

INCORPORATION BY REFERENCE (IBR) MANUAL

(Revised 3/2021)

I. Introduction.

A. Incorporation by reference (IBR) is a legal device by which one document is made a part of another simply by referring to it. The text of the referenced document, once incorporated by reference, becomes fully and legally a part of the document into which it is incorporated.

B. Maryland law permits incorporation by reference in both the Maryland Register and Code of Maryland Regulations (COMAR) (State Government Article, §7-207(a), Annotated Code of Maryland).

C. Incorporation by reference must take place within a regulation. A regulation proposing to incorporate a document by reference is no different than any other proposed regulation. All the standard regulation-making procedures apply.

II. Law Governing Incorporation by Reference.

The statute governing incorporation by reference is found in State Government Article, §7-207(a), Annotated Code of Maryland. As of October 1, 2005, this provision reads as follows:

(a) (1) Unless the Committee provides otherwise, the Code of Maryland Regulations and the Register may not reprint any text from:

- (i) the Annotated Code of Maryland;
- (ii) the Session Laws;
- (iii) the United States Code;
- (iv) the United States Statutes at Large;
- (v) the Code of Federal Regulations;
- (vi) the Federal Register; or

(vii) any other generally available publication that the Administrator specifies.

(2) State statutes as described under paragraph (1)(i) and (ii) of this subsection need not be incorporated by reference.

(3) (i) Federal laws as described under paragraph (1)(iii), (iv), (v), and (vi) of this subsection may be incorporated by reference.

(ii) Federal law incorporated by reference after October 1, 2005, shall be identified by using the phrase “incorporated by reference”.

- (iii) The unit incorporating federal law may:

1. incorporate only a specified version of that law by specifying a date; or

2. incorporate future versions of that law by using the phrase “as amended”.

(4) (i) Other publications as described in paragraph (1)(vii) of this subsection may be incorporated by reference by:

1. satisfying the requirements of § 23-303 of the Education Article, except as determined by the Administrator; and

2. Complying with Title 10, Subtitle 1 of this article and with other requirements specified by the Administrator.

(ii) Incorporated documents shall be identified by using the phrase “incorporated by reference”.

(iii) The incorporation shall specify an edition number, year, or other specific indication of the version being adopted.

(iv) Prospective incorporation is not permitted for this category of document.

(v) Agency generated documents have the additional requirement of providing the Division with an electronic version ready for publication on the Division website as required by § 7-206.2 of this subtitle.

III. State Statutes.

Summary:

- **Refer to State statutes by citation only**
- **Do not use the phrase “incorporated by reference”**
- **Do not use the phrase “as amended”**

A. State statutes are comprised of the Annotated Code of Maryland and the session laws (also called the chapter laws)(See State Government Article, §7-207(a)(1)(i) and (ii), Annotated Code of Maryland). Within the hierarchy of laws, statutes take precedence over regulations. Therefore, State statutes need not be incorporated by reference. The current version of a statute is the law and cannot be altered by regulation unless that authority is granted within the statute.

B. Statutes are referenced, not incorporated, as described in State Government Article, §7-207(a)(2), Annotated Code of Maryland. The phrase “incorporated by reference” is not to be used. In referring to statutes, the reference should always be to the Annotated Code except in the following circumstances, when the session law may be cited:

- (1) The language which became law is not codified in the Annotated Code, an

example of which includes fiscal legislation; and

(2) The agency is drafting regulations to a law which has not yet been included in the Annotated Code; this generally occurs between the end of the legislative session and September of each year. In this instance, the Annotated Code citation should also be included.

C. Examples of how to cite statutes are as follows:

Annotated Code: Insurance Article, §2-104, Annotated Code of Maryland (revised article)

Article 41, §6-303, Annotated Code of Maryland (unrevised article — black volume)

Session Law: Ch. 303, Acts of 2005

D. If an agency wishes to reprint in its regulations any text from the Annotated Code or session laws, contact the Administrative, Executive, and Legislative Review (AELR) Committee for approval. Be sure to include a copy of the AELR approval letter when submitting regulations to the Division of State Documents (DSD) that contain reprinted text.

IV. Federal Laws.

Summary:

- **Cite the federal law in a manner consistent with the Style Manual**
- **Use the phrase “incorporated by reference”**
- **Decide whether to incorporate prospectively future versions of federal law**

A. Unless the AELR Committee permits otherwise, agencies may not reprint in their regulations any text from the following federal sources:

- (1) United States Code;
- (2) United States Statutes at Large;
- (3) Code of Federal Regulations;
- (4) Federal Register.

B. Although text from these four documents may not be reprinted without permission, agencies may freely incorporate these documents by reference without seeking the prior approval of either the AELR Committee or DSD. This freedom to incorporate extends to any text found in these documents, whether regulatory or otherwise.

C. Just as with all other regulations, a regulation incorporating any of these four documents must be adopted as a regulation under the procedures specified in the Administrative Procedure Act (APA) and using the format specified by DSD. See Part V of this Manual for the format of the regulation.

D. If an agency wishes to reprint in its regulations any text from the four federal documents listed above, the agency should contact the AELR Committee for approval. Be sure to include a copy of the AELR approval letter when submitting regulations to DSD that contain reprinted text.

E. The phrase “incorporated by reference” must appear when incorporating these publications.

F. Prospective Incorporation—Future Versions of Federal Law.

(1) Prospective incorporation means that the promulgating agency wants to incorporate future versions of the federal law being incorporated. Under the law effective October 1, 2005, prospective incorporation may be used when incorporating federal documents. The decision of whether to prospectively incorporate is made by the promulgating agency. The agency has two choices. First, if the agency wants to incorporate future changes to a law being incorporated by reference, it may do so by using the phrase “as amended”. This phrase will automatically incorporate into COMAR future amendments to the federal law. Second, if the agency does not want to prospectively incorporate, “as amended” should not be used and, to clarify the agency’s intention, the year, or other specific identification, of the version being incorporated should appear in parenthesis following the citation of the law incorporated.

Examples: Prospective: 42 CFR §5.301, as amended

Not prospective: 42 CFR §5.301 (2004)

NOTE: Including neither the phrase “as amended” nor the year will just confuse the reader. The statute is specific. Intent is insufficient. Only using the phrase “as amended” will include future amendments.

(2) For incorporation of federal laws after October 1, 2005, use of the phrase “incorporated by reference” is required by statute. DSD had required it before this date, but some very old COMAR may not contain the phrase. The purpose of specifying the October 1, 2005 date in the statute is to allow agencies some time to make the necessary changes rather than have to rush to amend their regulations to include the phrase by October 1. However, DSD suggests that the language be amended to include the phrase as soon as possible. Federal law which a State agency intends to enforce needs to be incorporated, not just referenced.

(3) Remember that the standard before October 1 was that prospective incorporation did not apply to federal laws. It is our opinion that amending the regulation to add “as amended” is required before a later version of a federal law can be enforced.

V. Documents Requiring DSD Approval—In General.

Summary:

- Use the phrase “incorporated by reference” for all documents intended to be enforced

- **Include specific version identification**
- **Prospective incorporation is not permitted**

A. In addition to the six documents listed in Part II, an agency may also incorporate by reference “any other generally available publication that the Administrator specifies” (State Government Article, §7-207(a)(1)(vii), Annotated Code of Maryland). Under this provision, DSD has established the procedures set forth in this manual by which agencies may request permission to incorporate a document. The October 1, 2005, amendment codified many requirements that were already being implemented by DSD.

B. Although incorporation by reference is specifically permitted by law, the APA also intends that COMAR be a full text compilation of all agency regulations. If incorporation of “generally available” publications were permitted without restraint, COMAR could quickly become much less than the full text compilation it is intended to be. Because of this tension between the two concepts, DSD has developed standards by which it judges the appropriateness for incorporation of documents requiring DSD’s approval.

C. Before DSD will approve a document for incorporation, the document will be measured against the criteria and requirements in Part VI.

VI. Documents Requiring DSD Approval—General Criteria and Requirements.

A. Criteria and Requirements.

(1) The text of the document must be generally regulatory in character; that is, it must set forth standards, guidelines, or requirements with which regulated parties must comply. A document that merely recommends or suggests a course of conduct may be of dubious enforceability, and therefore not appropriate for incorporation.

(2) The document must meet a minimum page count requirement (see §C below), or present such special technical difficulties that it would be unduly expensive or burdensome to publish the document in the Maryland Register and COMAR.

(3) The agency proposing to incorporate a document must agree to provide 13 free copies for distribution to the State’s public depository libraries, as required by Education Article, §23-303 and as discussed in §D below.

(4) The document must be printed or photocopied so that all portions of each page, including headings and page numbers, are easily readable.

(5) The text of the document must be free from handwritten notations or other ambiguous markings.

(6) The document must have sequential page numbers.

(7) The document must be appropriately labeled and identified by COMAR citation in the manner specified in Part VIII of this manual.

(8) Off-size documents, and documents unable to stand by themselves on library shelves, must be housed in binders or special folders of a type and in a manner specified in Part VIII of this manual. For maps and other extraordinary documents, consult with DSD before proceeding.

B. For both agency-generated and non-agency documents, exceptions to these general requirements will be granted for compelling reasons.

C. Minimum Page Count Requirement.

(1) Non-Agency Documents. Documents that are published by sources outside of State government, such as national or international standard-setting organizations, must be at least 30 double-spaced pages (or equivalent) in length.

(2) Agency-Generated Documents. Documents which are authored by a State agency or assembled from different sources are viewed somewhat more stringently than documents originating with sources external to State government. Agency-generated documents must meet the following criteria:

(a) Documents must be at least 50 double-spaced pages (or equivalent) in length;

(b) Documents must be printed or typed on 8 1/2" x 11" pages; and

(c) Pages must be housed in rigid-cover binders (either Accopress-type binders or ring binders).

(3) If a document is rejected for incorporation because it fails to meet the minimum page count, the agency must write the provisions of the document directly into the text of its regulations.

D. Number of Document Copies. After receiving DSD approval to incorporate a document, the agency is to submit 16 copies of the document, prepared as described in this manual, to DSD at the same time it files the proposed or emergency regulation incorporating the document for publication in the Maryland Register. **The box or boxes containing the 16 copies must not contain the proposal.**

E. Requesting Permission to Incorporate.

(1) An agency seeking DSD's approval to incorporate a document must submit the following:

(a) A Request for Incorporation by Reference Form which is available online in PDF format (see **Exhibit 1**);

(b) A draft of the regulation that proposes to incorporate the document, as discussed in Part IX of this manual; and

(c) A copy of the document, labeled and bound as required by this manual and meeting all other DSD requirements.

(2) DSD's approval of the original document is not blanket approval for all future revisions of or supplements to the original document. A new request must be made for each revision or supplement that an agency wishes to incorporate.

F. Electronic Copy of Agency-Generated Documents. Under State Government Article, §7-207, Annotated Code of Maryland, as amended, effective October 1, 2005, an agency that incorporates by reference an agency-generated document must submit an electronic version as well as the 16 paper copies to DSD. DSD will attempt to place the electronic version on its COMAR Online website. To comply with this requirement, an agency should contact DSD early in the drafting process to discuss format.

VII. Documents Requiring DSD Approval—Documents Already Incorporated.

A. Before undertaking the steps necessary to incorporate a document that DSD must approve, check to see if the document has already been incorporated by performing a search on DSD's COMAR Online website (be sure to use search option 1). If so, it is already a part of COMAR and no additional copies of the document need to be provided for distribution to depository libraries.

B. Make sure that any document you find is precisely the same version of the document you wish to incorporate. Many documents retain the same title for years, but go through frequent revisions. Be sure to check the edition or supplement number with particular care. If the edition or supplement number is different, the agency may not be able to rely on the earlier incorporation to accomplish its purposes.

C. If an agency finds that precisely the same document it wishes to incorporate has already been incorporated, it should still review the document carefully. A previously incorporated document may be "tailored" by another agency to suit its needs. See Part X of this manual.

D. Even though an agency determines that a document has previously been incorporated, it still must complete and submit the Request for Incorporation by Reference Form discussed in Part VI, §E, as well as provide a copy of the document and a draft of the regulation. DSD will do a last-minute check to make certain that nothing has happened to alter the status of the document.

E. In preparing the IBR regulation for a document already incorporated, the agency is to use the following format:

.02 Incorporation by Reference.

In this chapter, the following documents are incorporated by reference:

A. Life Safety Code (NFPA 101, 2003 Edition), which has been

incorporated by reference in COMAR [give full COMAR citation where document was originally incorporated. **Example: 29.06.01.02**];

F. The example in §E illustrates a problem that could develop if proper care is not taken. If the Life Safety Code is updated to the 2005 edition in the referenced regulation, but §A as shown above is not also updated, the reader is left confused as which edition is intended to be enforced. In this situation, either diligence must be used to ensure that both regulations incorporate the same version or the agency must rely on the judgment of the other agency. If a document is incorporated in another chapter and the agency omits reference to a specific version, whatever future version is adopted in the referenced regulation is the version incorporated in both regulations. Conversely, if a future version is issued but not incorporated in the referenced regulation, that version is not adopted in either regulation.

VIII. Documents Requiring DSD Approval—Format.

A. Binders. If the document is bound in a hard or stiff cover, able to stand on library shelving, and not undersized (less than approximately 6" x 9"), a special binder is not required. A document label must be placed on the front of the document. If, however, the document does not have a durable cover, DSD requires that the document be housed in either an Accopress-type binder or a looseleaf binder. If the document is less than 6" x 9", even though bound, DSD requires that the document be inserted into a 12" x 9" expandable file pocket. Both the document and the expandable file pocket must be identically labeled in the manner described in §B below.

B. Document Label. A label is to be affixed to the cover of the document at the upper left-hand corner. The following information is to be typed on the label:

(1) Type the COMAR citation to the regulation in which the document is incorporated in 14 point type. **Example: COMAR 10.03.04.02B(5).** If the full title of the document is clearly set forth on the document cover, the label need include only the COMAR citation. See **Exhibit 2**.

(2) If the full title of the document is not clearly set forth on the document cover, type the full title of the document just below the COMAR citation, including bibliographical information. See **Exhibit 3**.

(3) If more than one document is included for incorporation within a single binder, each document and its COMAR citation are to be listed on the document label. Separate labels may be used, one below the other. See **Exhibit 4**.

C. Title Page. For an agency-generated document, include a title page with the name and year of issue of the document or documents (see **Exhibit 5**) as well as a Table of Contents if one is not already contained in the document.

D. Pagination.

(1) Most published documents originating outside an agency are already properly paginated. Agency-generated documents must also be paginated with a consecutive numbering

system. Throughout the document, each page is to carry a unique identifying number. This requirement also applies to introductory pages, such as table of contents, introduction, preface, etc. These pages may be assigned Roman numerals or any other numbering system that allows for precise identification of each page.

(2) The requirement that all pages throughout the document be given a unique number assures that if substitution pages are required later, each page can be precisely referenced for removal and replacement. When one or more additional pages are introduced between two existing pages, use a system of dash pages to identify the newly inserted pages. For example, three new pages introduced between existing pages 5 and 6 would be paginated as 5-1, 5-2, and 5-3. Two new pages introduced between 5-1 and 5-2 would be numbered 5-1-1 and 5-1-2.

(3) DSD recommends centering page numbers at least $\frac{1}{2}$ inch from the bottom edge of the page.

(4) When preparing an agency-generated document for incorporation, agencies are to follow two standard pagination conventions:

(a) Right-hand pages are given odd numbers, left-hand pages are given even numbers; and

(b) Each new chapter or section begins on a right-hand (odd-numbered) page, and if a chapter ends on a right-hand (odd-numbered) page, for example, page 7, leave the following left-hand page blank (mentally counting it as page 8) and begin the new chapter on page 9.

E. Clarity of Copy. All copies of incorporated documents must be printed or photocopied with absolute clarity with all text and page numbers clear and readable. Document pages must be assembled in proper order. DSD always checks each document carefully, and documents not meeting these minimal standards will be rejected. (NOTE: While the process of photocopying and assembling documents is admittedly tedious, it becomes pure drudgery if it has to be done over.)

F. Microfiche. Microfiche is proposed for incorporation in the same way as any other document. Each packet of fiche is to be labeled like a printed document, showing the COMAR codification number and document title with bibliographic information. Be sure to include the number of fiche in each packet (see **Exhibit 6**). In addition, fiche are to be housed in an Accopress or looseleaf binder, appropriately labeled (see "Document Label" above), and identified within the binder by a Table of Contents and any guidance on the use of microfiche the agency thinks desirable or necessary.

G. CD or DVD. DSD will accept requests for incorporation of a document in CD or DVD format. The following rules will govern:

(1) The CD or DVD must be in an appropriate jewel case with the CD/DVD labeled with the name of document being incorporated.

- (2) The jewel case with the CD/DVD is to be inserted into a plastic holder.
- (3) The plastic holder shall be in an Accopress or similar binder with the binder labeled as required in item B.

H. Internet. An Internet site may not be used as the official text of a document to be incorporated, but the agency may refer people to an Internet site for access to an unofficial copy.

IX. IBR Regulation.

A. Drafting the IBR Regulation.

(1) When submitting a Request Form, do not submit all the regulations comprising an agency proposal; submit only the regulation which incorporates the document. In referencing the document within the regulation, the general objective is to give enough information about the document so a reader will be able to identify it easily.

(2) Special care should be taken to have the title of the document appear in the regulation exactly as it appears on the document itself. Because many incorporated documents retain the same title for years but go through numerous editions or revisions along the way, the bibliographic information may be especially crucial to proper identification. **Examples:**

- (i) Safety Code for Elevators and Escalators (ASME/ANSI A17.1-1987).
- (ii) Life Safety Code (NFPA 101, 2003 Edition).

(3) Incorporation of a document can only occur through the standard regulation-making process prescribed by the APA. All of the usual regulation-making procedures must be followed, including publication in the Maryland Register. Compliance with APA regulation-making procedures pertains to all incorporated documents, both those requiring DSD's approval and those that do not.

(4) All incorporated documents are to be listed within a single IBR regulation at the beginning of any given COMAR chapter. The IBR regulation follows immediately after the "Scope", "Purpose", and "Definitions" regulations (if any).

(5) If there is only one document incorporated by reference in a chapter, an example of the format of the regulation is as follows:

.02 Incorporation by Reference.

The Maryland Minority Business Enterprise/Federal Disadvantaged Business Enterprise Program (Maryland Department of Transportation, July 1995) is incorporated by reference.

(6) If there is more than one document incorporated by reference in a chapter, an example of the format of the regulation is as follows:

.02 Incorporation by Reference.

In this chapter, the following documents are incorporated by reference:

- A. Guides to the Evaluation of Permanent Impairment (American Medical Association, Third Edition, 1988);
- B. Safety Code for Elevators and Escalators (ASME/ANSI A17.1-1987);
- C. 47 CFR §73.609, as amended;
- D. 21 U.S.C. §301 (1989); and
- E. 45 FR 56895 (1975).

(7) If the incorporated documents are to have application beyond a single chapter, use appropriate language to indicate the scope of their applicability. For example, if incorporated documents are to be applicable throughout a subtitle, then the lead-in sentence would begin with “In this subtitle,...” rather than “In this chapter,...”.

B. Subsequent References to the IBR Document.

(1) Listing all incorporated documents in a single IBR regulation allows the reader to determine the complete content of the chapter with ease. Any reference to the incorporated documents coming later in the same chapter of regulations need give only its full title precisely as it appeared in the IBR regulation. Bibliographic information is not to be repeated. **Example:**

.16 Evidence of Permanent Impairment.

A. Evidence of permanent impairment shall be recorded in the manner prescribed in Guides to the Evaluation of Permanent Impairment.

(2) Once a document is listed as incorporated by reference in the IBR regulation, the phrase “incorporated by reference” is not repeated when subsequent reference is made to the same document. Adoption of the IBR regulation in which the document is listed fully accomplishes its incorporation, and repeated use of the phrase is redundant.

C. Amending the IBR Regulation.

(1) Unless prospective incorporation of federal standards has been adopted by use of the phrase “as amended”, subsequent editions of or revisions to an incorporated document do not automatically become a part of an agency’s regulations. If an agency wishes to make subsequent editions or revisions a part of its regulations, the agency must amend the regulation in which incorporation occurred, following the standard procedures for amending an existing

regulation. The usual symbols employed to show changes to an existing regulation are used.

Example:

.02 Incorporation by Reference.

- A. (text unchanged)
- B. Documents Incorporated.

(1) Life Safety Code (NFPA 101, [1988] 1991 Edition).

(2) If the incorporated document originally required DSD approval, any subsequent edition or revision that an agency wishes to make a part of the document must also receive DSD approval. The agency is to submit the request to DSD for each subsequent change to an incorporated document in accordance with Part VI, §E.

(3) Once an agency receives approval, the agency is to send 16 copies of the revised document (whether it be the entire document or replacement pages) to DSD for distribution to depository libraries. These copies are to be sent to DSD at the same time the proposed or emergency regulation is submitted for publication in the Maryland Register.

X. “Tailoring” a Document in the IBR Regulation.

A. It is not necessary to incorporate a document in its entirety unless that is what an agency consciously intends to do. In fact, it may be unwise and even damaging to incorporate the entire document because some of its provisions may be contrary to the agency’s regulatory objectives. If an agency, without careful consideration, incorporates the entire document, the agency is bound by all of its provisions, both those that are wanted and those that are not. This could make the agency vulnerable to legal action by parties seeking to compel enforcement of all provisions of the incorporated document.

B. For this reason, before the decision is made to incorporate a document in its entirety, the whole document should be carefully reviewed. Only when a judgment is made that the entire document is consistent with agency objectives and State policy should incorporation of the entire document proceed. If, upon review, the agency decides to incorporate only selected chapters or sections of the document, the scope of incorporation can be limited. **Example:**

.02 Incorporation by Reference.

In this chapter, the following documents are incorporated by reference:

- A. Life Safety Code (NFPA 101, 1991 Edition), Chapters 1, 7, and 9 only;
- C. It is also possible to tailor an incorporated document by adding, deleting, or substituting words or phrases, as the agency thinks necessary. **Example:**

.02 Incorporation by Reference.

In this chapter, the following documents are incorporated by reference:

A. Life Safety Code (NFPA 101, 1991 Edition), Chapters 1, 7, and 9 only, with the following changes:

- (1) Wherever the words “Federal Government” appear, substitute “State of Maryland”;
- (2) Wherever the word “may” appears, substitute the word “shall”;

XI. IBR Document: Replacement or Supplementation?

A. Some IBR documents change more frequently than others. There are two ways an agency may cope with documents they know or expect will change frequently:

- (1) Replace the entire document; or
- (2) Replace only those pages actually being changed, if the document is in looseleaf format.

B. Non-Agency Documents.

(1) Most IBR documents originating outside an agency are likely to be bound and not designed for supplementation. For those documents, new editions or revisions typically result in complete republication. In this case, if an agency wishes to make the republished document a part of its regulations, the agency must amend the IBR regulation and provide DSD with copies of the republished document.

(2) Some IBR documents originating outside an agency have publishers that issue their own supplements, complete with instruction sheets for removing and replacing pages. For an agency that has incorporated such a document, amending the IBR regulation is a relatively simple task because the publisher has created the supplement pages and the “Remove/Insert” instruction sheet.

C. Agency-Generated Documents. The decision whether to supplement or replace an agency-generated document depends upon how the agency weighs certain variables. On the one hand, if the document is not expected to change frequently but will involve a great number of changed pages when it does, the agency may decide that replacing the entire document is the easiest and most cost-effective thing to do. On the other hand, if the document is expected to change frequently but not involve a great number of changed pages, the agency may decide that issuing periodic supplements is a better choice.

D. Supplementing Agency-Generated Documents.

(1) If the agency decides to issue supplements rather than reissue the entire document, the agency is committing itself to create the supplement pages and the detailed “Remove/Insert” instructions that must accompany them.

(2) As in the case of all changes to incorporated documents, each supplement to an agency-generated document requires the agency to propose an amendment to the regulation that incorporated the permanent document. The agency must also provide DSD with copies of the proposed or emergency supplement pages for distribution to the depository libraries. Each supplement page must have the supplement number typed at the lower left-hand corner (for right-hand pages) or right-hand corner (for left-hand pages).

(3) The agency must prepare an instruction sheet with detailed “Remove/Insert” instructions accounting for each page being changed by the supplement (see **Exhibit 7**). Because preparation of “Remove/Insert” instructions can become quite complicated, an agency unaccustomed to preparing instruction sheets is urged to submit them to DSD in draft. The “Remove/Insert” instructions are to be submitted as part of the proposal or emergency, not after adoption.

XII. Copyrighted Documents.

A. Many of the documents that agencies wish to incorporate by reference are copyrighted. Copyrighted documents are usually afforded protection against reproduction without the permission of the copyright holder. However, the Attorney General of Maryland has issued an opinion stating that the copyright doctrine known as “fair use” permits State agencies to incorporate by reference and photocopy copyrighted materials, even without the consent of the copyright holder (see 79 OAG 322, Opinion 94-060).

B. Agencies may, of course, continue to purchase copyrighted documents from the copyright holder, as most State agencies do. In many instances, this will remain the easier and more cost-effective way of making copies of an incorporated document available for distribution to depository libraries. It can be expensive, time-consuming, and troublesome to photocopy a copyrighted document, especially if it is lengthy. However, in cases where purchase of copyrighted material would be quite expensive, or in cases where an agency wishes only to incorporate part of a copyrighted document, the photocopying alternative may be a feasible and cost-effective option.

C. When photocopying a document, either in whole or in part, the photocopied material is always to include the cover, the title page, the preface or introduction, the table of contents (or that portion of the table reflecting the chapters or parts being photocopied), and the index.

D. The Attorney General has also recommended that State agencies place on the front of every copy of a copyrighted document a notice stating that the material is copyrighted and not in the public domain. Accordingly, when an agency incorporates a copyrighted document, whether acquired through purchase or by photocopying, a label is to be affixed to the front cover of each copy bearing the following message:

THIS DOCUMENT IS COPYRIGHTED
AND IS NOT IN THE PUBLIC DOMAIN

This message is to be carried on a label separate from the identifying COMAR label and affixed directly beneath it (see **Exhibit 2**). This same label is to be placed on any binder or pocket folder in which an undersized document is housed.

E. Another approach may be to paraphrase a copyrighted document, introducing the paraphrased material directly into the text of your regulations. For any copyrighted document of less than 30 double-spaced pages or equivalent (see Part VI, §C of this manual), DSD favors this approach. Permission from the copyright holder may be needed.

Request Form for Incorporation by Reference (IBR) (Use for Emergency and Proposed Regulations)

NOTE: An agency must submit to DSD any document requiring the Administrator's approval before the regulation is submitted to the AELR Committee

Department or Agency: _____

Name of document to be incorporated (give full name of document exactly as it appears on cover/title):

Has this document already been incorporated by another State agency?

Yes, see COMAR _____ (Example: 08.07.06.03) No

Each of the following is enclosed (check each):

A copy of the document proposed for incorporation.

Text of that portion of the regulation incorporating the document. All IBR documents are to be listed under a single IBR regulation. In drafting the regulation, use the document title exactly as it appears above. Do not use "as amended from time to time," or "as subsequently amended," or other equivalent expressions.

This document will be incorporated at COMAR _____ (Example: 26.12.01.01)

This regulation is (check as many as apply):

an emergency regulation an amended regulation a new regulation

Has a previous version of this document been incorporated by the requesting agency? Yes No

If this document is not already incorporated into COMAR, the agency agrees to submit 16 additional free copies to DSD at the same time the emergency or proposed regulation incorporating it is filed for publication in the *Maryland Register*.

Issue date desired for publication in the *Maryland Register*: _____ (month/day/year).

Questions concerning the request should be directed to:

Name: _____ Telephone number: _____

Return Approval Form to: (name, complete address, telephone number, and email address):

Submitted by:

- Name & Title of Authorized Officer: _____
- Signature: _____

Mail this form to:

Gail S. Klakring
Division of State Documents
State House
Annapolis MD 21401

If you have questions, call
(410) 260-3873, or
contact us by email, Gail.Klakring@maryland.gov

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2003 EDITION

NFPA 101®



Comprehensive
Consensus
Codes™

COMAR 10.07.02.21-1A(2)

IMMUNIZATION OF HEALTH-CARE WORKERS (U.S. Centers for
Disease Control and Prevention, MMWR 46:RR-18, 1997).

COMAR 26.11.32.02 B

South Coast Air Quality Management District -Protocol - Rule 1174
Ignition Method Compliance Certification Protocol, February 28, 1991.

ASTM Designation: D 4359-90 (Reapproved 2000) Standard Test
Method for Determining Whether a Material is a Liquid or a Solid.

ASTM Designation: E 260-96 (Reapproved 2001) Standard Practice for
Packed Column Gas Chromatography.

CARB Method 310, Determination of Volatile Organic Compounds
(VOC) in Consumer Products, adopted September 25, 1997, and as
last amended on September 3, 1999.

ASTM Designation: D 86-01 Standard Test Method for Distillation of
Petroleum Products at Atmospheric Pressure.

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Maryland Student Records System Manual

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TEST METHODS FOR EVALUATING SOLID WASTE,
PHYSICAL/CHEMICAL METHODS, SW-846, 1 OF 12
EP 1.17.846/ 3RD EDITION, FINAL UPDATE I... UNITED
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TEST METHODS FOR EVALUATING SOLID WASTE
PHYSICAL/CHEMICAL METHODS,
Update I (7/92)

(U.S. Environmental Protection Agency, 1986)

COMAR 26.12.01.01

Regulations for the Control of Ionizing Radiation (1994)**SUPPLEMENT No. 11****INSTRUCTION SHEET**

Supplement 11 to the document COMAR 26.12.01.01 "Regulations for the Control of Ionizing Radiation (1994)" has been adopted and is effective.

Instructions

Locate the binder having the COMAR number and document title appearing above.

Carefully follow the "Remove/Insert" instructions appearing below. Remove the obsolete pages listed under the column "Remove Pages" and insert the appropriate new or replacement pages listed under the column "Insert Pages". Each of these pages has at least one of the two faces of the page printed with the words "Supp. 11" in a lower corner. The obsolete pages removed from the permanent binder may be retained in a separate place for legal research.

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D1 through D8	D1 through D8
D11 through D18	D11 through D18
D21 through D26	D21 through D26
D31 through D38	D31 through D38
D43 through D46	D43 through D46
D111 and D112	D111 and D112
E9 and E10	E9 and E10
G39 and G40	G39 and G40
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