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# Federal Register Document Drafting Handbook

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## Chapter 6: What is Incorporation by Reference, and How do I do it?

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**Notes:** In this chapter, “we,” “our,” or “OFR” refer to the Office of the Federal Register, National Archives and Records Administration, and “you” or “your” refer to Federal agencies that prepare documents for publication in the *Federal Register*.

Use the examples in this chapter as models for style, not content. Although many of these are single-spaced for visual impact, you must double-space your document.

### 6.1 Purpose.

Incorporation by reference allows Federal agencies to comply with the requirement to publish rules in the *Federal Register* by referring to materials already published elsewhere. The legal effect of incorporation by reference is that the material is treated as if it were published in the *Federal Register*. This material, like any other properly issued rule, has the force and effect of law. Congress authorized incorporation by reference in the Freedom of Information Act to reduce the volume of material published in the *Federal Register* and Code of Federal Regulations (CFR). (See Appendix C.)

### 6.2 Eligibility.

The Director of the Federal Register decides when an agency may incorporate material by reference. The Director may approve an incorporation by reference if the material:

- Is published data, criteria, standards, specifications, techniques, illustrations, or similar material;
- Is reasonably available to and usable by the class of persons affected by the publication;
- Does not reduce the usefulness of the Federal Register publication system;
- Benefits the Federal Government and members of affected classes; and
- Substantially reduces the volume of material published in the *Federal Register*.

Any agency-produced publication will not be approved for incorporation by reference unless:

- In the judgment of the Director, it meets the requirements above and possesses other unique or highly unusual qualities; or
- It cannot be printed using the Federal Register/Code of Federal Regulations printing system.

The following materials will not be incorporated by reference:

- Material published previously in the *Federal Register*
- Material published in the United States Code.

### **6.3 Submission of request.**

Each agency must submit a written request for incorporation by reference approval to the Director of the Federal Register. (See Appendix A For a model letter.) Submit the request at least 20 working days before you submit the rule document to the OFR for publication. This 20-day period begins when the OFR receives:

- A letter requesting approval of the incorporation;
- A copy of the material to be incorporated; and
- A copy of the rule document that uses the proper language of incorporation.

The OFR will notify you of the decision to approve or disapprove an incorporation by reference within 20 working days after you submitted the request and all required materials.

Before you submit a request, carefully review your materials to make sure they are:

- Legible;
- Complete; and
- Clearly identified by the title, date, edition, author, publisher, and identification number of the publication.

### **6.4 Drafting requirements.**

The regulatory text in your rule 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;
- Contain a statement of availability stating where and how copies may be examined and obtained; and
- Refer to 5 U.S.C. 552(a) and include a statement that the Director of the Federal Register approves the incorporation by reference.

### Example 1: Incorporation by reference language

You must proceed in accordance with [INSERT THE NAME OF THE STANDARD AND/OR MATERIAL TO BE INCORPORATED INCLUDING TITLE, DATE, EDITION, AUTHOR, PUBLISHER, AND IDENTIFICATION NUMBER OF THE PUBLICATION]. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from [INSERT THE NAME AND ADDRESS OF STANDARD PRODUCER OR PUBLISHER]. You may inspect a copy at [INSERT THE NAME AND ADDRESS OF THE AGENCY] or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

The preamble of the rule document must refer to incorporation by reference in two locations:

- The DATES caption must include an approval statement that indicates the effective date of the incorporation by reference as approved by the Director of the Federal Register. The effective date of the document and the effective date of the incorporation by reference are always the same date.

### Example 2.

DATES: This regulation is effective July 3, 199x. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of July 3, 199x.

- The List of Subjects in the SUPPLEMENTARY INFORMATION section (see section 2.6) must include the term "Incorporation by reference."

If your agency needs to update material incorporated by reference, you must:

- Publish an amendment to the CFR in the *Federal Register*.
- Give the Office of the Federal Register a copy of the incorporated material, as amended or revised, for our files.
- Notify the Director of the Federal Register in writing that you made the change.

If your agency removes the rule containing the incorporation by reference or the rule does not go into effect, you must notify the Director of the Federal Register in writing within 5 working days.