource.org/codes.gov/> ). So if you ask me what is more 'reasonably available: hours at the library or hundreds of dollars of expense versus a simply download on my home computer, I think the answer is obvious.

While that example might lead to the false belief that this OFR amendment isn't necessary as some (the most popular) IBR materials are starting to become available, there needs to be equity, where any rules from any agencies should be readable in whole by any person. It is truly a win-win situation when agencies use Public IBR standards, the affected persons have the best access to the rules, and the standards themselves grow stronger by frequent review and incorporation into more documents.

Thank you for the opportunity to comment on this petition,

Luke Johnson