

**PART VIII.
INCORPORATION BY REFERENCE.**

§ 8.1. Filing requirements for material incorporated by reference.

A. When an agency needs to make applicable requirements, prohibitions, policies, standards, forms, instructions, or procedures prescribed or established in other documents, except statutes, whether issued by governmental agencies or by private organizations, the agency may incorporate by reference the text of the document into its regulations. When incorporating textual matter of other publications by reference, the agency shall file with the Registrar the incorporated publications in their entirety, except when the material is exempted by the Registrar per § 8.2 of this manual or is not required to be filed per § 8.3 of this manual. Whether the referenced material is required to be filed in full, is filed by descriptive statement as set out in § 8.2, or is not required to be filed pursuant to § 8.3, the agency shall make copies of all referenced publications available for public inspection and copying along with its other regulations.

B. Documents incorporated by reference (IBR) and a list of all IBR documents associated with a regulation shall be filed at the time the proposed or exempt final regulation is filed or whenever the reference to the incorporated document itself is amended. A document is incorporated by reference and becomes an enforceable part of the regulation when the regulation is adopted by the agency.

C. Whenever a regulation incorporates other textual material by reference, the agency shall specify the date of adoption, revision or publication, or the effective date, of the adopted material in the text of the regulation. If the document is updated, the agency shall amend the text of the regulation and the list of documents incorporated by reference to reflect the changes. Regulations must refer to a specific edition or source to which the public may refer; therefore, the agency shall avoid phrases like “as amended” or “including future amendments.”

D. An agency incorporating outside material into a regulation shall create a list of documents incorporated by reference that will be treated as an unnumbered section of the regulation. The list will appear in the Virginia Administrative Code following the numbered sections of the regulation and the forms list, if any. When documents are updated, added, or removed, the IBR list shall be amended using strikes and underscores as required for numbered sections of VAC.

E. Each item in the list of documents incorporated by reference shall be provided in the following format: title, edition, date of publication, and author or publishing entity from whom the publication may be obtained.

EXAMPLES

IBR in list form:

Standard Methods for the Examination of Water and Wastewater, 1992, American Public Health Association, American Waterworks Association, Water Pollution Control Federation.

Methods for Determination of Inorganic Substances in Environmental Samples, August 1993, United States Environmental Protection Agency.

Wisconsin Mound Soil Absorption System Siting, Design and Construction Manual, January 1990, College of Agricultural and Life Sciences, University of Wisconsin-Madison.

Standard Industrial Classification Manual, 1987, Office of Management and Budget.

Standard Methods for the Examination of Water and Wastewater, 18th Edition, 1992, American Public Health Association.

Method 8270C, Semivolatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS), Revision 3, December 1996, U.S. Government Printing Office.

Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, Department of Conservation and Recreation.

IBR in text of regulation:

f. All analyses will be made in accordance with Standard Methods for the Examination of Water and Wastewater, 1992 (American Public Health Association), or analytical methods approved by the division.

C. Mound systems shall be designed and constructed in accordance with the Wisconsin Mound Soil Absorption System Siting, Design and Construction Manual prepared by the Small Scale Waste Management Project, School of Natural Resources, College of Agricultural and Life Sciences, University of Wisconsin-Madison, January 1990.

F. An agency incorporating outside material shall affix the following information on the face of the incorporated material:

1. The title of the document;
2. The specific VAC number and chapter title into which the outside material is being adopted;
3. The name of the agency;
4. The filing date of the document; and
5. The address where the referenced document may be obtained.

EXAMPLE

Information to affix to the face of the document when incorporating by reference:

Title of Document:	Control of Communicable Diseases Manual, 17th Edition, 2000.
Reference to:	12 VAC 5-90, Regulations for Disease Reporting and Control
Filed by:	State Board of Health
Date filed:	August 15, 2003
Document available from:	American Public Health Association 800 I Street, NW Washington, D.C. 20001

§ 8.2. Filing an incorporated document by description in lieu of full text.

A. In certain limited instances, on a case-by-case basis, the Registrar may allow an agency to file an incorporated document by description in lieu of full text where justification is provided to the Registrar that filing the full text would be impractical. The Registrar may exempt an agency from filing in full if:

1. The document exceeds 500 pages and is generally available to the public;
2. The material is not available in document form; for example, the material is only available on computer tape or disks or on the Internet;
3. The material is updated more than twice yearly; or
4. The material is copyrighted or is otherwise the property of an individual or an organization other than the state government.

B. Any request for exemption to these filing requirements shall be made to the Registrar by the agency in writing on forms provided by the Registrar (Form RR11). Any approval granted by the Registrar shall

also be made in writing. The agency shall continue to provide full text of documents incorporated by reference for which a request for exemption from these filing requirements has been made until such time as the Registrar grants written approval to the agency.

C. The granting of an exemption under this section does not relieve an agency from the requirement of maintaining on file, and making available to the public, the full text of all materials incorporated by reference.

§ 8.3. Exemptions to filing of documents incorporated by reference.

A. Notwithstanding the requirements of § 5.10 B of this manual, the requirements established in §§ 8.1 and 8.2 of this manual do not apply to incorporation of textual matter by reference to the Federal Register or the Code of Federal Regulations, or by reference to regulations of other Virginia agencies. Where such references are made, however, the citation shall be sufficient for accurate identification of the referenced material. Where the material has been published in the Code of Federal Regulations, the title and section numbers shall be cited as described in § 3.17 D of this manual and the date of publication shall be given.

When the referenced material has not been published in the Code of Federal Regulations (CFR) but appears in the Federal Register, the volume and page number shall be cited as described in § 3.17 C of this manual and the date of that publication shall be given, and if the material is in codified form, the CFR citation should be given.

EXAMPLES

from the agency summary of the Department of Social Services:

The department is authorized to develop a state plan for refugee resettlement with necessary procedures and reporting requirements pursuant to the Refugee Act of 1980, Pub. L. No. 96-212, and 45 FR 35359 (May 27, 1980).

from 9 VAC 5-190-110:

B. The following documents (October 8, 1997, 62 FR 52622) from the United States Environmental Protection Agency are incorporated herein by reference:

from 9 VAC 5-60-130:

"Source category schedule for standards" means the schedule issued pursuant to § 112(e) of the federal Clean Air Act for promulgating MACT standards issued pursuant to § 112(d) of the federal Clean Air Act and published in the Federal Register at 67 FR 6521, February 12, 2002.

9 VAC 5-60-91. National Performance Track Program.

The Environmental Protection Agency (EPA) National Performance Track Program as promulgated in 40 CFR 63.2, 63.10, and 63.16 is, unless indicated otherwise, incorporated by reference into the regulations of the board as amended by the word or phrase substitutions given in 9 VAC 5-60-110. The specific version of the provisions adopted by reference shall be that promulgated on April 22, 2004 (69 FR 21737).

B. In addition to the Federal Register and the Code of Federal Regulations, it is not necessary to file the following documents when they are incorporated by reference:

1. United States Code;
2. Code of Virginia; and
3. Supreme Court decisions.

C. The granting of an exemption under this section does not relieve an agency from the requirement of maintaining on file, and making available to the public, the full text of all materials incorporated by reference.