

Incorporation by Reference



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Legal Authority

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- **Freedom of Information Act**
 - 5 U.S.C. 552(a)
- **Office of the Federal Register regulations**
 - 1 CFR part 51
- **National Technology Transfer and Advancement Act of 1995**
 - 15 U.S.C. 272 note (Pub. L. 104-113)

Guidance

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- **OFR's Document Drafting Handbook**
 - Chapter 6
- **Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities**
 - OMB Circular A-119

What it Does

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- Allows Federal agencies to comply with the requirement to publish rules in the *Federal Register* by referring to materials already published elsewhere.

Legal Effect

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- **The publication:**
 - Is treated as if it were published in the *Federal Register*
 - Has the force and effect of law

Eligible Standards

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- published data, criteria, standards, specifications, techniques, illustrations, or similar material;
- 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;
- Benefit the Federal Government and members of affected classes;
- Substantially reduce the volume of material published in the *Federal Register*.

Ineligible Standards

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- Standards that do not exist.
- Agency created material.
 - Unless:
 - ✦ it 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.
- Material published in the *Federal Register*.
- Material published in the United States Code.

Drafting

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- **Dates section must:**
 - Include an approval statement
 - ✦ **DATES:** This regulation is effective July 3, 20XX. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of July 3, 20XX.
- **Preamble must:**
 - Contain the terms “incorporation by reference” in the List of Subjects

Drafting

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The regulatory text 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.
 - This must EXACTLY match the title page or cover sheet of your document.

Drafting

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Regulatory text must contain statements of availability stating where:

- **The document can be inspected at your agency**
 - Agency address where the public can view the material,
 - AND Agency phone number for questions from the public regarding the material;
- **Copies can be purchased from the publisher.**
 - Publisher address, phone number, email, and internet

Submission

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- **At the final rule stage submit 20 days before publication of the final rule:**
 - A request letter
 - The final rule document
 - The standards

Submission

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- Legible;
- Complete; and
- the standard clearly identified by the:
 - title,
 - date,
 - edition,
 - author,
 - publisher, and
 - identification number

Best Practices

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- Follow the DDH chapter 6 when drafting your proposed rule.
- If you are considering an agency created document – talk to us before drafting the proposed rule.
- Don't submit a rule for publication if you haven't received approval for your IBR request.

Issues

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- **Make sure you keep a copy of the standard for public inspection.**
- **You can only IBR an existing edition of a standard.**
- **It's all in the details so copy read your rule text.**
- **Slow responses to OFR questions delay publication of your rule.**

Remember

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- **Assemble your IBR approval request package, including:**
 - One copy of your unsigned DRAFT final rule;
 - A signed IBR approval request letter (including the CFR title and ALL affected CFR sections); 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.**

Questions?

