
Federal Register Document Drafting Handbook

August 2008 Revision

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 (NARA), 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 examples are single-spaced, you must double-space your document.

6.1 Purpose.

Incorporation by reference (IBR) 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).

We encourage regulation drafters and agency liaisons to contact us as early as possible when considering using an incorporation by reference in a regulation. Since this is a technical subject area, it sometimes creates confusion that can significantly delay IBR request review and approval of your final rule document.

6.2 Eligibility.

The Director of the Federal Register decides when an agency may incorporate material by reference **in a final rule**. The Director may approve an IBR request 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*.

We may in some cases approve web-based materials; **however**, we need a paper copy of the materials for our records. Please call us as early as possible if you think you may want IBR approval for web-based materials.

We will approve an agency-produced publication for IBR, only if:

We are satisfied that it meets the requirements above and possesses other unique or highly unusual qualities; or

It is impossible or impractical to print using the Federal Register/Code of Federal Regulations printing system.

We will **not** approve an IBR of any of the following materials;

Material published previously in the *Federal Register*; or

Material published in the United States Code.

6.3 How to submit a request.

You must request our approval for each IBR before you publish the related final rule, and you may not publish the final rule before receiving our approval. Request approval by submitting a letter to the Director of the Federal Register. *See Example 6.1.*

Example 6.1: Incorporation by reference request.

AGENCY LETTERHEAD

December 25, 2xxx

Raymond A. Mosley, Director
Office of the Federal Register (NF)
The National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740-6001

Dear Mr. Mosley:

In accordance with 1 CFR part 51, we request that you approve the incorporation by reference of the material listed below into the Code of Federal Regulations (CFR). An original copy of the material is enclosed. The following material will be referenced in [LIST EACH SECTION WHERE THE MATERIAL WILL BE REFERENCED. THIS REFERENCE SHOULD INCLUDE DETAILS TO ANY SUBPARAGRAPH LEVELS, FOR EXAMPLE 63.1234(c)(1)(ii)(B)]:

[INSERT THE NAME OF EACH STANDARD TO BE INCORPORATED INCLUDING TITLE, DATE, AUTHOR, PUBLISHER, AND IDENTIFICATION NUMBER OF THE PUBLICATION.]

We have also enclosed a draft of the final rule that incorporates the material into the CFR.

Please contact [INSERT NAME] of my staff at [TELEPHONE NUMBER] if you have any questions.

Sincerely,

[SIGN]

Type name,
Title

Among the signatures we will accept are those from OFR liaison officers, program staff, or an agency attorney. The request letter does not have to be signed by the head of your agency.

We must receive your request at least 20 working days before you submit the rule document to us for publication. The 20-day period begins when we receive:

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

Failure to follow this procedure will delay the processing of your request. IBR approval requests do not qualify for expedited processing.

We will notify you of the decision to approve or disapprove an IBR request 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 do all of the following:

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. This must EXACTLY match the title page or cover sheet of your document.

Contain statements of availability stating where;

The document can be inspected at your agency AND

Where copies can be purchased from the publisher.

Include in the statements of availability:

Agency address where the public can view the material AND

Agency phone number for questions from the public regarding the material;

Publisher address, phone number, email, and internet address

Refer to 5 U.S.C. 552(a) and include a statement that the Director of the Federal Register approves the incorporation by reference. *See Example 6.2.*

Example 6.2: 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 [PUBLISHER CONTACT INFORMATION]. You may inspect a copy at [AGENCY CONTACT INFORMATION] or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to:
http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

The preamble of the rule document must refer to incorporation by reference in both the DATES caption and in the List of Subjects.

The DATES caption must include an approval statement that indicates the effective date of the IBR as approved by the Director of the Federal Register. It is not necessary to name each publication in the DATES section. **The effective date of the document and the effective date of the incorporation by reference are always the same date.**

See Example 6.3.

Example 6.3: Preamble DATES caption language.

DATES: This regulation is effective July 3, 200x. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of July 3, 200x.

The List of Subjects at the end of the preamble (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; and

Request an updated approval from the Director of the Federal Register in writing.

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

6.5 Formatting your incorporation by reference.

One standard incorporated in one section.

If you are incorporating a single document by reference, place the required IBR language immediately after the first reference that you make in the document. *See Example 6.4.*

Example 6.4: One standard incorporated in one section.

Title 33: Navigation and Navigable Waters

PART 1 01 – MARITIME SECURITY: GENERAL

Subpart C – Communication (Port – Facility – Vessel)

§ 101.310 Additional communication devices.

(a) *Alert Systems.* Alert systems, such as the ship security alert system required in Safety of Life at Sea (“SOLAS”) Chapter XI-2, Regulation 6 may be used to augment communication and may be one of the communication methods listed in a vessel or facility security plan under part 104, 105, or 106 of this subchapter. SOLAS Chapter XI-2, Regulation 6 (2006) is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 5 1. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the *Federal Register* and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741 -6030 or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. Also, it is available for inspection at [INSERT NAME, ADDRESS OF AGENCY, PROGRAM OFFICE OR DIVISION, AND PHONE NUMBER WHERE COPIES ARE ON FILE] and is available from the International Maritime Organization (IMO) Publications Section, 4 Albert Embankment, London SE 1 7SR, United Kingdom, ADD PHONE NUMBER AND WEBSITE IF AVAILABLE].

(b) *Automated Identification Systems (AIS)*. AIS may be used to augment communication, and may be one of the communication methods listed in a vessel security plan under part 104 of this subchapter. * * *

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How to incorporate multiple standards.

When you incorporate multiple standards into your document, you can include the IBR statements in any of the following ways:

By using the format above for each document;

By including the IBR statement for the documents in a separate paragraph or

By including the IBR statement for the documents in a separate section (what we call a “Centralized IBR section”).

Using a separate paragraph.

If you decide to include the IBR statement in a separate paragraph, the paragraph must be either the first or last paragraph within the section. *See example 6.5.*

Example 6.5: Multiple standards incorporated by reference in one section.

Title 46: Shipping
PART 183—ELECTRICAL INSTALLATION
Subpart A—General Provisions

§ 183.130 Alternative standards.

(a) A vessel, other than a high speed craft, of not more than 19.8 meters (65 feet) in length carrying not more than 12 passengers, may comply with the following requirements instead of complying with the requirements of this part in their entirety:

(1) Section 183.420; and

(2) The following American Boat and Yacht Council (ABYC) Projects where applicable:

- (i) E-8, "Alternating Current (AC) Electrical Systems on Boats;"
 - (ii) E-9, "Direct Current (DC) Electrical Systems on Boats;" and
 - (iii) A-16, "Electrical Navigation Lights."
- (b) A vessel with an electrical installation operating at less than 50 volts may meet the requirements in 33 CFR 183.430 instead of those in §1 83.340 of this part.
- (c) The standards required in this section are incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the *Federal Register* and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030 or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. Also, it is available for inspection at [INSERT NAME OF AGENCY, PROGRAM OFFICE OR DIVISION, AND PHONE NUMBER WHERE COPIES ARE ON FILE] and is available from the sources indicated below.
- (1) The following standards are available from the American Boat and Yacht Council (ABYC), 3069 Solomons Island Rd., Edgewater, MD 21037, [ADD PHONE NUMBER AND WEBSITE IF AVAILABLE].
- (i) E-8, "Alternating Current (AC) Electrical Systems on Boats" (1994).
 - (ii) E-9, "Direct Current (DC) Electrical Systems on Boats" (2000).
 - (iii) A-1 6, "Electrical Navigation Lights" (2001).
- (2) [Reserved]

Using a separate section.

If you are incorporating multiple standards by reference in a part or subpart, you can create a separate incorporation by reference section. A centralized IBR section allows you to publish the standard approval language and list the publisher information only once for a group of sections. A centralized incorporation by reference section must:

Contain the required approval language in the first paragraph;

List each publisher along with its address information in "(a)" level paragraphs

List the publisher's incorporated standards separately in "(1)" level paragraphs under the publisher's information paragraph. *See example 6.6.*

Include all the required information about the standard; and

List all sections that require the use of the standard.

To help us process your request in a timely manner, your request letter should include cross references to the subparagraph level in the section that requires the use of the standard, 40 CFR 63.17(b)(1)(iii)(A). However, your centralized IBR section should cross reference to the paragraph level, 40 CFR 63.17(b).

In specific sections where you require the use of the standard, add the following phrase after the standard's title, "(incorporated by reference, see [insert the centralized IBR section number])." The cross reference back to the centralized IBR section allows the reader to quickly find the approval language and information regarding the standard's publisher.

A poorly drafted centralized IBR section may create problems for you. It can be difficult to amend, especially if the centralized incorporation by reference section and the section that requires the use of the standard do not cross-reference each other.

Example 6.6: Multiple standards incorporated by reference in multiple sections.

Title 46: Shipping

PART 107—INSPECTION AND CERTIFICATION

Subpart B—Inspection and Certification

§ 107.1 15 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the Federal Register and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030 or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. Also, it is available for inspection at [INSERT NAME OF AGENCY, PROGRAM OFFICE OR DIVISION, AND PHONE NUMBER WHERE COPIES ARE ON FILE], and is available from the sources listed below.

(b) The American Bureau of Shipping, ABS Plaza, 16855 Northchase Drive, Houston, TX 77060, [ADD PHONE NUMBER AND WEBSITE IF AVAILABLE].

(1) Rules for Building and Classing Mobile Offshore Drilling Units, 1978, IBR approved for § 107.205(b).

(2) U.S. Supplement to ABS Rules for Mobile Offshore Drilling Units, November 1, 1998, IBR approved for § 107.205(b).

(c) The American Petroleum Institute, 1220 L Street NW., Washington, D.C. 20005-4070.

(1) API RP2D - Recommended Practice for Operation and Maintenance of Offshore Cranes, 1972 (“API RP2D”), IBR approved for § 107.259.

(2) API Spec 2C - Specification for Offshore Cranes, 1972 (“API Spec 2C”), IBR approved for § 107.309.

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Title 46: Shipping

PART 107—INSPECTION AND CERTIFICATION

Subpart B—Inspection and Certification

§ 107.259 Crane inspection and testing.

(a) Each crane must be inspected and tested in accordance with Section 3 of the API RP 2D (incorporated by reference, see § 107.1 15), except that the rated load test must be performed in accordance with § 107.260.

(b) The tests are witnessed and the inspections are conducted by— * * *

* * *

6.6 Checklist.

Assemble your package, including:

- ✓ One copy of your unsigned **DRAFT** final rule;
- ✓ A signed request letter; and
- ✓ Complete copies of all standards—including title pages

Submit the package **at least 20** working days before you want to have the final rule published.