

## ORAL ARGUMENT NOT YET SCHEDULED

No. 22-7063

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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AMERICAN SOCIETY FOR TESTING AND MATERIALS, et al.,  
Appellants

v.

PUBLIC.RESOURCE.ORG, INC.,  
Appellee

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Appeal from the United States District Court  
for the District of Columbia  
Hon. Tanya S. Chutkan, No. 1:13-cv-1215-TSC

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**PUBLIC APPENDIX**  
**VOLUME 12 (JA8818-JA9197)**  
**MATERIAL UNDER SEAL IN SEPARATE SUPPLEMENT**

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<p style="text-align: center;"><b>DEFENDANT’S SECOND SUPPLEMENTAL STATEMENT OF FACT</b></p>	<p style="text-align: center;"><b>PLAINTIFFS’ RESPONSE</b></p>
<p>incorporated the standard by reference. Dkt. 121-5 ¶ 28, Ex. 2.</p>	<p>currently include any standards published by Plaintiffs. Wise Decl. II ¶ 10, Ex. 182 (<a href="https://law.resource.org/pub/us/cfr/manifest.us.html">https://law.resource.org/pub/us/cfr/manifest.us.html</a>).</p> <p>Disputed to the extent it suggests that Plaintiffs’ standards are themselves law. Disputed to the extent it implies that each of the standards at issue has been incorporated by reference in its entirety or at all for the reasons stated in response to Paragraph 84.</p> <p>Disputed to the extent it suggests that PRO provides accurate information regarding incorporation by reference. As explained in Plaintiffs’ briefing, PRO often provides inaccurate information. <i>E.g.</i>, Mot. 15 &amp; n.10.</p>
<p>169. Plaintiffs’ [sic] names must be used in order to refer to the standards at issue. For example, ASTM states that the citation format for this standard is: “ASTM D396-98, Standard Specification for Fuel Oils, ASTM International, West Conshohocken, PA, 2001, www.astm.org.” Dkt. 122-9, Ex. 147.</p>	<p>Objection. PRO’s reliance on ASTM’s citation format to give proper attribution to an ASTM work is irrelevant to the question of whether PRO can use the ASTM trademark in other contexts.</p> <p>PRO’s statement that “names must be used” is a legal conclusion, not a fact.</p> <p>Disputed to the extent it implies PRO has no alternative but to use ASTM’s trademark. PRO cites no evidence to refute the fact that it could refer to ASTM standards by their designation (e.g., D396-98) or by “the standard incorporated by reference in” the relevant incorporating regulation.</p>
<p>170. Public Resource purchased a physical copy of each of the incorporated laws at issue. Dkt. 121-5 ¶ 24.</p>	<p>Disputed to the extent it suggests that Plaintiffs’ standards are themselves law. Disputed to the extent it implies that each of the standards at issue has been incorporated by reference in its entirety or at all for the reasons stated in response to Paragraph 84.</p>



<p align="center"><b>DEFENDANT’S SECOND                  SUPPLEMENTAL                  STATEMENT OF FACT</b></p>	<p align="center"><b>PLAINTIFFS’ RESPONSE</b></p>
<p>171. Public Resource posted on its website a PDF version of each incorporated law at issue. The PDF version accurately appeared as a scan of a physical version of the incorporated law. Dkt. 121-5 ¶ 24.</p>	<p>Disputed. Defendant added a cover page to the PDF versions of Plaintiffs’ standards so PRO’s postings do not accurately appear as a scan of a physical version of Plaintiffs’ standards. ECF No. 118-2 (Pls.’ SMF) ¶¶ 183-84. Defendant also admits that it made errors in creating the PDF versions of Plaintiffs’ standards, including skipping pages and scanning pages upside down. ECF No. 118-2 (Pls.’ SMF) ¶¶ 214, 216.</p> <p>Disputed to the extent it states that Plaintiffs’ standards are themselves law. Disputed to the extent it implies that each of the standards at issue has been incorporated by reference in its entirety or at all for the reasons stated in response to Paragraph 84.</p>
<p>172. For some of the incorporated laws at issue, Public Resource posted versions in HTML and SVG formats. Dkt. 121-5 ¶ 25–26.</p>	<p>Disputed to the extent it suggests that Plaintiffs’ standards are themselves law. Disputed to the extent it implies that each of the standards at issue has been incorporated by reference in its entirety or at all for the reasons stated in response to Paragraph 84.</p> <p>Disputed to the extent it implies that posting versions of Plaintiffs’ Works is transformative as addressed in Plaintiffs’ brief. Reply at Part I.A.1.b.</p>
<p>173. For some of the PDF versions of the incorporated laws, Public Resource attached its own cover page, which indicated where the law was incorporated by reference. Dkt. 121-5 ¶ 20–22; Compl. Ex. G, ECF No. 1-7.</p>	<p>Disputed to the extent it suggests that Plaintiffs’ standards are themselves law. Disputed to the extent it implies that each of the standards at issue has been incorporated by reference in its entirety or at all for the reasons stated in response to Paragraph 84.</p> <p>Defendant presented no evidence that it added a cover page to only some, rather than all, of the PDF versions of Plaintiffs’ standards. <i>See</i> ECF No. 118-2 (Pls.’ SMF) ¶¶ 183-84.</p>

<p style="text-align: center;"><b>DEFENDANT’S SECOND SUPPLEMENTAL STATEMENT OF FACT</b></p>	<p style="text-align: center;"><b>PLAINTIFFS’ RESPONSE</b></p>
	<p>Disputed to the extent it suggests that PRO provides accurate information regarding incorporation by reference. As explained in Plaintiffs’ briefing, PRO often provides inaccurate information. <i>E.g.</i>, Mot. 15 &amp; n.10.</p>
<p>174. Public Resource’s addition of embedded text and metadata in the PDF versions of incorporated laws on its website did not change the appearance of the PDF versions. Dkt. 121-5 ¶ 25.</p>	<p>Disputed to the extent it suggests that Plaintiffs’ standards are themselves law. Disputed to the extent it implies that each of the standards at issue has been incorporated by reference in its entirety or at all for the reasons stated in response to Paragraph 84.</p>
<p>175. The embedded text in the PDF versions of incorporated laws on Public Resource’s website enabled software based searching and text to speech functionality. Dkt. 121-5 ¶ 25.</p>	<p>Objection. This is statement is supported solely by inadmissible opinion testimony.</p> <p>Disputed to the extent it suggests that Plaintiffs’ standards are themselves law. Disputed to the extent it implies that each of the standards at issue has been incorporated by reference in its entirety or at all for the reasons stated in response to Paragraph 84.</p> <p>Disputed to the extent it states that Plaintiffs’ standards are themselves laws. Disputed to the extent it implies any individual who accessed the PDF versions actually performed software based searching and/or used text-to-speech functions. Disputed to the extent it implies that an individual who used text-to-speech functions would consider the versions of Plaintiffs’ standards on Defendant’s website to be accessible. <i>See</i> Pls.’ Supp. SMF ¶ 5 (Fruchterman Depo. 256:12-259:6).</p> <p>Disputed. There is no record evidence supporting that the embedded text in the PRO’s PDF versions of the Works actually this enabled speech functionality. Additionally, Mr. Fruchterman</p>

DEFENDANT’S SECOND SUPPLEMENTAL STATEMENT OF FACT	PLAINTIFFS’ RESPONSE
	acknowledged that he had asked a visually disabled person to evaluate the PDF versions of Plaintiffs’ standards that were posted on Defendant’s website, and that person informed him that those documents could not be considered to be accessible. ECF No. 155-1 (Pls.’ Supp. SMF) ¶ 5 (Fruchterman Depo. 256:12-259:6).
<b>A. The Standards that Plaintiffs Publish Already Have Errors</b>	
176. Public Resource purchased a physical copy of the 2011 NEC, which did not include a requirement that high-voltage cables be shielded. Public Resource posted an electronic version of that physical copy on its website in PDF and HTML formats. Dkt. 121-5 ¶ 34.	Disputed to the extent it suggests that Defendant acted reasonably in posting a version of the 2011 NEC with these errors. The errata in question was issued by NFPA and posted on NFPA’s website in April 2011, more than a year before Defendant posted the 2011 NEC on its website.
177. NFPA issued two errata to the 2011 NEC. The errata included the addition of a requirement that high-voltage cables be shielded as well as changes to cross-references in various sections. Dkt. 122-8, Exs. 123–24.	Undisputed.
178. Public Resource promptly corrected the errors to certain HTML versions of incorporated laws that Plaintiffs’ counsel identified during the course of the deposition of Carl Malamud. Dkt. 121-5 ¶ 33.	Disputed—PRO has still not corrected the errors. <i>See</i> ECF No. 118-2 (Pls.’ SMF) ¶ 218; ECF. No. 198-3 (Pls.’ 2d. Supp. SMF) ¶¶ 14-25.  Disputed to the extent it suggests that Plaintiffs’ standards are themselves law. Disputed to the extent it implies that each of the standards at issue has been incorporated by reference in its entirety or at all for the reasons stated in response to Paragraph 84.
<b>XII. PUBLIC INTEREST CONSIDERATIONS</b>	
179. It is in the public interest for people to be educated about the NFPA standards. Becker Decl., ¶ 13, Ex. 46 (Bliss Depo.) at 121:22–122:4 (“NFPA’s standards establish ways to	Disputed to the extent Defendant characterizes Mr. Bliss’s testimony as a legal conclusion regarding the public interest or that Mr. Bliss’s statement would apply to

<p style="text-align: center;"><b>DEFENDANT’S SECOND SUPPLEMENTAL STATEMENT OF FACT</b></p>	<p style="text-align: center;"><b>PLAINTIFFS’ RESPONSE</b></p>
<p>make buildings safer and processes to be safer and for people to act or react in a more safe manner when it comes to fire, electrical safety and other hazards. It’s in the public interest that people be educated about those requirements or those standards.”).</p>	<p>PRO’s purported “educational” purpose. The NFPA and its standard development work more broadly serves the public interest. ECF No. 118-2 (Pls.’ SMF) ¶ 95.</p>
<p>180. It is in the public interest for people to use the ASTM standards. M. Becker Decl. ¶ 20, Ex. 22 </p>	<p>Undisputed.</p>
<p>181. Public.Resource.org seeks to inform the public about the content of the law. Dkt. 122-2, Ex. 17 (C. Malamud Ex. 33) (Public Resource “tries to put more government information online. We’ve had a big impact on putting more judicial information on the Internet, but also do fiche and a variety of other documents such as IRS nonprofit tax returns.”).</p>	<p>Objection as to relevance of Mr. Malamud’s or PRO’s supposed subjective intent. As explained in Plaintiffs’ briefing, fair use turns on how a work appears to a reasonable observer, not on the infringer’s subjective intent. Reply at Part I.A.1.b.</p> <p>Disputed to the extent it suggests that Plaintiffs’ standards are themselves law. Disputed to the extent it implies that each of the standards at issue has been incorporated by reference in its entirety or at all for the reasons stated in response to Paragraph 84.</p>
<p>182. The Internet is fast becoming the primary means of obtaining information about government operations and policies. <i>See</i> U.S. Department of Justice, Civil Rights Division, “Accessibility of State and Local Government Websites to People with Disabilities,” <a href="http://www.ada.gov/websites2.htm">http://www.ada.gov/websites2.htm</a>. Accessibility best practices follow the principle of universal design, which states that the best accommodations for people with disabilities are those that benefit everyone:</p>	<p>Objection. The statement by the Department of Justice, Civil Rights Division is inadmissible hearsay to the extent it is offered to prove the truth of the matter asserted.</p> <p>The statement is also irrelevant. The D.C. Circuit has already rejected Defendant’s argument that converting works into a format more accessible for the visually impaired is transformative use. <i>Am. Soc’y for Testing &amp; Materials</i>, 896 F.3d at 450.</p>

<p style="text-align: center;"><b>DEFENDANT’S SECOND SUPPLEMENTAL STATEMENT OF FACT</b></p>	<p style="text-align: center;"><b>PLAINTIFFS’ RESPONSE</b></p>
<p>When accessible features are built into web pages, websites are more convenient and more available to everyone—including users with disabilities. Web designers can follow techniques developed by private and government organizations to make even complex web pages usable by everyone including people with disabilities.</p> <p><i>Id.</i></p>	<p>This statement also is improper opinion testimony.</p> <p>Disputed. This statement is not supported by any admissible evidence.</p>
<p>183. A special commission of the Department of Education concluded in the field of accessibility for higher education that requiring people with disabilities to use special accommodations from the providers of instructional material is disfavored. “Rather, the ideal is for . . . instructional materials to be available in accessible forms in the same manner that and at the same time as traditional materials.” Advisory Commission on Accessible Instructional Materials, Report of the Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students with Disabilities at 49 (December 6, 2011), <a href="http://www2.ed.gov/about/bdscomm/list/aim/meeting/aim-report.pdf">http://www2.ed.gov/about/bdscomm/list/aim/meeting/aim-report.pdf</a>. The Chafee Amendment, codified at 17 U.S.C. § 121, has never been the Copyright Act’s sole means of promoting accessibility, and federal officials now consider it outdated and in need of reform. <i>See id.</i> at 43-44.</p>	<p>Objection. The statement by the Advisory Commission on Accessible Instructional Materials is inadmissible hearsay to the extent it is offered to prove the truth of the matter asserted.</p> <p>The statement is also irrelevant. The D.C. Circuit has already rejected Defendant’s argument that converting works into a format more accessible for the visually impaired is transformative use. <i>Am. Soc’y for Testing &amp; Materials</i>, 896 F.3d at 450.</p> <p>This statement also is improper opinion testimony.</p> <p>Disputed. This statement is not supported by any admissible evidence.</p>
<p style="text-align: center;"><b>XIII. DRAFTING OF THE STANDARDS AT ISSUE</b></p>	
<p>184. Each standard at issue was developed by a large number of unpaid volunteers, including federal government employees, state and municipal government employees, employees of private companies and organizations, and ordinary citizens. Becker Decl., ¶ 7, Ex. 40</p>	<p>Objection. Vague as to the use of the term “developed.”</p> <p>Disputed to the extent it implies that volunteers were the only developers of the standards. Plaintiffs presented evidence that</p>

<p style="text-align: center;"><b>DEFENDANT’S SECOND SUPPLEMENTAL STATEMENT OF FACT</b></p>	<p style="text-align: center;"><b>PLAINTIFFS’ RESPONSE</b></p>
<p>(Smith Depo.) at 56:03–57:06; ¶ 79, Ex. 81; Becker Decl., ¶ 12, Ex. 45 (Grove Depo.) at 97:25–98:07; ¶ 20, Ex.22; ¶ 22, Ex. 24; Becker Decl., ¶ 8, Ex. 41 (Dubay Depo.) at 15:16–16:10, 51:20–52:15, 75:17–76:11, 240:22–242:04; Becker Decl., ¶ 9, Ex. 42 (Mullen Depo.) at 114:22–115:23; Becker Decl., ¶ 10, Ex. 43 (Reiniche Depo.) at 21:01–23:21, 105:08–106:18 194:04–194:07; ¶ 42, Ex. 44; ¶ 46, Ex. 48.</p>	<p>their employees drafted language that appears in the standards. ECF No. 118-2 (Pls.’ SMF) ¶¶ 34-35, 117, 137-39, 141. Disputed to the extent it suggests that the individuals who authored each standard or any portion thereof included federal, state and municipal government employees because Defendant provides no support for this proposition.</p>
<p>185. Volunteers or members of the public proposed the creation or revision of the standards at issue. Becker Decl., ¶ 7, Ex. 40 (Smith Depo.) at 18:05–18:19, 280:10–280:20; ¶ 93, Ex. 95; ¶ 123, Ex. 125, p. 4; Becker Decl., ¶ 10, Ex. 43 (Reiniche Depo.) at 94:20–98:24; ¶ 124, Ex. 126, p. 5 (discussing ASHRAE membership categories).</p>	<p>Disputed. Plaintiffs’ rules dictate the process and procedures for developing, revising and updating the standards on a regular schedule. ECF No. 118-2 (Pls.’ SMF) ¶¶ 42, 93, 140.</p> <p>Plaintiffs also have a role in deciding whether or not to develop a standard. <i>See, e.g.</i>, ECF No. 118-2 (Pls.’ SMF) ¶ 92. Plaintiffs control the development of the standards they publish. ECF No. 118-2 (Pls.’ SMF) ¶¶ 30-36, 117-18, 138-41. Plaintiffs have procedures in place to ensure that standards meet their required form and style guidelines. ECF No. 118-2 (Pls.’ SMF) ¶¶ 34, 118, 139.</p>
<p>186. Volunteers drafted the language for the standards at issue, with public input, and determine the arrangement and inclusion of proposed text. Becker Decl., ¶ 7, Ex. 40 (Smith Depo.) at 18:05–18:23, 20:04–20:11; ¶ 93, Ex. 95; Becker Decl., ¶ 13, Ex. 46 (Bliss Depo.) at 45:12–46:02 (“We use a system of volunteers to serve on committees to develop the standard. It’s volunteers that serve on the standards council. It’s volunteers that serve as our membership to make the final voting.”); Becker Decl., ¶ 13, Ex. 46 (Bliss Depo.) at 46:03–46:13; Becker Decl., ¶ 8, Ex. 41 (Dubay Depo.) at 29:12–29:21; Becker Decl., ¶ 10, Ex. 43 (Reiniche Depo.) at 49:08-50:11; Becker Decl., ¶ 10, Ex. 43 (Reiniche Depo.) at 60:05–60:12</p>	<p>Disputed to the extent it implies that volunteers were the only drafters of the standards. Plaintiffs presented evidence that their employees drafted language that appears in the standards. ECF No. 118-2 (Pls.’ SMF) ¶¶ 34-35, 117, 137-39, 141.</p>

<p style="text-align: center;"><b>DEFENDANT’S SECOND SUPPLEMENTAL STATEMENT OF FACT</b></p>	<p style="text-align: center;"><b>PLAINTIFFS’ RESPONSE</b></p>
<p>(“[ASHRAE] Standard 90.1 is on continuous maintenance, so anyone at any time can propose a change to the standard. It could be a project committee member or the public.”).</p>	
<p>187. Volunteers voted on the final content of the standards at issue at the end of the development or revision process. Becker Decl., ¶ 7, Ex. 40 (Smith Depo.) at 15:25–16:10, 17:14–17:24, 98:07–98:25, 186:21–186:25, 274:23–276:12; Becker Decl., ¶ 13, Ex. 46 (Bliss Depo.) at 45:12–46:13; Becker Decl., ¶ 8, Ex. 41 (Dubay Depo.) at 55:22–57:17; Becker Decl., ¶ 10, Ex. 43 (Reiniche Depo.) at 94:20–96:02 (describing the volunteer committee resolution process that votes on drafts and revisions of ASHRAE standards).</p>	<p>Undisputed.</p>
<p>188. The volunteers who developed the standards at issue did so out of service to their country as federal, state, or municipal employees, in furtherance of the business interests of the private companies or organizations they worked for, or because of personal interest. Becker Decl., ¶ 7, Ex. 40 (Smith Depo.) at 45:16–46:04 (stating that volunteers develop ASTM standards because “a company or an individual would be interested in having an ASTM standard that they could say their product or service is in compliance with”); Becker Decl., ¶ 13, Ex. 46 (Bliss Depo.) at 138:22139:12 (as a public official, Mr. Bliss participated in NFPA standard development because his “motivation was to try and establish the best possible fire safety standards that could be developed”); Becker Decl., ¶ 10, Ex. 43 (Reiniche Depo.) at 50:12-51:06 (volunteers or members of the public participate because it affects their business interests and they want to write the language that is adopted into code, or because of personal interest).</p>	<p>Objection. Vague as to the use of the term “developed.” The motivations of volunteers who participated in Plaintiffs’ standards development process is also irrelevant.</p> <p>Disputed. This statement is not supported by the cited sources. Defendant has no basis for drawing any conclusions about the motivations of any, much less all, of the hundreds of thousands of volunteers who participated in Plaintiffs’ standards development process.</p> <p>Disputed to the extent it implies that volunteers were the only developers of the standards. Plaintiffs presented evidence that their employees drafted language that appears in the standards. ECF No. 118-2 (Pls.’ SMF) ¶¶ 34-35, 117, 137-39, 141.</p>

<p style="text-align: center;"><b>DEFENDANT’S SECOND SUPPLEMENTAL STATEMENT OF FACT</b></p>	<p style="text-align: center;"><b>PLAINTIFFS’ RESPONSE</b></p>
<p>189. Plaintiffs’ employees set up meetings to discuss drafts of the standards at issue at public locations, advised the volunteers who drafted the standards, and assisted with formatting. Becker Decl., ¶ 7, Ex. 40 (Smith Depo.) at 268:13–272:25 (listing the ways in which ASTM staff assist the people who actually draft the standards); Becker Decl., ¶ 8, Ex. 41 (Dubay Depo.) at 52:16–53:04 (“NFPA employees are not -- cannot be members of our technical committees. However, as I stated previously, it’s important -- there’s an important role that NFPA staff plays in guiding, advising the committee, coordinating the activities and providing their technical expertise, especially technical staff liaison into this committee process. But they do not have -- they’re not members of the committee, and they do not carry a vote in the decisions of the committees.”); Becker Decl., ¶ 10, Ex. 43 (Reiniche Depo.) at 97:13–98:19 (involvement of ASHRAE staff in development and updating of standard 90.1 is limited to reviewing and making suggestions to the volunteers who draft and vote on the text of the standard).</p>	<p>Disputed to the extent it implies that these are the only tasks performed by Plaintiffs’ employees. Plaintiffs presented evidence that their employees drafted language that appears in the standards. ECF No. 118-2 (Pls.’ SMF) ¶¶ 34-35, 117, 137-39, 141.</p>
<p>190. Plaintiffs did not have control over the content of the standards at issue during the development and revision of those standards. The decision to develop or revise the standards at issue was made by volunteers, not by the Plaintiffs. Becker Decl., ¶ 7, Ex. 40 (Smith Depo.) at 15:25–16:10, 17:14–17:24, 98:07–98:25, 186:21–186:25, 274:23–276:12; Becker Decl., ¶ 13, Ex. 46 (Bliss Depo.) at 45:12–46:02, 46:03–46:13 (NFPA employees assist the volunteers, but the volunteers have the “ultimate decision . . . as to what the language will actually say”); Becker Decl., ¶ 8, Ex. 41 (Dubay Depo.) at 55:22–57:17; Becker Decl., ¶ 10, Ex. 43 (Reiniche Depo.) at 94:20–96:02.</p>	<p>Objection. Vague and ambiguous as to the term “control.”</p> <p>Disputed. Plaintiffs presented evidence that their employees drafted language that appears in the standards. ECF No. 118-2 (Pls.’ SMF) ¶¶ 34-35, 117, 137-39, 141.</p> <p>Disputed to the extent it omits reference to the Plaintiffs, to whom the volunteers proposed the creation or revision of the standards.</p> <p>Plaintiffs have a role in deciding whether or not to develop a standard. <i>See, e.g.</i>, ECF No. 118-2 (Pls.’ SMF) ¶ 92. Plaintiffs’ rules dictate the process and procedures for</p>



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	<p>developing, revising and updating the standards on a regular schedule. ECF No. 118-2 (Pls.’ SMF) ¶¶ 42, 93, 140. Plaintiffs control the development of the standards they publish. ECF No. 118-2 (Pls.’ SMF) ¶¶ 30-36, 117-18, 138-41. Plaintiffs also have procedures in place to ensure that standards meet their required form and style guidelines. ECF No. 118-2 (Pls.’ SMF) ¶¶ 34, 118, 139.</p>
<p>191. Federal government employees authored parts of the standards at issue. M. Becker Decl. ¶ 20, Ex. 20 at 1; ¶ 21, Ex. 23 at 9. <i>See also</i> Table 6 of “Comment on Safety Standard for Automatic Residential Garage Door Operators”, Public.Resource.Org, Nov. 16, 2015, at <a href="https://law.resource.org/pub/us/cfr/regulations.gov.docket.15/cpsc.gov.20151116.html#t6">https://law.resource.org/pub/us/cfr/regulations.gov.docket.15/cpsc.gov.20151116.html#t6</a> (cataloging nineteen textual contributions to the National Electrical Code from Consumer Product Safety Commission staff).</p>	<p>Objection to PRO’s reliance on Exhibit 20. It is hearsay. As it appears to be a statement Mr. Malamud made to the Ninth Circuit—not any evidence that federal government employees authored standards—it is irrelevant. Plaintiffs further object to PRO’s reliance on Table 6 of “Comment on Safety Standard for Automatic Residential Garage Door Operators” as irrelevant hearsay and for lack of authenticity. The document was not attached as an exhibit to PRO’s motion and the link directs to a letter from Carl Malamud titled: “Status Code 451: Your Request Has Been Denied.” Plaintiffs further object as, to the extent the cited evidence does not relate to one of the Works, it is irrelevant.</p> <p>To the extent PRO intends to rely on the document at the website <a href="https://law.resource.org/pub/us/cfr/regulations.gov.docket.15/cpsc.gov.20151116.html">https://law.resource.org/pub/us/cfr/regulations.gov.docket.15/cpsc.gov.20151116.html</a>, that document’s Table 6 offers no support for its self-serving assertion that federal government employees drafted any portion of any standard. Specifically, all of the links in that Table take a visitor to a Consumer Product Safety Commission website that reads “Be Right Back...”</p> <p>Disputed. This statement is entirely unsupported by the cited documents.</p>

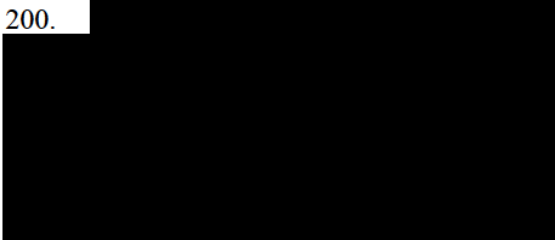

<p style="text-align: center;"><b>DEFENDANT’S SECOND SUPPLEMENTAL STATEMENT OF FACT</b></p>	<p style="text-align: center;"><b>PLAINTIFFS’ RESPONSE</b></p>
	<p>Defendant has presented no evidence that federal government employees drafted any language that appears in any of the standards at issue.</p> <p>Moreover, federal government employees may participate in the development of private standards without altering the copyrightability of that standard. Revised OMB Circular No. A-119, 81 FR 4673, (2016).</p>
<p>192. Employees of third party companies, organizations, or government entities authored parts of the standards at issue in their capacity as employees of those third party companies, organizations, or government entities. Becker Decl., ¶ 13, Ex. 46 (Bliss Depo.) at 163:04–164:19.</p>	<p>Disputed. Plaintiffs are the organizational authors who oversee the development of the Works. <i>See Veeck v. Southern Bldg. Code Cong. Int’l, Inc.</i>, 293 F.3d 791, 794 (5th Cir. 2003) (en banc). Moreover, Plaintiffs own copyright registrations for each of the Works. ECF No. 198-3 (Pls.’ SSUMF) ¶¶ 1, 7, 9-10. Defendants also do not dispute that ASTM has copyright registrations that cover each of the standards at issue in this litigation. ECF No. 155-3 ¶ 70.</p> <p>Disputed to the extent it implies that any or all employees of any company, organization or government entity participate in Plaintiffs’ standard development processes in their capacity as employees of those entities. Disputed to the extent it implies that any employees of government entities authored any parts of the standards at issue. Defendant has presented no evidence to support these assertions. Defendant does not even cite any evidence related to ASTM or ASHRAE to support this statement.</p>
<p>193. Plaintiffs have no procedures to ensure that employees of third party companies, organizations, or government entities are capable of transferring any copyright in the standards at issue to Plaintiffs, and that such copyright is not instead held by the employer.</p>	<p>Objection. Relevance. Defendant has not identified any language in any of the standards at issue that were authored in whole or in part by an employee of a third-party company, organization, or government entity.</p>

<p style="text-align: center;"><b>DEFENDANT’S SECOND SUPPLEMENTAL STATEMENT OF FACT</b></p>	<p style="text-align: center;"><b>PLAINTIFFS’ RESPONSE</b></p>
<p>Plaintiffs do not have any procedures in place to ensure that governmental and private company employees who participate in the development of standards have the authority or ability to transfer copyright to the Plaintiff organizations, and Plaintiffs did not request copyright assignments from the employers of the individuals who authored components of the standards at issue. Becker Decl., ¶ 7, Ex. 40 (Smith Depo.) at 46:12–49:25, 166:17-170:19; Dkt. 120, Ex. 74; Becker Decl., ¶ 8, Ex. 41 (Dubay Depo.) at 220:15–220:25 (“NFPA verifies through our policy the submission from the individual. We do not go to their companies to verify authority of their signature.”); Becker Decl., ¶ 10, Ex. 43 (Reiniche Depo.) at 92:13–93:07.</p>	<p>Disputed. NFPA’s and ASHRAE’s assignment forms require the person signing to warrant that he/she has the authority to enter into the assignment. ECF No. 118-8, (Pauley Decl.) ¶ 31, Ex. B (NFPA assignment forms state: I hereby warrant that . . . I have full power and authority to enter into this assignment.”); ECF No. 121-2 (Def. SUMF) ¶ 144 (ASHRAE forms state: “I hereby attest that I have the authority and I am empowered to grant this copyright release.”).</p> <p>Disputed to the extent it implies that Plaintiffs have an affirmative obligation to ensure that individuals who sign assignment forms are authorized to sign such forms.</p> <p>Plaintiffs also have intellectual property policies and registration forms that are widely available and distributed. <i>See, e.g.</i>, ECF No. 122-5, Def. Ex. 79. To the extent employers direct any employees to participate in the SDO process, they are or should be aware of the conditions under which all individuals participate, including the requirement that they assign any copyright interest that they may have to the SDO.</p>
<p><b>A. Copyright is not One of the Incentives for Drafting the Standards.</b></p>	
<p>194. Persons who volunteer to create and develop voluntary consensus standards have incentives to do so that are independent of owning the copyright to the standards or earning revenue from the sale of the standards. Becker Decl., ¶ 11, Ex. 44 (Jarosz Depo.) at 82:9–17; Becker Decl., ¶ 7, Ex. 40 (Smith Depo.) at 45:16–46:10; Becker Decl., ¶ 13, Ex. 46 (Bliss Depo.) at 21:1–3; 15–17; Becker Decl., ¶ 10, Ex. 43 (Reiniche Depo.) at 50:12–</p>	<p>Objection. Lack of foundation and/or personal knowledge. The fact witnesses cited by Defendant lack person knowledge of the incentives of volunteers who create and develop standards. Relevance. The incentives of persons who are not authors of standards at issue are irrelevant.</p> <p>Undisputed that volunteers who assist in the development of voluntary consensus</p>

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<p>51:6; Becker Decl., ¶ 13, Ex. 46 (Bliss Depo.) at 118:09–119:01.</p>	<p>standards participate in the standards development process for a variety of reasons, but those volunteers neither bear the significant costs of creating and publishing of the standards, nor do they do all of the work that is necessary for the creation and publication of the standards. Only SDOs such as Plaintiffs do that work. ECF No. 118-2 (Pls.’ SMF) ¶¶ 43, 104, 105, 152. Disputed to the extent this implies that Plaintiffs would have the incentive to create and develop their standards if they did not own the copyrights in the standards. <i>See</i> ECF No. 118-2 (Pls.’ SMF) ¶¶ 45-47, 105-08, 152-53. None of the cited evidence suggests as much.</p>
<p>195. Plaintiffs have earned revenue from sources other than selling copies of the standards. These sources include revenue from selling interpretative material related to incorporated standards; standards that have not been incorporated into law; membership dues; conference fees; training services; and public grants and contracts. Becker Decl., ¶ 9, Ex. 42 (Mullen Depo.) at 130:21–133:03; 228:11–229:23; Becker Decl., ¶ 11, Ex. 44 (Jarosz Depo.) at 192:22–193:6; Becker Decl., ¶ 13, Ex. 46 (Bliss Depo.) at 199:23–201:12; 158:06–159:15; Becker Decl., ¶ 12, Ex. 45 (Grove Depo.) at 264:22–266:19; Becker Decl., ¶ 11, Ex. 44 (Comstock Depo.) at 48:23–56:21; 59:03–60:02; 72:5–74:15. Plaintiffs acknowledge that other standards development organizations operate without asserting a right to exclude. ECF No. 117-1 (Jarosz Rep.) ¶ 81.</p>	<p>Objection. Relevance. The methods of operation of non-party standards development organizations with different business models are irrelevant.</p> <p>Undisputed as to the first two sentences. Plaintiffs acknowledge that certain European standards development organizations do not depend on the sales of their standards to support the development of their standards. These standards development organizations are funded in a front-loaded fashion, in which they charge members to participate and contribute to the standards development process. ECF No. 118-12, Ex. 1 (Jarosz Rep.) ¶ 81. Unlike Plaintiffs, these SDOs do not create voluntary consensus standards that comply with ANSI requirements. ECF No. 118-2 (Pls.’ SMF) ¶¶ 7-8, 12, 88, 139. The funding model these European SDOs use, which Plaintiffs do not use, creates barriers to broad participation in the standard development process. ECF No. 118-2 (Pls.’ SMF) ¶¶ 259-60.</p>

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	Disputed to the extent Defendant suggests that these other sources of revenue mean Plaintiffs would not suffer market harm or irreparable harm from the loss of revenue from standards incorporated by reference. ECF No. 155, Pls.’ Reply Br. at Parts I.A.4.b and III.B.1.
<b>B. copyright registration and assignment</b>	
<p>196. Almost all of the standards at issue that Plaintiffs registered with the Copyright Office are registered as “works made for hire” (with the exception of one NFPA standard, NFPA 54 National Fuel Gas Code 2006). Dkt. 122-2 Ex. 13 (ASTM Certificates of Registration); Dkt. 122-2 Ex. 15 (NFPA Certificates of Registration); ¶ 14, Ex. 16 (ASRAE Certificates of Registration).</p>	<p>Objection. The deposition testimony cited at ECF No. 122-2, Exhibit 13 is irrelevant.</p> <p>Disputed to the extent that Defendant implies that Plaintiffs’ ownership of the Works is exclusively pursuant to evidence of work for hire authorship because, even if not necessary, Plaintiffs have submitted additional evidence of ownership via assignments of copyright. <i>E.g.</i>, ECF No. 118-2 (Pls.’ SMF) ¶¶ 18, 20-24, 112-113, 115; ECF No. 155-1 (Pls.’ Supp. SUMF) ¶¶ 14-15, 20-22; <i>see also Am. Soc’y for Testing &amp; Materials v. Public.Resource.org, Inc.</i>, No. 13-CV-1215 (TSC), 2017 WL 473822, at *7 (D.D.C. Feb. 2, 2017), <i>rev’d in part, vacated in part</i>, 896 F.3d 437 (D.C. Cir. 2018) (finding that Defendant’s effort to “point[] to weaknesses in the additional evidence that Plaintiffs proffered to establish their ownership, including questioning whether every one of the hundreds of Plaintiffs’ members who contributed to the standards at issue signed an agreement with appropriate language transferring or assigning copyright ownership to Plaintiffs” “did not adduce any additional evidence disproving Plaintiffs’ authorship”).</p>
<p>197. Plaintiffs have not provided evidence that one standard at issue, ASTM D323 1958</p>	<p>Objection. Irrelevant. ASTM D323 1958 (1968) is not at issue in this motion. <i>See</i> ECF 198-2, Pls’ Appendix A; ECF No. 202, Def.’s Mot. (moving for summary judgment</p>

<p style="text-align: center;"><b>DEFENDANT’S SECOND SUPPLEMENTAL STATEMENT OF FACT</b></p>	<p style="text-align: center;"><b>PLAINTIFFS’ RESPONSE</b></p>
<p>(1968), was ever registered with the copyright office. Complaint, Ex. A at 4, ECF No. 1-1.</p>	<p>on the “works listed in Appendix A to Plaintiffs’ motion (Dkt. 198-2”).</p>
<p>198. NFPA is the only Plaintiff to allege that a work made for hire agreement was signed by developers of the standards at issue. Plaintiffs’ Statement of Material Facts ¶ 115, ECF No. 118-2. This language attempting to classify the work of volunteers as “work made for hire” was added to NFPA forms only in 2007, after most of the standards at issue were already published, and used inconsistently thereafter. Dkt. 122-8 Exs. 127, 128, 129 (compare NEC proposal forms from 2005, 2007, and 2008).</p>	<p>Undisputed that NFPA alleges that a work made for hire agreement was signed.</p> <p>Disputed that those individuals are the “developers” of the standards at issue, which also includes NFPA staff.</p> <p>Disputed that the “work made for hire” language was only added in 2007. The undisputed testimony is that the NFPA committee application form is signed by all members of NFPA technical committees who participate in the development of the standards, and that it has contained unchanged “work made for hire” language “for many years.” Pauley Decl. ¶ 34. Defendant’s citation to pre-2007 forms is limited only to certain forms for proposals from members of the public, not the committee application.</p> <p>Disputed to the extent that PRO implies that ASTM did not offer evidence to support that the ASTM Works are works made for hire of ASTM. Declaration of Thomas O’Brien, previously filed at Dkt. 118-7, (“O’Brien Decl.”) ¶¶ 17-39 (ASTM employees are involved in drafting certain components of “every ASTM standard,”); <i>see Veeck v. Southern Bldg. Code Cong. Int’l, Inc.</i>, 293 F.3d 791, 794 (5th Cir. 2003) (en banc) (“As the organizational author of original works, SBCCI indisputably holds a copyright in its model building codes”).</p>
<p>199. Plaintiffs claim to be assignees of any copyright that the volunteers or members of the public who authored the standards at issue</p>	<p>Disputed to the extent that Defendant implies that the assignments from volunteers and members are the only basis for Plaintiffs’ copyright ownership of the Standards at Issue or that the record evidence is</p>

<p style="text-align: center;"><b>DEFENDANT’S SECOND SUPPLEMENTAL STATEMENT OF FACT</b></p>	<p style="text-align: center;"><b>PLAINTIFFS’ RESPONSE</b></p>
<p>might have had in the standards at issue. Dkt. 118-1 at 16.</p>	<p>insufficient to establish Plaintiffs’ ownership of the copyrights in the Works. <i>E.g.</i>, ECF No. 155-3 (Pls’ Response to PRO’s Statement of Disputed Facts) ¶¶ 18, 20-24, 35, 71-76, 112-15, 120-21, 137-146; ECF No. 155-1 (Pls.’ Supp. SMF) ¶¶ 14-15, 20-22; ECF No. 204-1 (PRO’s Second Supp. Statement of Disputed Facts) ¶ 7 (PRO does not dispute that the copyright registrations for the ASTM standards appearing in bold in Annex A were effective within five years of the date of first publication and thus, under 17 U.S.C. § 410(c), constitute prima facie evidence of the valid copyright in ASTM’s standards and its work for hire authorship and ownership of the ASTM Works).</p>
<p>200.  Dkt. 120, Ex. 53 at p. 6, fn. 4.</p>	<p>Disputed as incomplete.  Def. Ex. 53 at p. 6, fn. 4 (emphasis added).</p> <p>Objection. Lack of foundation as to any Plaintiff other than NFPA. Hearsay as to any Plaintiff other than NFPA.</p>
<p>201. ASHRAE claims ownership of its Standards at Issue by virtue of copyright release forms that the people who drafted the standards allegedly signed. Becker Decl., ¶ 10, Ex. 43 (Reiniche Depo.) at 192:17–194:03 (stating that ASHRAE claims authorship of the standards at issue “[a]s a basis of the signed copyright assignments that all the members sign when they apply for membership, that the commenters sign when they submit a comment</p>	<p>Disputed insofar as an additional basis for claiming ownership of its standards, separate and apart from any assignments from participants in the development process, is based on its role as the organizational author of the standards and its employees’ contribution of language in the standards. ECF No. 118-1 (Pls.’ Mem.) at 16.</p>

<p style="text-align: center;"><b>DEFENDANT’S SECOND SUPPLEMENTAL STATEMENT OF FACT</b></p>	<p style="text-align: center;"><b>PLAINTIFFS’ RESPONSE</b></p>
<p>and that the members that submit change – or the public that submits change proposals sign when they submit a change proposal”); Becker Decl., ¶ 10, Ex. 43 (Reiniche Depo.) at 193:08–17 (stating that the people who authored the standards are not employees of ASHRAE).</p>	
<p>202. ASHRAE requires volunteers who contribute to standard development to sign a copyright release explicitly granting ASHRAE “non-exclusive” rights in those contributions. Becker Decl., ¶ 10, Ex. 43 (Reiniche Depo.) at 70:02-70:11.</p>	<p>Disputed insofar as the copyright release also contains the following language: “I understand that I acquire no rights in publication of such documents in which my contributions or other similar analogous form are used.” ECF No. 118-10 (Reiniche Decl.) Ex. 2; <i>see also</i> ECF No. 118-10 (Reiniche Decl.) Ex. 1 (“I understand that I acquire no rights in publication of the standard in which my proposals in this or other analogous form is used.”).</p>



<p style="text-align: center;"><b>DEFENDANT’S SECOND SUPPLEMENTAL STATEMENT OF FACT</b></p>	<p style="text-align: center;"><b>PLAINTIFFS’ RESPONSE</b></p>
<p>203. ASHRAE indicated the following language from one of its alleged “assignment” forms when asked to indicate what language from that form it believes serves as an assignment of copyright rights:</p> <p style="padding-left: 40px;">If elected as a member of any ASHRAE Standard or Guideline Project Committee or appointed as a consultant to such committee I hereby grant the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) the <i>non-exclusive, royalty-free rights, including nonexclusive, royalty rights in copyright</i>, to any contributions I make to documents prepared by or for such committee for ASHRAE publication and I understand that I acquire no rights in publication of such documents in which my contributions or other similar analogous form are used. I hereby attest that I have the authority and I am empowered to grant this copyright release.</p> <p>M. Becker Decl. ¶ 46, Ex. 48 (Reiniche Ex. 1155) (emphasis added); Becker Decl., ¶ 10, Ex. 43 (Reiniche Depo.) at 94:12–94:14.</p>	<p>Undisputed.</p>
<p>204. Every document that ASHRAE has produced to support its claim that the people who drafted the ASHRAE standards at issue assigned their copyrights to ASHRAE states explicitly that the grant of rights is non-exclusive. Becker Decl., ¶ 10, Ex. 43 (Reiniche Depo.) at 69:19–94:19; Dkt. 122-3, Exs. 27–48.</p>	<p>Disputed insofar as the copyright release also contains the following language: “I understand that I acquire no rights in publication of such documents in which my contributions or other similar analogous form are used.” ECF No. 118-10 (Reiniche Decl.) Ex. 2; <i>see also</i> ECF No. 118-10 (Reiniche Decl.) Ex. 1 (“I understand that I acquire no rights in publication of the standard in which my proposals in this or other analogous form is used.”). Further disputed in that this statement addresses forms signed by ASHRAE volunteers but says nothing of documents produced that relate to</p>

<p style="text-align: center;"><b>DEFENDANT’S SECOND SUPPLEMENTAL STATEMENT OF FACT</b></p>	<p style="text-align: center;"><b>PLAINTIFFS’ RESPONSE</b></p>
	<p>ASHRAE’s argument that ASHRAE is an institutional author and that employees of ASHRAE contribute to authorship of the standards.</p>
<p>205. All but four of the 229 ASTM standards at issue in this case were developed and published prior to 2003. ECF No. 1-1 (Complaint) Ex. A.</p>	<p>Disputed to the extent Defendant suggests that all but four of the 229 ASTM standards at issue in this case were only published prior to 2003.</p>
<p>206. ASTM admits that it did not request copyright assignments from the people who drafted ASTM standards until approximately 2003. Becker Decl., ¶ 7, Ex. 40 (Smith Depo.) at 24:18–26:12; 27:07–27:14; 40:22–41:15; 214:24–215:06.</p>	<p>Undisputed to the extent the statement asserts that ASTM did not have written and executed documents evidencing copyright assignments prior to 2003. Disputed to the extent it implies ASTM does not own copyrights in the ASTM Works.</p>
<p>207. ASTM has not produced signed copyright assignments for any of the standards at issue. Becker Decl., ¶ 7, Ex. 40 (Smith Depo.) at 24:18–26:12; 27:07–27:14; 40:22–41:15; 214:24–215:06.</p>	<p>Disputed. For the four standards for which ASTM previously moved for summary judgment (ASTM D86-07, ASTM D975-07, ASTM D1217-93, and ASTM D396-98), ASTM presented evidence that it obtained assignments of copyrights from individual contributors to the standards to ASTM. SUMF ¶¶ 18, 20-24. With respect to the remaining ASTM standards at issue in this case, ASTM has produced evidence that over 25,000 members completed membership renewal forms every year since 2007. ECF No. 155-1 (Pls. Suppl. SUMF) ¶ 14. The vast majority of these members completed their membership renewals using the online membership form. ECF No. 155-1 (Pls. Suppl. SUMF) ¶ 15. Although ASTM did not request signed writings evidencing copyright assignments from its members until approximately 2003, the language in the assignments it obtained since then retroactively assigned any copyrights that individual possessed in any ASTM standard to ASTM. <i>See</i> ECF No. 118-2 (Pls.’ SMF) ¶ 18.</p>

<p style="text-align: center;"><b>DEFENDANT’S SECOND SUPPLEMENTAL STATEMENT OF FACT</b></p>	<p style="text-align: center;"><b>PLAINTIFFS’ RESPONSE</b></p>
<p>208. Prior to 2003, ASTM did not believe that it needed formal assignment agreements. Becker Decl., ¶ 7, Ex. 40 (Smith Depo.) at 42:15–42:16 (“[ASTM] didn’t feel like we needed any formal, any formal assignment paper.”).</p>	<p>Disputed. Prior to and after 2003, ASTM believed it had a basis for claiming ownership of its standards separate and apart from any assignments from participants in the development process based on its role as the organizational author of the standards and its employees’ contribution of language in the standards. ECF No. 118-1 (Pls.’ Mem.) at 16; ECF No. 200 (Pls.’ Mem.) at 10-11; <i>Am. Soc’y for Testing &amp; Materials v. Public.Resource.org, Inc.</i>, No. 13-CV-1215 (TSC), 2017 WL 473822, at *7 (D.D.C. Feb. 2, 2017), <i>rev’d in part, vacated in part</i>, 896 F.3d 437 (D.C. Cir. 2018) (“Defendant has not identified any evidence that . . . the ASTM Plaintiffs . . . do not own the copyrights of the standards, in whole or in part. The court therefore concludes that the ASTM Plaintiffs . . . are the owners of the copyrights at issue and have standing to bring their claims”). ASTM consulted with the Copyright Office about how to complete its copyright applications. ECF No. 155-1 (Pls.’ Supp. SUMF) ¶ 13. The Copyright Office instructed ASTM to fill out its copyright applications noting itself as the sole author of the standards as works made for hire. ECF No. 155-1 (Pls.’ Supp. SUMF) ¶ 13.</p>
<p>209. ASTM now admits that it only started asking for copyright assignments in 2005, Opp. at 32, which is years after 226 of the 229 ASTM standards at issue had been developed. See ECF No. 1-1 (Complaint Exhibit A, listing ASTM standards at issue and their date of publication).</p>	<p>Disputed to the extent it implies ASTM does not own copyrights in the ASTM Works. Although ASTM does not have written and executed documents evidencing copyright assignments prior to 2003, ASTM has produced evidence that over 25,000 members completed membership renewal forms every year since 2007. ECF No. 155-1 (Pls. Suppl. SUMF) ¶ 14. The vast majority of these members completed their membership renewals using the online membership form. ECF No. 155-1 (Pls.</p>

<p style="text-align: center;"><b>DEFENDANT’S SECOND SUPPLEMENTAL STATEMENT OF FACT</b></p>	<p style="text-align: center;"><b>PLAINTIFFS’ RESPONSE</b></p>
	<p>Suppl. SUMF) ¶ 15; <i>Am. Soc’y for Testing &amp; Materials v. Public.Resource.org, Inc.</i>, No. 13-CV-1215 (TSC), 2017 WL 473822, at *7 (D.D.C. Feb. 2, 2017), <i>rev’d in part, vacated in part</i>, 896 F.3d 437 (D.C. Cir. 2018) (“Defendant has not identified any evidence that . . . the ASTM Plaintiffs . . . do not own the copyrights of the standards, in whole or in part. The court therefore concludes that the ASTM Plaintiffs . . . are the owners of the copyrights at issue and have standing to bring their claims”); ECF No. 204-1 (PRO’s Second Supp. Statement of Disputed Facts) ¶ 7 (PRO does not dispute that the copyright registrations for the ASTM standards appearing in bold in Annex A were effective within five years of the date of first publication and thus, under 17 U.S.C. § 410(c), constitute prima facie evidence of the valid copyright in ASTM’s standards and its work for hire authorship and ownership of the ASTM Works).</p>
<p>210. ASTM alleges that it relied on an unspoken “basic understanding” that the volunteers who drafted the standards at issue intended to create standards that ASTM would eventually distribute. Becker Decl., ¶ 7, Ex. 40 (Smith Depo.) at 42:18–44:01; 94:01–94:20.</p>	<p>Disputed. ASTM’s ownership claims do not depend on, but are confirmed by, the understanding of all participants in the standard development process intend ASTM to own the copyrights in standards.</p>
<p>211. ASTM has not produced any evidence of the existence of an alleged “basic understanding” between the creators of the standards at issue and ASTM, nor any evidence of what the contours of this “basic understanding” were. Becker Decl., ¶ 7, Ex. 40 (Smith Depo.) at 44:03–45:14; 104:21–105:24 (“Q: Did Mr. Lively provide any basis for his statement that there was an understanding in the early ‘80s that ASTM would copyright the material provided by individuals that was incorporated into the standards drafts? A: No. I think it was just his belief just as it was my</p>	<p>Disputed. ASTM has presented evidence that participants in the standard development process intend ASTM to own the copyrights in standards. <i>See</i> ECF No. 118-2 (Pls.’ SMF) ¶ 40; ECF No. 118-11 (Thomas Decl.) ¶ 23; ECF No. 118-4 (Cramer Decl.) ¶¶ 6, 10, 11, 15; ECF No. 118-6 (Jennings Decl.) ¶¶ 7-9, 12.</p> <p>ASTM has always openly claimed ownership of these works without objection. ECF No. 118-2 (Pls.’ SMF) ¶ 26; ECF No. 122-5, Def. Ex. 77 at 6 (ASTM’s Intellectual Property</p>

<p style="text-align: center;"><b>DEFENDANT’S SECOND SUPPLEMENTAL STATEMENT OF FACT</b></p>	<p style="text-align: center;"><b>PLAINTIFFS’ RESPONSE</b></p>
<p>belief.”); Becker Decl., ¶ 7, Ex. 40 (Smith Depo.) at 44:03–45:14 (stating that ASTM “didn’t think that documentation [of the alleged ‘basic understanding’] was needed”).</p>	<p>Policy adopted in 1999); ECF No. 122-5, Def. Ex. 78 at (VI)(A)(1) (ASTM’s Intellectual Property Policy 2003); ECF No. 122-5, Def. Ex. 79 at (VI)(A)(1) (ASTM’s Intellectual Property Policy 2010).                  Moreover, many of the participants pay for copies of the ASTM standards from ASTM and bearing ASTM’s copyright notice. ECF No. 118-2 (Pls.’ SMF) ¶¶ 16-18, 40. ASTM is not aware of any individual or other person who claims to own any copyright interest in any ASTM standard. O’Brien Decl. III ¶ 6. Since ASTM filed the lawsuit in 2013, no participant or volunteer has contacted ASTM to assert copyright ownership or otherwise challenge ASTM’s copyright interest in any of the ASTM Works. O’Brien Decl. III ¶ 7.</p>
<p>212. ASTM claimed that the ASTM “IP Policy” somehow confirms the existence of this alleged “basic understanding.” Becker Decl., ¶ 7, Ex. 40 (Smith Depo.) at 57:23–59:25.</p>	<p>Undisputed.</p>
<p>213. The earliest IP Policy document that ASTM produced in this litigation was approved by ASTM on April 28, 1999 and put into effect thereafter. ASTM had no IP Policy prior to April 28, 1999. Dkt. 122-5, Ex. 77, ¶ 77; Dkt. 122-5 Ex. 79; Dkt. 122-9, Ex. 152 (Internet Archive capture of the ASTM home page the day before the ASTM IP Policy was approved, and a capture after the ASTM Policy was approved, showing that the link to the IP Policy in the lower-right corner of the page was not present on April 27, 1999).</p>	<p>Disputed. It is undisputed that the earliest IP Policy produced in this litigation was approved on April 28, 1999, but there is no support for the proposition that ASTM had no IP policy prior to that date.</p>
<p>214. In 2010, approximately three years after the publishing of the most recent ASTM standard at issue, the ASTM IP Policy was amended to include the following language: “Each member agrees, by such participation and enjoyment of his/her annual membership</p>	<p>Objection. Objection to the characterization of the ASTM documents based on the best evidence rule. Plaintiffs also object to the quoted text as an incomplete.</p>


<p align="center"><b>DEFENDANT’S SECOND SUPPLEMENTAL STATEMENT OF FACT</b></p>	<p align="center"><b>PLAINTIFFS’ RESPONSE</b></p>
<p>benefits, to have transferred any and all ownership interest, including copyright, they possess or may possess in the ASTM IP to ASTM.” Dkt. 122-5, Ex. 77 and Ex. 79 (Compare Section V.D. in both documents).</p>	<p>Disputed to the extent it omits reference to the statement in the 1999 IP Policy that “[b]y participating in any ASTM technical committee and /or participating in the creation and adoption of ASTM’s Intellectual Property, participants and committee members acknowledge that the copyright to such Intellectual Property resides in ASTM. <i>See</i> ECF No. 122-5, Def. Ex. 77.</p>
<p>215. There was no means that ASTM imposed for the volunteers who drafted the ASTM standards at issue to signify that they had read and agreed to the ASTM IP Policy. Becker Decl., ¶ 7, Ex. 40 (Smith Depo.) at 173:10–181:12 (admitting that ASTM does not know if members read or understood the assignment clause, nor whether they assented to transfer their copyright to ASTM).</p>	<p>Disputed. Certain ASTM membership forms stated: “By applying for or renewing your ASTM membership, you acknowledge you have read and agree to abide by ASTM’s Intellectual Property Policy.” <i>See, e.g.</i>, ECF No. 120-20, Def. Ex. 87.</p> <p>ASTM has always openly claimed ownership of these works without objection. ECF No. 118-2 (Pls.’ SMF) ¶ 26; ECF No. 122-5, Def. Ex. 77 at 6 (ASTM’s Intellectual Property Policy adopted in 1999); ECF No. 122-5, Def. Ex. 78 at (VI)(A)(1) (ASTM’s Intellectual Property Policy 2003); ECF No. 122-5, Def. Ex. 79 at (VI)(A)(1) (ASTM’s Intellectual Property Policy 2010). Moreover, many of the participants pay for copies of the ASTM standards from ASTM and bearing ASTM’s copyright notice. ECF No. 118-2 (Pls.’ SMF) ¶¶ 16-18, 40. ASTM is not aware of any individual or other person who claims to own any copyright interest in any ASTM standard. O’Brien Decl. III ¶ 6. Since ASTM filed the lawsuit in 2013, no participant or volunteer has contacted ASTM to assert copyright ownership or otherwise challenge ASTM’s copyright interest in any of the ASTM Works. O’Brien Decl. III ¶ 7.</p>
<p>216. ASTM has not retained or produced in this litigation completed membership forms</p>	<p>Disputed. For the four standards for which ASTM moved for summary judgment,</p>

<p style="text-align: center;"><b>DEFENDANT’S SECOND SUPPLEMENTAL STATEMENT OF FACT</b></p>	<p style="text-align: center;"><b>PLAINTIFFS’ RESPONSE</b></p>
<p>pertaining to any of the standards at issue. The membership forms that ASTM has produced date from 2008 and later, with only one membership form from 2007. M. Becker Decl. ¶ 90, Ex. 92; Becker Decl., ¶ 7, Ex. 40 (Smith Depo.) at 258:11–258:23.</p>	<p>ASTM presented evidence that the leader of the group that developed the standard and/or a member of the committee that drafted the standard assigned any copyrights in their individual contributions to the standards to ASTM. ECF No. 118-2 (Pls.’ SMF) ¶¶ 18, 20-24. With respect to the remaining ASTM standards at issue in this case, ASTM has produced evidence that over 25,000 members completed membership renewal forms every year since 2007, which is as far back as ASTM maintains membership records. ECF No 155-1 (Pls.’ Supp. SUMF) ¶ 14. The vast majority of these members completed their membership renewals using the online membership form. ECF No 155-1 (Pls.’ Supp. SUMF) ¶ 15. Although ASTM did not request executed written copyright assignments from its members until approximately 2003, the language in the assignments it obtained since then retroactively assigned any copyrights that individual possessed in any ASTM standard to ASTM. <i>See</i> ECF No. 118-2 (Pls.’ SMF) ¶ 18.</p>
<p>217. ASTM has failed to exercise control over the creation and enforcement of its membership and participation forms (that it terms copyright “assignments”), resulting in a multiplicity of forms that either have no assignment language at all, or have various iterations of language that ASTM claims grants it copyright assignments. Becker Decl., ¶ 7, Ex. 40 (Smith Depo.) at 216:01–217:12, 225:05–225:19 (membership forms were prepared ad hoc by any number of people, and he does not know if anyone knows how many different variations of ASTM membership form were used from 2007 to 2014, because his “experience as being a staff manager is I don’t think people think about the version of an application that’s being used. I think it’s</p>	<p>Objection. Vague and ambiguous as to the terms “exercise control” and “enforcement.” In addition, it is irrelevant whether ASTM exercised control of the creation and enforcement of membership and participation forms, especially with respect to individuals who were not involved with the development of the Works.</p> <p>Disputed. The statement is not supported by the cited testimony.</p>

<p style="text-align: center;"><b>DEFENDANT’S SECOND SUPPLEMENTAL STATEMENT OF FACT</b></p>	<p style="text-align: center;"><b>PLAINTIFFS’ RESPONSE</b></p>
<p>viewed as a tool that enables an individual to join a technical committee.”),</p>	
<p>218. Many individuals renew their ASTM memberships through alternate channels other than using ASTM membership renewal forms or renewing through ASTM’s online portal, and thereby do not encounter or formally assent to any copyright assignment language. Becker Decl., ¶ 7, Ex. 40 (Smith Depo.) at 278:04–278:18 (ASTM members can renew their membership by phone or by email, without using the online portal or using ASTM’s mail-in forms); Dkt. 120, Ex. 94 (example of an ASTM member renewing by email). ASTM’s online membership agreement process does not require a member to click “yes,” or “I agree,” or any other affirmation to the language discussing copyright assignment that appears on the web page. Instead, members click a button labeled “continue” that appears below the message: “[c]lick ‘continue’ to place your ASTM membership renewal in the shopping cart.” Dkt. 122-9, Ex. 149.</p>	<p>Disputed to the extent that there is no evidence that “many” individuals renew their ASTM memberships through alternate channels. Defendant has found several isolated instances of ASTM members renewing their ASTM memberships outside of the normal channels. These individuals and their renewal methods are irrelevant because there is no evidence that they were involved in the development of any of the Works.</p> <p>Disputed that clicking on “continue” in the online process is not an indication of assent.</p>
<p>219. The membership forms that ASTM has produced usually do not include language asking for an assignment of copyright rights. Becker Decl., ¶ 7, Ex. 40 (Smith Depo.) at 211:24-212:12 (acknowledging ASTM forms that did not have assignment language. Dkt. 120, Exs. 91 and 93 (examples of ASTM forms without any assignment language).</p>	<p>Objection. Evidence that persons who were not involved in the development of any ASTM Work at issue is irrelevant.</p> <p>Disputed. The membership form in Defendant’s Exhibit 91 includes copyright assignment language. Defendant produced tens of thousands of pages of hard-copy membership forms. ECF No. 155-1 (Pls. Suppl. SUMF) ¶ 16. Defendant identified a very small percentage of those forms that do not include language regarding assignment of copyright. <i>See</i> ECF No. 122-6, Def. Ex. 93.</p> <p>Defendant did not produce any evidence that any of the persons who signed those forms were involved in the development of the</p>



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	Works, and therefore, these forms are irrelevant.
<p>220. Of the ASTM forms that do include what ASTM alleges to be assignment language, there is no means for a person filling out the form to sign her name or show that she agrees to assign her copyright rights to ASTM. Dkt. 120, Exs. 87-91, 80 (ASTM forms with alleged assignment language); Becker Decl., ¶ 7, Ex. 40 (Smith Depo.) at 173:10–181:12 (admitting that there is nowhere on the alleged copyright assignment for a member to check a box, sign her name, or otherwise indicate that she understands and assents to transfer her copyright to ASTM, and admitting that ASTM does not know if a member who completes the form has read the assignment clause or assents to transfer her copyright to ASTM).</p>	<p>Objection. Evidence that persons who were not involved in the development of any ASTM Work at issue is irrelevant.</p> <p>Disputed. ASTM’s online membership forms require the member to assent to the assignment of any copyrights. <i>See</i> Def. Ex. 149. ASTM’s hard-copy membership forms contain numerous spaces where a member can sign her name. <i>See, e.g.</i>, Def. Ex. 87 (showing examples of members filling in their names and/or signing their names). Defendant has not produced any evidence that any person who participated in the development of any ASTM Work at issue failed to execute an assignment.</p>
<p>221. Through at least 2008, NFPA used copyright release language for the creators of the NFPA standards at issue that referred to a grant of non-exclusive rights. MDkt. 122-4 Exs. 54–76; Dkt. 120 Ex. 129.</p>	<p>Disputed as incomplete and not relevant to the 2011 NEC and 2014 NEC at issue here. The copyright release language stated: “I hereby grant the NFPA the nonexclusive, royalty-free rights, including nonexclusive, royalty-free rights in copyright, in this proposal, and I understand that I acquire no rights in any publication of NFPA in which this proposal in this or another similar or analogous form is used.” <i>See, e.g.</i>, Becker Decl. Ex. 54.</p>
<p>222. For example, an NFPA document soliciting proposed text for the 2011 edition of the National Electrical Code, includes the following text:</p> <div data-bbox="289 1633 755 1801" style="background-color: black; width: 287px; height: 80px; margin-top: 10px;"></div>	<p>Undisputed.</p>

<p style="text-align: center;"><b>DEFENDANT’S SECOND SUPPLEMENTAL STATEMENT OF FACT</b></p>	<p style="text-align: center;"><b>PLAINTIFFS’ RESPONSE</b></p>
<p style="text-align: center;"></p> <p>M. Becker Decl. ¶ 127, Ex. 129 (emphasis added).</p>	
<p>223. NFPA did not exercise control over the process by which people submitted proposals. NFPA’s Rule 30(b)(6) corporate representative Christian Dubay, stated that “in past history over the years . . . there’s many different versions of our forms and ways of submission.” Becker Decl., ¶ 8, Ex. 41 (Dubay Depo.) at 134:21–134:24. NFPA would accept retyped versions of the forms that people used when contributing text to a standard draft. M. Becker Decl. ¶ 61, Ex. 63; Becker Decl., ¶ 8, Ex. 41 (Dubay Depo.) at 146:06–146:14. NFPA allowed volunteers to use any existing standard draft contribution form in place of the form that NFPA designated for use for the particular standard. Becker Decl., ¶ 8, Ex. 41 (Dubay Depo.) at 146:06–146:14.</p>	<p>Disputed to the extent it characterizes the existence of different versions of the forms as lacking control. Defendant does not cite to evidence showing material differences between these forms.</p>
<p>224. NFPA’s online public comment portal includes the following language under the “Copyright Assignment and Signature” page: “I understand and intend that I acquire no rights, including rights as a joint author, in any publication of the NFPA in which this Public Comment in this or another similar or derivative form is used.” Dkt. 122-9, Ex. 154 at 10. In earlier copyright releases, NFPA used similar language that would also effectively bar joint ownership: “I understand that I acquire no rights in any publication of NFPA in which this comment in this or another similar or analogous form is used.” Dkt. 122-5, Ex. 73. ASHRAE uses almost identical language in its copyright releases: “I understand that I acquire no rights in publication of such documents in which my</p>	<p>Disputed to the extent it implies that this is an accurate description of NFPA’s current website.</p>

<p style="text-align: center;"><b>DEFENDANT’S SECOND SUPPLEMENTAL STATEMENT OF FACT</b></p>	<p style="text-align: center;"><b>PLAINTIFFS’ RESPONSE</b></p>
<p>contributions or other similar analogous form are used.” Dkt. 122-4, Ex. 48.</p>	
<p style="text-align: center;"><b>XIV. INCORPORATION OF THE NATIONAL ELECTRICAL CODE INTO CALIFORNIA TITLE 24</b></p>	
<p>225. The California Building Standards Commission (“CBSC”) generally issues a new California Building Standards Code Title 24 every three years. The current effective California Building Standards Code is a 2016 edition. The rulemaking processes for the next edition (the 2019 edition) is complete; the new code was published on or around July 1, 2019, and it will become effective January 1, 2020. Becker Decl. ¶ 3, Ex. 36 (Marvelli Depo.) at 22:21-23:6, 35:6-25.</p>	<p>Objection to the relevance of the development of California’s Building Standards Code. As explained in Plaintiffs’ briefing, PRO has staked its entire fair use argument on the incorporation by reference process the federal government—not any state—uses. Reply at Part I.A.1.a. Objection to the relevance of this statement to the extent it does not relate to any of the Works.</p> <p>Objection. Hearsay.</p>
<p>226. The California Building Code includes three categories of building standards—namely, (1) reference standards that have been adopted without change; (2) those that have been adopted and adapted from national model code, with amendments; and (3) those authorized by the California legislature but which are not covered by the national model codes. Becker Decl. ¶ 3, Ex. 36 (Marvelli Depo.) at 40:6-41:16, Ex. 3.</p>	<p>Objection to the relevance of the development of California’s Building Standards Code. As explained in Plaintiffs’ briefing, PRO has staked its entire fair use argument on the incorporation by reference process the federal government—not any state—uses. Objection to the relevance of this statement to the extent it does not relate to any of the Works.</p> <p>Objection. Hearsay.</p> <p>Objection to the statement’s use of “adopted without change” as vague and ambiguous, as there is no indication of what material these reference standards are adopting. Objection to the use of the undefined terms “national model codes” and “reference standards” as vague and ambiguous.</p>
<p>227. The CBSC incorporates by reference certain reference standards by making them “part of the model code.” In some cases, the</p>	<p>Objection to the relevance of the development of California’s Building Standards Code. As explained in Plaintiffs’</p>

<p style="text-align: center;"><b>DEFENDANT’S SECOND SUPPLEMENTAL STATEMENT OF FACT</b></p>	<p style="text-align: center;"><b>PLAINTIFFS’ RESPONSE</b></p>
<p>incorporation involves referring to the reference standard, such that a reader might have to refer to a separate reference standard. In other instances, the reference code may itself be reprinted in the model code. Becker Decl. ¶ 3, Ex. 36 (Marvelli Depo.) at 30:23-31:25, 32:7-15.</p>	<p>briefing, PRO has staked its entire fair use argument on the incorporation by reference process the federal government—not any state—uses. Reply at Part I.A.1.a.                      Objection to the relevance of this statement to the extent it does not relate to any of the Works.</p> <p>Objection. Hearsay.</p> <p>Objection to the use of the undefined terms “model code,” “reference standards,” and “reference code” as vague and ambiguous.</p>
<p>228. California Building Standards law requires California to adopt the most recent version of model codes that refer to reference standards. Becker Decl. ¶ 3, Ex. 36 (Marvelli Depo.) at 27:17-28:16, 44:14-46:14.</p>	<p>Objection to the relevance of the development of California’s Building Standards Code. As explained in Plaintiffs’ briefing, PRO has staked its entire fair use argument on the incorporation by reference process the federal government—not any state—uses. Reply at Part I.A.1.a.                      Objection to the relevance of this statement to the extent it does not relate to any of the Works.</p> <p>Objection. Hearsay.</p> <p>Objection to the use of the undefined terms “model codes” and “reference standards” as vague and ambiguous.</p> <p>Objection. Improper opinion/lack of foundation. This is a legal conclusion, not a fact.</p>
<p>229. Until the 2019 edition of the California Building Standards Code goes into effect, the 2016 edition is the law. The national model codes adopted into Title 24 apply to all occupancies in California, including residences, office buildings, schools, hospitals, government</p>	<p>Objection to the relevance of the development of California’s Building Standards Code. As explained in Plaintiffs’ briefing, PRO has staked its entire fair use argument on the incorporation by reference process the federal government—not any state—uses. Reply at Part I.A.1.a.                      Objection to the relevance of this statement</p>

<p style="text-align: center;"><b>DEFENDANT’S SECOND SUPPLEMENTAL STATEMENT OF FACT</b></p>	<p style="text-align: center;"><b>PLAINTIFFS’ RESPONSE</b></p>
<p>buildings, etc. Becker Decl. ¶ 3, Ex. 36 (Marvelli Depo.) at 36:1-8, 41:17-43:2, Ex. 3.</p>	<p>to the extent it does not relate to any of the Works.</p> <p>Objection. Hearsay.</p> <p>Objection. Improper opinion/lack of foundation. This is a legal conclusion, not a fact.</p> <p>Objection as incomplete. As the deponent later explained, Becker Decl. ¶ 3, Ex. 36 (Marvelli Depo.) at 182:13-19, Exhibit 3 to the Marvelli deposition reads: “All occupancies in California are subject to national and model codes adopted into Title 24, and occupancies are further subject to amendments adopted by state agencies and ordinances implemented by local jurisdictions’ governing bodies.” Wise Decl. II ¶ 11, Ex. 183. Accordingly, all occupancies in the state must look to state agency amendments and local jurisdictions’ rules to determine their conduct. Becker Decl. ¶ 3, Ex. 36 (Marvelli Depo.) at 182:13-184:19.</p>
<p>230. In a previous role as an architectural associate for the California Department of General Services, Ms. Marvelli developed construction drawings for state building so they complied with the California Building Standards Code. Multiple state and local agencies enforce compliance with the California Building Codes. Becker Decl. ¶ 3, Ex. 36 (Marvelli Depo.) at 23:7-24:5, 118:6-119:15, 124:3-125:8, 127:15-130:3.</p>	<p>Objection to the relevance of the development of California’s Building Standards Code. As explained in Plaintiffs’ briefing, PRO has staked its entire fair use argument on the incorporation by reference process the federal government—not any state—uses. Reply at Part I.A.1.a.</p> <p>Objection to the relevance of this statement to the extent it does not relate to any of the Works.</p> <p>Objection. Hearsay.</p> <p>Objection. Improper opinion/lack of foundation as to how state and local agencies act.</p>

<p style="text-align: center;"><b>DEFENDANT’S SECOND SUPPLEMENTAL STATEMENT OF FACT</b></p>	<p style="text-align: center;"><b>PLAINTIFFS’ RESPONSE</b></p>
<p>231. Title 24 contains multiple parts; for example, the 2019 triennial edition of the code has thirteen parts. Each part of Title 24 pertains to a different subject matter. For instance, Part 1 of Title 24 is the California Administrative Code. The most relevant one for this case is Part 3, which is the California Electrical Code. The California Electrical Code has two sources—namely, (1) NFPA 70, also known as the National Electrical Code; and (2) the California amendments. For instance, the 2019 California Electrical Code is based on the 2017 version of the National Electrical Code; the 2016 California Electrical Code is based on the 2014 version of the National Electrical Code; the 2013 California Electrical Code is based on the 2011 version of the National Electrical Code. Becker Decl. ¶ 3, Ex. 36 (Marvelli Depo.) at 36:1-25, 43:4-44:12, 78:25-79:5.</p>	<p>Objection to the relevance of the development of California’s Building Standards Code. As explained in Plaintiffs’ briefing, PRO has staked its entire fair use argument on the incorporation by reference process the federal government—not any state—uses. Reply at Part I.A.1.a.</p> <p>Objection to the relevance of this statement to the extent it does not relate to any of the Works.</p> <p>Objection. Hearsay.</p> <p>Objection to the use of the phrase “based on” as vague and ambiguous.</p>
<p>232. Adoption of the code is a deliberative process. Mia Marvelli is Executive Director of the California Building Standards Commission (CBSC), a state commission that administers the California Building Standards process. The California Building Standards law is found in the California Health and Safety Code, and the CBSC uses the processes under the Administrative Procedure Act to administer the rulemaking process for Title 24 (also known as the California Building Standards Code) of the California Code of Regulations. The CBSC receives rulemaking documents from State agencies, and then conducts public hearings and public comment periods on the documents. The CBSC ultimately takes one of four actions on those rulemaking document: (1) approve; (2) approve as amended; (3) disapprove; or (4) further action. Becker Decl. ¶ 3, Ex. 36 (Marvelli Depo.) at 9:25-10:1, 13:14-15:10, 44:14-47:11.</p>	<p>Objection to the relevance of the development of California’s Building Standards Code. As explained in Plaintiffs’ briefing, PRO has staked its entire fair use argument on the incorporation by reference process the federal government—not any state—uses. Reply at Part I.A.1.a.</p> <p>Objection to the relevance of this statement to the extent it does not relate to any of the Works.</p> <p>Objection. Hearsay.</p> <p>Objection to the undefined and subjective term “deliberative process” as vague and ambiguous.</p> <p>Disputed that California uses “a deliberative process” as the cited reference does not support this proposition.</p>

<p align="center"><b>DEFENDANT’S SECOND SUPPLEMENTAL STATEMENT OF FACT</b></p>	<p align="center"><b>PLAINTIFFS’ RESPONSE</b></p>
<p>233. There are ten commissioners that conduct the rulemakings. The Governor of California appoints the commissioners under the authority of the California Building Standards law. Each commissioner represents a different type of interest (e.g., building officials, construction industry), and all the commissioners participate together in a public hearing on the rulemaking. If the commission approves the regulations, they are assembled for the publisher to the develop the next edition of the California Building Standards Code. Becker Decl. ¶ 3, Ex. 36 (Marvelli Depo.) at 15:13-19, 16:13-19, 16:24-20:3, 22:17-20.</p>	<p>Objection to the relevance of the development of California’s Building Standards Code. As explained in Plaintiffs’ briefing, PRO has staked its entire fair use argument on the incorporation by reference process the federal government—not any state—uses. Reply at Part I.A.1.a.</p> <p>Objection to the relevance of this statement to the extent it does not relate to any of the Works.</p> <p>Objection. Hearsay.</p>
<p>234. The “Acknowledgements” section of the California Electrical Code states that “the California Electrical Code was developed through the outstanding collaborative efforts of” a number of State agencies, such as the Department of Housing and Community Development. Ms. Marvelli was not aware of any State agencies that have sought a copyright in their contributions to any version of the California Electrical Code. Becker Decl. ¶ 3, Ex. 36 (Marvelli Depo.) at 74:12-79:25, Ex. 4.</p>	<p>Objection to the relevance of the development of California’s Building Standards Code. As explained in Plaintiffs’ briefing, PRO has staked its entire fair use argument on the incorporation by reference process the federal government—not any state—uses. Reply at Part I.A.1.a.</p> <p>Objection to the relevance of this statement to the extent it does not relate to any of the Works.</p> <p>Objection. Hearsay.</p> <p>Objection. Improper opinion/lack of foundation and incomplete. The witness testified that she would “have to research” whether any organizations sought a copyright in the California Electrical Code. Becker Decl. ¶ 3, Ex. 36 (Marvelli Depo.) at 77:16-17.</p> <p>Disputed to the extent PRO attempts to draw any inference from the fact that Ms. Marvelli was unaware of the information in question.</p> <p>Disputed to the extent it suggests that any state agencies made contributions to any</p>

<p align="center"><b>DEFENDANT’S SECOND SUPPLEMENTAL STATEMENT OF FACT</b></p>	<p align="center"><b>PLAINTIFFS’ RESPONSE</b></p>
	<p>version of the California Electrical Code. The cited reference does not support that proposition.</p>
<p>235. State agencies apply the nine-point criteria in Section 18930 of the Health and Safety Code in deciding whether to adopt a reference standard into the California Building Code. If all the criteria are met, the commission generally approves the package. If one of the criteria is not met, the commission may still approve adoption of the reference standards, as amended. The nine criteria that state agencies consider are (1) whether the proposed building standards do not conflict with, overlap or duplicate other building standards; (2) whether the proposed building standards are within the parameters established by enabling legislation and are not expressly within the exclusive jurisdiction of another agency; (3) whether the public interest requires the adoption of the building standards; (4) whether the proposed building standards are not unreasonable, arbitrary, unfair or capricious in whole or in part; (5) whether the cost to the public is reasonable, based on the overall benefit to be derived from the building standards; (6) whether the proposed building standard is not unnecessarily ambiguous or vague, in whole or in part; (7) whether the applicable national specifications, published standards, and model codes have been incorporated; (8) whether the format of the proposed building standards is consistent with that adopted by the commission; and (9) whether the proposed building standards, if they promote fire and panic safety as determined by the State Fire Marshal, have the written approval of the State Fire Marshall. Becker Decl. ¶ 3, Ex. 36 (Marvelli Depo.) at 29:6-30:14, 103:22-106:22.</p>	<p>Objection to the relevance of the development of California’s Building Standards Code. As explained in Plaintiffs’ briefing, PRO has staked its entire fair use argument on the incorporation by reference process the federal government—not any state—uses. Reply at Part I.A.1.a.</p> <p>Objection to the relevance of this statement to the extent it does not relate to any of the Works.</p> <p>Objection. Hearsay.</p> <p>Objection. Improper opinion/lack of foundation.</p>
<p>236. Portions of California Electrical Code are reproduced with permission from the</p>	<p>Objection to the relevance of the development of California’s Building</p>



<p style="text-align: center;"><b>DEFENDANT’S SECOND SUPPLEMENTAL STATEMENT OF FACT</b></p>	<p style="text-align: center;"><b>PLAINTIFFS’ RESPONSE</b></p>
<p>National Electrical Code, and the California Electrical Code states that “no portions of NEC material may be reproduced except with permission of the National Fire Protection Association.” The California Electrical Code includes a legend that tells the reader how to distinguish between model code portions and California amendments. Aside from appearing in the California Electrical Code itself, California amendments “may or may not” appear in a document called the Final Statement of Reasons that state agencies issue during the rulemaking process; if a California amendment does not appear in the Final Statement of Reasons, Ms. Marvelli did not know how a person would access the amendment without going to the California Electrical Code itself. Becker Decl. ¶ 3, Ex. 36 (Marvelli Depo.) at 61:20-64:12, 65:18-67:25, 68:16-69:8, Ex. 4.</p>	<p>Standards Code. As explained in Plaintiffs’ briefing, PRO has staked its entire fair use argument on the incorporation by reference process the federal government—not any state—uses. Reply at Part I.A.1.a.</p> <p>Objection to the relevance of this statement to the extent it does not relate to any of the Works.</p> <p>Objection. Hearsay.</p> <p>Objection. Improper opinion/lack of foundation.</p> <p>Disputed to the extent PRO attempts to draw any inference from the fact that Ms. Marvelli was unaware of the information in question.</p>
<p>237. The NFPA and CBSC has a “zero dollar” contract under which NFPA grants CBSC a nonexclusive license to use and copy the National Electrical Code solely to create and publish the California Electrical Code. In exchange, CBSC grants NFPA “an exclusive, worldwide license to copy, print, publish, distribute and sell the Code and all Code Supplements . . . .” When asked at her deposition, Ms. Marvelli did not recall whether the NFPA established any method for distribution of the 2016 California Electrical Code in consultation with NFPA. Becker Decl. ¶ 3, Ex. 36 (Marvelli Depo.) at 107:11-23, 108:18-109:12, 134:19-135:17, Ex. 7 (agreement for 2016 triennial edition of California Electrical Code) at § 4.</p>	<p>Objection to the relevance of the development of California’s Building Standards Code. As explained in Plaintiffs’ briefing, PRO has staked its entire fair use argument on the incorporation by reference process the federal government—not any state—uses. Reply at Part I.A.1.a.</p> <p>Objection to the relevance of this statement to the extent it does not relate to any of the Works.</p> <p>Objection. Hearsay.</p> <p>Objection. Improper opinion/lack of foundation.</p> <p>Objection as incomplete. The cited provision reads, in full, “CBSC hereby grants NFPA an exclusive, worldwide license to copy, print, publish, distribute and sell the Code and all Code Supplements in accordance with the terms of this</p>

<p style="text-align: center;"><b>DEFENDANT’S SECOND SUPPLEMENTAL STATEMENT OF FACT</b></p>	<p style="text-align: center;"><b>PLAINTIFFS’ RESPONSE</b></p>
	<p>Agreement.” Wise Decl. II ¶ 12, Ex. 184 (Ex. 7 to Marvelli deposition).</p> <p>Disputed to the extent PRO attempts to draw any inference from the fact that Ms. Marvelli was unaware of the information in question.</p> <p>Disputed to the extent the statement suggests that the cited language is representative or has appeared in all contracts between NFPA and CBSC related to the California Electrical Code.</p>
<p>238. The contract with NFPA is subject to a noncompetitive bid coordination process. Becker Decl. ¶ 3, Ex. 36 (Marvelli Depo.) at 141:21-142:11, Ex. 9 (forms for 2016 triennial edition).</p>	<p>Objection to the relevance of the development of California’s Building Standards Code. As explained in Plaintiffs’ briefing, PRO has staked its entire fair use argument on the incorporation by reference process the federal government—not any state—uses. Reply at Part I.A.1.a.</p> <p>Objection to the relevance of this statement to the extent it does not relate to any of the Works.</p> <p>Objection. Hearsay.</p> <p>Disputed to the extent the statement suggests that this statement is representative of all contract negotiations between NFPA and CBSC related to the California Electrical Code.</p>
<p>239. The CBSC administers a web page with information about the part of Title 24 at the following URL: <a href="https://www.dgs.ca.gov/BSC/Codes">https://www.dgs.ca.gov/BSC/Codes</a>. But CBSC does not store an accessible version of the 2013, 2016, or 2019 triennial edition of the California Building Standards Code on the webpage. The CBSC webpage instead points to model code publisher in a section titles “Purchase the Codes”, listing the parts that are</p>	<p>Objection to the relevance of the development of California’s Building Standards Code. As explained in Plaintiffs’ briefing, PRO has staked its entire fair use argument on the incorporation by reference process the federal government—not any state—uses. Reply at Part I.A.1.a.</p> <p>Objection to the relevance of this statement to the extent it does not relate to any of the Works.</p>

<p align="center"><b>DEFENDANT’S SECOND SUPPLEMENTAL STATEMENT OF FACT</b></p>	<p align="center"><b>PLAINTIFFS’ RESPONSE</b></p>
<p>available through each publisher. The publisher of the 2016 edition of the California Electrical Code is BNi; for the 2019, it is NFPA. Becker Decl. ¶ 3, Ex. 36 (Marvelli Depo.) at 34:18-35:22, 37:1-23, 38:2-19, 51:16-52:2, 53:3-6, 54:9-12, 70:23-74:1, Ex. 84.</p>	<p>Objection. Hearsay.</p> <p>Disputed to the extent the statement suggests that the CBSC website’s only link to the codes is under a heading that reads “Purchase the Codes.” The website links to the codes higher up on the page under headings that list the edition (e.g., 2019 Triennial Edition of Title 24) and the Part (e.g., California Electrical Code). Wise Decl. II ¶ 11, Ex. 183 (Ex. 3 to Marvelli deposition).</p>
<p>240. CBSC has the practical ability to post a searchable PDF version of the 2016 California Electrical Code on its website, and it has done so in the past by “mistake.” Becker Decl. ¶ 3, Ex. 36 (Marvelli Depo.) at 99:22-102:4.</p>	<p>Objection to the relevance of the development of California’s Building Standards Code. As explained in Plaintiffs’ briefing, PRO has staked its entire fair use argument on the incorporation by reference process the federal government—not any state—uses. Reply at Part I.A.1.a.</p> <p>Objection to the relevance of this statement to the extent it does not relate to any of the Works.</p> <p>Objection. Hearsay.</p> <p>Disputed to the extent it suggests that CBSC could post a searchable PDF version of the 2016 California Electrical Code on its website without violating its contractual obligations or without infringing NFPA’s copyright.</p>
<p>241. The CBSC does not know whether the publisher provides full access to the text of the California Electrical Code without payment, or whether the publisher is a commercial actor or not. In addition, Ms. Marvelli did not know whether the online NFPA viewer could print, copy, or search the text of the 2019 version of the California Electrical Code. Nor did she know how many screenshots would be</p>	<p>Objection to the relevance of the development of California’s Building Standards Code. As explained in Plaintiffs’ briefing, PRO has staked its entire fair use argument on the incorporation by reference process the federal government—not any state—uses. Reply at Part I.A.1.a.</p> <p>Objection to the relevance of this statement</p>

<p style="text-align: center;"><b>DEFENDANT’S SECOND SUPPLEMENTAL STATEMENT OF FACT</b></p>	<p style="text-align: center;"><b>PLAINTIFFS’ RESPONSE</b></p>
<p>necessary to reproduce the entire California Electrical Code from the NFPA viewer. The CBSC has received calls where people have been unable to access the California Electrical Code, but it has no ability to fix the access issues and notifies the publisher of the issue. Ms. Marvelli had no knowledge of whether the NFPA had made any efforts to make the California Electrical Code available to print-disabled individuals, mobility-impaired individuals, or individuals who lack eyesight, and the CBSC has not taken steps to make the California Electrical Code available to these persons. Becker Decl. ¶ 3, Ex. 36 (Marvelli Depo.) at 56:8-57:20, 57:22-58:7, 58:24-61:19, 70:23-74:1, 82:10-17, 91:10-23, 136:23-138:2, Ex. 4; <i>see also id.</i> at 93:17-94:2, 95:14-98:1 (similarly, no knowledge of whether a person can print, copy, or search the text of the California Residential Code, Part 2.5 of Title 24, from the website of the publisher, International Code Council (ICC)).</p>	<p>to the extent it does not relate to any of the Works.</p> <p>Objection. Hearsay.</p> <p>Disputed. The cited reference does not support PRO’s claim that “CBSC does not know” any information. When asked whether “anybody in [Ms. Marvelli’s] office know[s] what BNi offers,” Ms. Marvelli responded “I don’t know that. I wouldn’t know that.” Becker Decl. ¶ 3, Ex. 36 (Marvelli Depo.) at 57:1-6.</p> <p>Disputed to the extent it suggests that any individual has been unable to access the California Electrical Code. Ms. Marvelli testified that she was not aware of anyone who wanted to access the California Electrical Code who was unable to do so. Becker Decl. ¶ 3, Ex. 36 (Marvelli Depo.) at 179:10-14.</p> <p>Disputed to the extent it suggests that any print-disabled individuals, mobility-impaired individuals, or individuals who lack eyesight have been unable to access the California Electrical Code or have requested that the CBSC make the California Electrical Code more accessible. Ms. Marvelli testified that she was not aware of any such individuals having difficulty accessing the California Electrical Code, nor was she aware of any requests for access from such individuals. Becker Decl. ¶ 3, Ex. 36 (Marvelli Depo.) at 137:19-21, 137:25-138:2, 179:21-180:17.</p> <p>Disputed to the extent PRO attempts to draw any inference from the fact that Ms. Marvelli was unaware of the information in question.</p>
<p>242. CBSC operates under a legal mandate requiring the publication of codes 180 days</p>	<p>Objection to the relevance of the development of California’s Building</p>

<p style="text-align: center;"><b>DEFENDANT’S SECOND SUPPLEMENTAL STATEMENT OF FACT</b></p>	<p style="text-align: center;"><b>PLAINTIFFS’ RESPONSE</b></p>
<p>prior to the effective. For instance, for the 2016 California Electrical Code, the publication date was required to be July 1, 2016. But, as of August 2, 2016, the California Electrical Code published by NFPA was not available for online access. Becker Decl. ¶ 3, Ex. 36 (Marvelli Depo.) at 131:3-134:8, Ex. 87.</p>	<p>Standards Code. As explained in Plaintiffs’ briefing, PRO has staked its entire fair use argument on the incorporation by reference process the federal government—not any state—uses. Reply at Part I.A.1.a.</p> <p>Objection to the relevance of this statement to the extent it does not relate to any of the Works.</p> <p>Objection. Hearsay. The statement’s assertion that the California Electrical Code was not available for online access is based on an email that the deponent did not send and was not even sure if she received. Becker Decl. ¶ 3, Ex. 36 (Marvelli Depo.) at 132:18-22. Both the deponent’s testimony and the underlying email are hearsay to the extent they are used for the truth of the matter asserted.</p> <p>Disputed. The deponent testified that she did not know whether the California Electrical Code was available for online access prior to August 1, 2016. Becker Decl. ¶ 3, Ex. 36 (Marvelli Depo.) at 132:6-8. When questioned about an email, she said that she read the email as indicating that CBSC did not yet have a link to the California Electrical Code on its website, not that the California Electrical Code was not available for online access on NFPA’s or some other website. <i>Id.</i> at 133:20-134:8. The deponent never stated nor implied that the California Electrical Code was not available for online access as of August 2, 2016. Further disputed that the 2016 California Electrical Code was “published by NFPA,” as acknowledged in 239, BNi published the 2016 California Electrical Code.</p>

Dated: December 23, 2019

Respectfully submitted,

/s/ J. Kevin Fee

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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

<p>AMERICAN SOCIETY FOR TESTING AND MATERIALS d/b/a ASTM INTERNATIONAL;</p> <p>NATIONAL FIRE PROTECTION ASSOCIATION, INC.; and</p> <p>AMERICAN SOCIETY OF HEATING, REFRIGERATING, AND AIR CONDITIONING ENGINEERS,</p> <p style="text-align: right;">Plaintiffs/ Counter-Defendants,</p> <p>v.</p> <p>PUBLIC.RESOURCE.ORG, INC.,</p> <p style="text-align: right;">Defendant/ Counter-Plaintiff.</p>	<p>Case No. 1:13-cv-01215-TSC</p>
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**PLAINTIFFS' THIRD SUPPLEMENTAL STATEMENT OF MATERIAL FACTS IN SUPPORT OF THEIR SECOND MOTION FOR SUMMARY JUDGMENT**

Pursuant to Local Rule 7(h), Plaintiffs American Society for Testing and Materials (“ASTM”), National Fire Protection Association, Inc. (“NFPA”) and American Society of Heating, Refrigerating, and Air Conditioning Engineers (“ASHRAE”) (collectively, “Plaintiffs”) hereby submit, in support of their Second Motion for Summary Judgment, this Third Supplemental Statement of Material Facts<sup>1</sup> as to which there is no genuine issue to be tried.

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<sup>1</sup> Plaintiffs filed an original Statement of Material Facts (Dkt. 118-2) (“SMF”), Supplemental Statement of Material Facts (Dkt. 155-1), and a Second Supplemental Statement of Material Facts (Dkt. 201). The facts contained in this Third Supplemental Statement of Material Facts are additional to the already-developed record. Plaintiffs also have relied on and cited to their prior statements of material facts in support of their Second Motion for Summary Judgment.



1. PRO stated that Exhibits 89 to 91 to the Supplemental Declaration of Matthew Becker “show[] the citation and text of at least one federal incorporation into the C.F.R. of each complete standard.” Opp. 8; *see also* Supplemental Declaration of Matthew Becker, previously filed at Dkt. 204-5 (“Supp. Becker Decl.”). As explained below, this is not accurate:

2. Exhibit 89 to the Supplemental Becker Declaration is titled “ASHRAE Editions Incorporated by Reference” and includes a chart listing each of the ASHRAE standards at issue, with a column for, *inter alia*, “C.F.R. Reference. Supp. Becker Decl. ¶ 57, Ex. 89. Though PRO posted ASHRAE’s standards in 2012, for three of the four identified works on Exhibit 89, PRO lists a C.F.R. reference from 2013 or later. *See id.*

3. Additionally, PRO’s chart does not actually demonstrate that the cited C.F.R. reference has any relation to large parts of the referenced works. Plaintiffs have prepared a chart that demonstrates this. *See Wise Decl. II ¶ 14, Ex. 186.* In short, the C.F.R. references that PRO provides in its chart relate to use of government funds to build new structures within the United States, yet the ASHRAE standards contain numerous non-prescriptive elements, including entire appendices of information related to how best to comply with the standards in foreign territories. *Id.* Plainly, those appendices (and other non-prescriptive elements in the ASHRAE standards) do not relate to the C.F.R. sections cited by PRO. Additionally, one of the ASHRAE works in question is a handbook that contains guidance related to compliance with ASHRAE standards, which was IBR’d to aid in compliance with other ASHRAE standards referenced in the same portions of the C.F.R. That handbook contains text pertaining to multiple ASHRAE standards, including those not IBR’d in that portion of the C.F.R., thus large portions of the handbook do not relate to the cited C.F.R. cite PRO provides. *Id.*

4. Exhibit 90 to the Supplemental Becker Declaration is titled “ASTM Editions Incorporated by Reference” and includes a chart listing each of the ASTM standards at issue, with columns for, *inter alia*, “C.F.R. Reference.” Supp. Becker Decl. ¶ 57, Ex. 90. For more than 20% of the ASTM Works (41 standards), Exhibit 90 identifies a citation to a provision of the C.F.R. that was not promulgated until after PRO posted the standards in 2012. Wise Decl. II ¶ 4, Ex. 176.

5. For approximately 30% of the ASTM Works (56 standards), Exhibit 90 identifies a citation to a provision of the C.F.R. that had been amended to eliminate reference to the ASTM Work at issue or to incorporate a different ASTM standard prior to the time PRO posted ASTM’s Works in 2012. *Id.*

6. Exhibit 91 to the Supplemental Becker Declaration is titled “NFPA Editions Incorporated by Reference” and includes a chart listing each of the NFPA standards at issue, with columns for, *inter alia*, “C.F.R. Reference.” Supp. Becker Decl. ¶ 58, Ex. 91. Plaintiffs have provided a chart that responds to each of the C.F.R. references that PRO identifies. *See* Wise Decl. II ¶ 3, Ex. 175.

7. As shown in Plaintiffs’ chart, Exhibit 91 does not contain any citation to a federal regulation that incorporates by reference four of the NFPA standards at issue. *See id.* (NFPA 1 (2003), NFPA 1 (2006), NFPA 54 (2006), NFPA 70 (2008)).

8. For the remaining 19 NFPA standards at issue, the federal regulations PRO identifies have no relevance to many portions of the standards. *See id.* For example, PRO’s Exhibit 91 identifies a regulation providing that “fixed extinguishing systems” must comply with NFPA 11 (2005), but that standard includes provisions related to fixed, semifixed, and portable systems—the standard’s provisions related to semifixed and portable systems are not necessary to complying with the regulation PRO identifies. *Id.* at 2; *see also generally* Supplemental

Declaration of James Pauley, previously filed at Dkt. 198-50, (“Supp. Pauley Decl.”) Ex. D (Dkt. 199, sealed). Similarly, Exhibit 91 identifies a regulation that requires veterans’ cemeteries to meet the architectural and structural requirements of NFPA 101 (2003); that regulation does not require compliance with the standard’s provisions related to one- and two-family dwellings, not to mention day-care occupancies, educational occupancies, industrial occupancies (or numerous others). Wise Decl. II ¶ 3, Ex. 175 at 19; *see also generally* Supp. Pauley Decl. Ex. T (Dkt. 199, sealed).

9. 164 of the 191 ASTM standards at issue are available for free read-only access on ASTM’s website; with respect to the remaining 27 ASTM standards at issue, ASTM is not aware of any regulation that has incorporated those standards by reference and PRO has not identified any. Declaration of Thomas O’Brien, previously filed at Dkt. 118-7, ¶ 60; Declaration of Jane Wise, previously filed at Dkt. 198-5, ¶ 157, Ex. 156. Each of the 23 NFPA standards at issue in this litigation is available for free read-only access on NFPA’s website. Supp. Pauley Decl. ¶¶ 40-41. Each of the 3 ASHRAE standards at issue in this litigation is available for free read-only access on ASHRAE’s website. Declaration of Stephanie Reiniche, previously filed at Dkt. 118-10, ¶ 19.

10. In at least eleven instances, PRO’s Internet Archive postings continue to display the ASTM Logo. Wise Decl. II ¶ 5, Ex. 177.

Dated: December 23, 2019

Respectfully submitted,

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# **Exhibit 176**

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM A106 / A106 M	2004b	Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service	49 C.F.R. § 192.7 (2010)	2011	<p>49 C.F.R. § 192.7, "What documents are incorporated by reference partly or wholly in this part?" (2010):</p> <p>(a) Any documents or portions thereof incorporated by reference in this part are included in this part as though set out in full. When only a portion of a document is referenced, the remainder is not incorporated in this part.</p> <p>(b) All incorporated materials are available for inspection in the Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001, 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: <a href="http://www.archives.gov/federalregister/codeofregulations/ilmllocations.html">http://www.archives.gov/federalregister/codeofregulations/ilmllocations.html</a>. These materials have been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. In addition, the incorporated materials are available from the respective organizations listed in paragraph (c) (1) of this section.</p> <p>...</p> <p>(c) (1) Incorporated by reference (IBR). List of Organizations and Addresses:</p> <p>...</p> <p>C. American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428.</p> <p>...</p> <p>(c)(2) Documents incorporated by reference.</p> <p>...</p> <p>C. American Society for Testing and Materials (ASTM):</p> <p>...</p> <p>(2) ASTM A106/A106M-04b (2004) "Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service."</p> <p>§§ 192.113; Item 1, Appendix B.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

<sup>1</sup> ASTM has only included Works listed in Appendix A that are the subject of the Parties' motions. ECF No. 198-2, ECF No. 202.  
<sup>2</sup> Where the ASTM standard referenced in the quoted C.F.R. language differs from the version of the ASTM standard that PRO reproduced and displayed, ASTM has highlighted and bolded that language.

<sup>3</sup> PRO does not do any analysis of the cited federal regulations that would illuminate which, if any, portions of the standard PRO considers "necessary to comply with [a] legal duty." *ASTM II*, 896 F.3d at 450, nor does it address Plaintiffs' analysis of these regulations, see Dkt. 199-2 at ¶¶ 45-56, which is expressly incorporated herein. Indeed, it seems unlikely that PRO could meet this burden (which is presumably why it did not try).

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM A184	1979	Standard Specification for Fabricated Deformed Steel Bar Mats for Concrete Reinforcement	24 C.F.R. (Parts 200 to 499) (2005)	2009	<p>24 C.F.R. (Parts 200 to 499), "Minimum Property Standards for Care-Type Housing" (2005):</p> <p>The following publications are incorporated by reference in the HUD Minimum Property Standards (MPS) in 24 CFR part 200, subpart S. The MPS are available for public inspection and can be for ppropriate [sic] use at 490 L'Enfant Plaza East, Suite 3214, or at each HUD Regional, Area, and Service Office. Copies are available for inspection at the Office of the Federal Register, 800 North Street, NW, suite 700, Washington, DC. The individual standards referenced in the MPS are available at the address contained in the following table. They are also available for public inspection at HUD, Manufactured Housing and Construction Standards Division, Suite 3214, 490 L'Enfant Plaza East, Washington, DC 20024.</p> <p>...</p> <p>American Society for Testing and Materials 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, Telephone (610) 832-9585, FAX (610) 832-9555</p> <p>...</p> <p>ASTM A 184-79 Fabricated Deformed Steel Bar Mats for Concrete Reinforcement; Part 200, Subpart S</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>Moreover, 24 C.F.R. (Parts 200 to 499) contains a non-substantive list of standards incorporated by reference. Each entry on this list references a substantive regulation—here, 24 C.F.R. Part 200, Subpart S. But 24 C.F.R. Part 200, Subpart S does not refer to A184-79. This underscores the fact that PRO has not analyzed the substantive regulations at issue.</p>
ASTM A185	1979	Standard Specification for Welded Steel Wire Fabric for Concrete Reinforcement	24 C.F.R. (Parts 200 to 499) (2005)	2009	<p>24 C.F.R. (Parts 200 to 499), "Minimum Property Standards for Care-Type Housing" (2005):</p> <p>The following publications are incorporated by reference in the HUD Minimum Property Standards (MPS) in 24 CFR part 200, subpart S. The MPS are available for public inspection and can be obtained for ppropriate [sic] use at 490 L'Enfant Plaza East, Suite 3214, or at each HUD Regional, Area, and Service Office. Copies are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC. The individual standards referenced in the MPS are available at the address contained in the following table. They are also available for public inspection at the HUD, Manufactured Housing and Construction Standards Division, Suite 3214, 490 L'Enfant Plaza East, Washington, DC 20024.</p> <p>...</p> <p>American Society for Testing and Materials 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, Telephone (610) 832-9585, FAX (610) 832-9555</p> <p>...</p> <p>ASTM A 185-79 Welded Steel Wire Fabric for Concrete Reinforcement; Part 200, Subpart S</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>Moreover, 24 C.F.R. (Parts 200 to 499) contains a non-substantive list of standards incorporated by reference. Each entry on this list references a substantive regulation—here, 24 C.F.R. Part 200, Subpart S. But 24 C.F.R. Part 200, Subpart S does not refer to A185-79. This underscores the fact that PRO has not analyzed the substantive regulations at issue.</p>



No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM A203 / A203M	1997	Standard Specification for Pressure Vessel Plates, Alloy Steel, Nickel	46 C.F.R. § 54.01-1 (2010)	2013	<p>46 C.F.R. § 54.01-1, "Incorporation by Reference" (2010):</p> <p>(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 <a href="http://www.archives.gov/federalregister/codeofregulations/thrllocations.html">http://www.archives.gov/federalregister/codeofregulations/thrllocations.html</a>. The material is also available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG-521), 2100 2nd St. SW., Stop 7126, Washington, DC 20593-7126, and is available from the sources listed below.</p> <p>...</p> <p>(c) ASTM International (formerly American Society for Testing and Materials) (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959</p> <p>...(2) ASTM A 203/A 203M-97, Standard Specification for Pressure Vessel Plates, Alloy Steel, Nickel ("ASTM A 203"), 54.05-20</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by mandate and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>
ASTM A242	1979	Standard Specification for High-Strength Low-Alloy Structural Steel	24 C.F.R. (Parts 200 to 499) (2005)	2009	<p>24 C.F.R. (Parts 200 to 499), "Minimum Property Standards for Care-Type Housing" (2005):</p> <p>The following publications are incorporated by reference in the HUD Minimum Property Standards (MPS) in 24 CFR part 200, subpart S. The MPS are available for public inspection and can be obtained for appropriate [sic] use at 490 L'Enfant Plaza East, Suite 3214, or at each HUD Regional, Area, and Service Office. Copies are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC. The individual standards referenced in the MPS are available at the address contained in the following table. They are also available for public inspection at HUD, Manufactured Housing and Construction Standards Division, Suite 3214, 490 L'Enfant Plaza East, Washington, DC 20024.</p> <p>...</p> <p>American Society for Testing and Materials 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, Telephone (610) 832-9585, FAX (610) 832-9555</p> <p>...</p> <p>ASTM A 242-79 High-Strength Low-Alloy Structural Steel; Part 200, Subpart S</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by mandate and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>Moreover, 24 C.F.R. (Parts 200 to 499) contains a non-substantive list of standards incorporated by reference. Each entry on this list references a substantive regulation—here, 24 C.F.R. Part 200, Subpart S. But 24 C.F.R. Part 200, Subpart S does not refer to A242-79. This underscores the fact that PRO has not analyzed the substantive regulations at issue.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM A285	1978	Standard Specification for Pressure Vessel Plates, Carbon Steel, Low- and Intermediate-Tensile Strength	49 C.F.R. § 171.7 (2009)	2009	<p>49 C.F.R. § 171.7, "Reference Material" (2009):</p> <p>(a) Matter incorporated by reference—</p> <p>(1) General. There is incorporated, by reference in parts 170-189 of this subchapter, matter referred to that is not specifically set forth. This matter is hereby made a part of the regulations in parts 170-189 of this subchapter. The matter subject to change is incorporated only as it is in effect on the date of issuance of the regulation referring to that matter. The material listed in paragraph (a)(3) has been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.O. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval and a notice of any change in the material will be published in the FEDERAL REGISTER. Matters referenced by footnote are included as part of the regulations of this subchapter.</p> <p>(2) Accessibility of materials. All incorporated matter is available for inspection at: (i) The Office of Hazardous Materials Safety, Office of Hazardous Materials Standards, East Building, PHH-10, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001. For information on the availability of this material at PHH-10, call 1-800-467-4922, or go to: <a href="http://www.phmsa.dot.gov">http://www.phmsa.dot.gov</a>; and (ii) The National Archives and Records Administration to (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <a href="http://www.archives.gov/federalregister/codeofregulations/ibr/locations.html">http://www.archives.gov/federalregister/codeofregulations/ibr/locations.html</a> (3) Table of material incorporated by reference. The following table sets forth material incorporated by reference. The first column lists the name and address of the organization from which the material is available and the name of the material. The second column lists the section(s) of this subchapter, other than § 171.7, in which the matter is referenced. The second column is presented for information only and may not be all inclusive.</p> <p>...</p> <p>American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 1942, telephone (610) 832-9585, <a href="http://www.astm.org">http://www.astm.org</a>: Noncurrent ASTM Standards are available from:</p> <p>Engineering Societies Library, 354 East 47th Street, New York, NY 10017</p> <p>...</p> <p>ASTM A 285-78 Pressure Vessel Plates, Carbon Steel, Low- and Intermediate-Tensile Strength (179,300-7)</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM A307	1978c	Standard Specification for Carbon Steel Externally Threaded Standard Fasteners	24 C.F.R. (Parts 200 to 499) (2005)	2009	<p>24 C.F.R. (Parts 200 to 499), "Minimum Property Standards for Care-Type Housing" (2005):</p> <p>The following publications are incorporated by reference in the HUD Minimum Property Standards (MPS) in 24 CFR part 200, subpart S. The MPS are available for public inspection and can be obtained for appropriate [sic] use at 490 L'Enfant Plaza East, Suite 3214, or at each HUD Regional, Area, and Service Office. Copies are available for inspection at the Office of the Federal Register, 800 North Capital Street, NW, suite 700, Washington, DC. The individual standards referenced in the MPS are available at the address contained in the following table. They are also available for public inspection at Ile HUD, Manufactured Housing and Construction Standards Division, Suite 3214, 490 L'Enfant Plaza East, Washington, DC 20024.</p> <p>...</p> <p>American Society for Testing and Materials 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, Telephone (610) 832-9585, FAX (610) 832-9555</p> <p>...</p> <p><b>ASTM A 307-78</b> Carbon Steel Externally Threaded Standard Fasteners; Part 200, Subpart S</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM/II</i>, 896 F.3d at 450–51.</p> <p>Moreover, 24 C.F.R. (Parts 200 to 499) contains a non-substantive list of standards incorporated by reference. Each entry on this list references a substantive regulation—here, 24 C.F.R. Part 200, Subpart S. But 24 C.F.R. Part 200, Subpart S does not refer to A307-78c. This underscores the fact that PRO has not analyzed the substantive regulations at issue.</p> <p>Finally, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM A325	1979	Standard Specification for High-Strength Bolts for Structural Steel Joints	24 C.F.R. (Parts 200 to 499) (2005)	2009	<p>24 C.F.R. (Parts 200 to 499), "Minimum Property Standards for Care-Type Housing" (2005):</p> <p>The following publications are incorporated by reference in the HUD Minimum Property Standards (MPS) in 24 CFR part 200, subpart S. The MPS are available for public inspection and can be obtained for appropriate [sic] use at 490 L'Enfant Plaza East, Suite 3214, or at each HUD Regional, Area, and Service Office. Copies are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC. The individual standards referenced in the MPS are available at the address contained in the following table. They are also available for public inspection at the HUD, Manufactured Housing and Construction Standards Division, Suite 3214, 490 L'Enfant Plaza East, Washington, DC 20024.</p> <p>...</p> <p>American Society for Testing and Materials 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, Telephone (610) 832-9585, FAX (610) 832-9555</p> <p>...</p> <p>ASTM A 325-79 High Strength Bolts for Structural Steel Joints; Part 200, Subpart S</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>Moreover, 24 C.F.R. (Parts 200 to 499) contains a non-substantive list of standards incorporated by reference. Each entry on this list references a substantive regulation—here, 24 C.F.R. Part 200, Subpart S. But 24 C.F.R. Part 200, Subpart S does not refer to A325-79. This underscores the fact that PRO has not analyzed the substantive regulations at issue.</p>
ASTM A333/A333M	1994	Standard Specification for Seamless and Welded Steel Pipe for Low-Temperature Service	46 C.F.R. § 56.01-2 (2011)		<p>46 C.F.R. § 56.01-2, "Incorporation by Reference" (2011):</p> <p>(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 <a href="http://www.archives.gov/federalregister/codeofregulations/fbrlocations.html">http://www.archives.gov/federalregister/codeofregulations/fbrlocations.html</a>. The material is also available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG-521), 2100 2nd St, SW., Stop 7126, Washington, DC 20593-7126, and is available from the sources listed below.</p> <p>...</p> <p>(e) ASTM International (formerly American Society for Testing and Materials) (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959</p> <p>...</p> <p>(25) ASTM A 333/A 333M-94, Standard Specification for Seamless and Welded Steel Pipe for Low-Temperature Service ("ASTM A-333" or "ASTM A 333"), 56.50-105; 56.60-1.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM A36	1977 <sup>ae</sup>	Standard Specification for Structural Steel	24 C.F.R. (Parts 200 to 499) (2005)	2009	<p>24 C.F.R. (Parts 200 to 499), "Minimum Property Standards for Care-Type Housing" (2005):</p> <p>The following publications are incorporated by reference in the HUD Minimum Property Standards (MPS) in 24 CFR part 200, subpart S. The MPS are available for public inspection and can be obtained for appropriate [sic] use at 490 L'Enfant Plaza East, Suite 3214, or at each HUD Regional, Area, and Service Office. Copies are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC. The individual standards referenced in the MPS are available at the address contained in the following table. They are also available for public inspection at the HUD, Manufactured Housing and Construction Standards Division, Suite 3214, 490 L'Enfant Plaza East, Washington, DC 20024.</p> <p>...</p> <p>American Society for Testing and Materials 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, Telephone (610) 832-9585, FAX (610) 832-9555</p> <p>...</p> <p><b>ASTM A 36-77a</b> Structural Steel; Part 200, Subpart S</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM/II</i>, 896 F.3d at 450–51.</p> <p>Moreover, 24 C.F.R. (Parts 200 to 499) contains a non-substantive list of standards incorporated by reference. Each entry on this list references a substantive regulation—here, 24 C.F.R. Part 200, Subpart S. But 24 C.F.R. Part 200, Subpart S does not refer to A307-78c. This underscores the fact that PRO has not analyzed the substantive regulations at issue.</p> <p>Finally, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM A36 / A36M	1997ae1	Standard Specification for Carbon Structural Steel	46 C.F.R. § 56.01-2 (2011)		<p>46 C.F.R. § 56.01-2, "Incorporation by Reference" (2011):</p> <p>(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 <a href="http://www.archives.gov/federalregister/codeofregulations/ibr/locations.html">http://www.archives.gov/federalregister/codeofregulations/ibr/locations.html</a>. The material is also available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG-521), 2100 2nd St, SW., Stop 7126, Washington, DC 20593-7126, and is available from the sources listed below.</p> <p>...</p> <p>(e) ASTM International (formerly American Society for Testing and Materials) (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959</p> <p>...</p> <p>(1) <b>ASTM A 36/A 36M-97a</b>, Standard Specification for Carbon Structural Steel ("ASTM A 36"), 56.30-10.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by mandate and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>
ASTM A369 / A369M	1992	Standard Specification for Carbon and Ferritic Alloy Steel Forged and Bored Pipe for High-Temperature Service	46 C.F.R. § 56.01-2 (2011)		<p>46 C.F.R. § 56.01-2, "Incorporation by Reference" (2011):</p> <p>(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 <a href="http://www.archives.gov/federalregister/codeofregulations/ibr/locations.html">http://www.archives.gov/federalregister/codeofregulations/ibr/locations.html</a>. The material is also available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG-521), 2100 2nd St, SW., Stop 7126, Washington, DC 20593-7126, and is available from the sources listed below.</p> <p>...</p> <p>(e) ASTM International (formerly American Society for Testing and Materials) (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959</p> <p>...</p> <p>(32) ASTM A 369/A 369M-92, Standard Specification for Carbon and Ferritic Alloy Steel Forged and Bored Pipe for High-Temperature Service ("ASTM A 369"), 56.60-1.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by mandate and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM A370	1977e2	Standard Methods and Definitions for Mechanical Testing of Steel Products	46 C.F.R. § 56.01-1 (1997)		<p>46 C.F.R. § 56.01-1, "Incorporation by Reference" (1997):</p> <p>(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the FEDERAL REGISTER and make the material available to the public. All approved material is on file at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC, and at the U.S. Coast Guard, Office of Design and Engineering Standards (G—MSE), 2100 Second Sheet SW., Washington, DC 20593-0001 and is available from the sources indicated in paragraph (b) of this section.</p> <p>(b) The material approved for incorporation by reference in this part and the sections affected are:</p> <p>...</p> <p>American Society for Testing and Materials (ASTM) 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959.</p> <p>...</p> <p><b>ASTM A-370, Mechanical Testing of Steel Products, 1977 54.25-20</b></p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by mandate and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM/II</i>, 896 F.3d at 450–51.</p> <p>Moreover, PRO's quoted language does not accurately reflect the text of 46 C.F.R. § 56.01-1 (1997), which does not IBR A370-77e2. See Wise Decl. II ¶ 6, Ex. 178.</p> <p>Finally, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>
ASTM A441	1979	Standard Specification for High-Strength Low-Alloy Structural Manganese Vanadium Steel	24 C.F.R. (Parts 200 to 499) (2005)	2009	<p>24 C.F.R. (Parts 200 to 499), "Minimum Property Standards for Care-Type Housing" (2005):</p> <p>The following publications are incorporated by reference in the HUD Minimum Property Standards (MPS) in 24 CFR part 200, subpart S. The MPS are available for public inspection and can be obtained for appropriate [sic] use at 490 L'Enfant Plaza East, Suite 3214, or at each HUD Regional, Area, and Service Office. Copies are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC. The individual standards referenced in the MPS are available at the address contained in the following table. They are also available for public inspection at HUD, Manufactured Housing and Construction Standards Division, Suite 3214, 490 L'Enfant Plaza East, Washington, DC 20024.</p> <p>...</p> <p>American Society for Testing and Materials 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, Telephone (610) 832-9585, FAX (610) 832-9555</p> <p>...</p> <p>ASTM A 441-79 High-Strength Low-Alloy Structural Manganese Vanadium Steel; Part 200, Subpart S</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM/II</i>, 896 F.3d at 450–51.</p> <p>Moreover, 24 C.F.R. (Parts 200 to 499) contains a non-substantive list of standards incorporated by reference. Each entry on this list references a substantive regulation—here, 24 C.F.R. Part 200, Subpart S. But 24 C.F.R. Part 200, Subpart S does not refer to A441-79. This underscores the fact that PRO has not analyzed the substantive regulations at issue.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM A449	1978a	Standard Specification for Quenched and Tempered Steel Bolts and Studs	24 C.F.R. (Parts 200 to 499) (2005)	2009	<p>24 C.F.R. (Parts 200 to 499), "Minimum Property Standards for Care-Type Housing" (2005):</p> <p>The following publications are incorporated by reference in the HUD Minimum Property Standards (MPS) in 24 CFR part 200, subpart S. The MPS are available for public inspection and can be obtained for appropriate [sic] use at 490 L'Enfant Plaza East, Suite 3214, or at each HUD Regional, Area, and Service Office. Copies are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC. The individual standards referenced in the MPS are available at the address contained in the following table. They are also available for public inspection at the HUD, Manufactured Housing and Construction Standards Division, Suite 3214, 490 L'Enfant Plaza East, Washington, DC 20024.</p> <p>...</p> <p>American Society for Testing and Materials 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, Telephone (610) 832-9585, FAX (610) 832-9555</p> <p>...</p> <p>ASTM A 449-78a Quenched and Tempered Steel Bolts and Studs; Part 200, Subpart S</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>Moreover, 24 C.F.R. (Parts 200 to 499) contains a non-substantive list of standards incorporated by reference. Each entry on this list references a substantive regulation—here, 24 C.F.R. Part 200, Subpart S. But 24 C.F.R. Part 200, Subpart S does not refer to A449-78a. This underscores the fact that PRO has not analyzed the substantive regulations at issue.</p>
ASTM A475	1978 (1984) e1	Standard Specification for Zinc-Coated Steel Wire Strand	7 C.F.R. § 1755.370 (1999)		<p>7 C.F.R. § 1755.370 RUS specification for seven wire galvanized steel strand (1999):</p> <p>(a) RUS incorporates by reference <b>ASTM A475-78</b>, Standard Specification for Zinc-Coated Steel Wire Strand, issued May 1978. All seven wire galvanized steel strand purchased after April 1, 1990 for use on telecommunications systems financed by RUS loan funds must conform to this standard. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 on January 19, 1990). Copies of <b>ASTM A475-78</b> are available for inspection during normal business hours at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC, and at the Rural Utilities Service, Administrative Services Division, room 0175-5, U.S. Department of Agriculture, Washington, DC 20250, telephone 202-382-9551.</p> <p>Copies are available from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103, telephone 215-299-5400.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>



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ASTM A490	1979	Standard Specification for Quenched and Tempered Alloy Steel Bolts for Structural Steel Joints	24 C.F.R. (Parts 200 to 499) (2005)	2009	<p>24 C.F.R. (Parts 200 to 499), "Minimum Property Standards for Care-Type Housing" (2005):</p> <p>The following publications are incorporated by reference in the HUD Minimum Property Standards (MPS) in 24 CFR part 200, subpart S. The MPS are available for public inspection and can be obtained for appropriate [sic] use at 490 L'Enfant Plaza East, Suite 3214, or at each HUD Regional, Area, and Service Office. Copies are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC. The individual standards referenced in the MPS are available at the address contained in the following table. They are also available for public inspection at the HUD, Manufactured Housing and Construction Standards Division, Suite 3214, 490 L'Enfant Plaza East, Washington, DC 20024.</p> <p>...</p> <p>American Society for Testing and Materials 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, Telephone (610) 832-9585, FAX (610) 832-9555</p> <p>...</p> <p>ASTM A 490-79 Quenched and Tempered Alloy Steel Bolts for Structural Steel Joints; Part 200, Subpart S</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>Moreover, 24 C.F.R. (Parts 200 to 499) contains a non-substantive list of standards incorporated by reference. Each entry on this list references a substantive regulation—here, 24 C.F.R. Part 200, Subpart S. But 24 C.F.R. Part 200, Subpart S does not refer to A490-79. This underscores the fact that PRO has not analyzed the substantive regulations at issue.</p>
ASTM A496	1978	Standard Specification for Deformed Steel Wire for Concrete Reinforcement	24 C.F.R. (Parts 200 to 499) (2005)	2009	<p>24 C.F.R. (Parts 200 to 499), "Minimum Property Standards for Care-Type Housing" (2005):</p> <p>The following publications are incorporated by reference in the HUD Minimum Property Standards (MPS) in 24 CFR part 200, subpart S. The MPS are available for public inspection and can be obtained for appropriate [sic] use at 490 L'Enfant Plaza East, Suite 3214, or at each HUD Regional, Area, and Service Office. Copies are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC. The individual standards referenced in the MPS are available at the address contained in the following table. They are also available for public inspection at the HUD, Manufactured Housing and Construction Standards Division, Suite 3214, 490 L'Enfant Plaza East, Washington, DC 20024.</p> <p>...</p> <p>American Society for Testing and Materials 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, Telephone (610) 832-9585, FAX (610) 832-9555</p> <p>...</p> <p>ASTM A 496-78 Deformed Steel Wire for Concrete Reinforcement; Part 200, Subpart S</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>Moreover, 24 C.F.R. (Parts 200 to 499) contains a non-substantive list of standards incorporated by reference. Each entry on this list references a substantive regulation—here, 24 C.F.R. Part 200, Subpart S. But 24 C.F.R. Part 200, Subpart S does not refer to A496-78. This underscores the fact that PRO has not analyzed the substantive regulations at issue.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM A497	1979	Standard Specification for Welded Deformed Steel Wire Fabric for Concrete Reinforcement	24 C.F.R. (Parts 200 to 499) (2005)	2009	<p>24 C.F.R. (Parts 200 to 499), "Minimum Property Standards for Care-Type Housing" (2005):</p> <p>The following publications are incorporated by reference in the HUD Minimum Property Standards (MPS) in 24 CFR part 200, subpart S. The MPS are available for public inspection and can be obtained for appropriate [sic] use at 490 L'Enfant Plaza East, Suite 3214, or at each HUD Regional, Area, and Service Office. Copies are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC. The individual standards referenced in the MPS are available at the address contained in the following table. They are also available for public inspection at the HUD, Manufactured Housing and Construction Standards Division, Suite 3214, 490 L'Enfant Plaza East, Washington, DC 20024.</p> <p>...</p> <p>American Society for Testing and Materials 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, Telephone (610) 832-9585, FAX (610) 832-9555</p> <p>...</p> <p>ASTM A 497-79 Welded Deformed Steel Wire, Fabric for Concrete Reinforcement; Part 200, Subpart S</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by mandate and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>Moreover, 24 C.F.R. (Parts 200 to 499) contains a non-substantive list of standards incorporated by reference. Each entry on this list references a substantive regulation—here, 24 C.F.R. Part 200, Subpart S. But 24 C.F.R. Part 200, Subpart S does not refer to A497-79. This underscores the fact that PRO has not analyzed the substantive regulations at issue.</p>
ASTM 500	1978	Standard Specification for Cold-Formed Welded and Seamless Carbon Steel Structural Tubing in Rounds and Shapes	24 C.F.R. (Parts 200 to 499) (2005)	2009	<p>24 C.F.R. (Parts 200 to 499), "Minimum Property Standards for Care-Type Housing" (2005):</p> <p>The following publications are incorporated by reference in the HUD Minimum Property Standards (MPS) in 24 CFR part 200, subpart S. The MPS are available for public inspection and can be obtained for appropriate [sic] use at 490 L'Enfant Plaza East, Suite 3214, or at each HUD Regional, Area, and Service Office. Copies are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC. The individual standards referenced in the MPS are available at the address contained in the following table. They are also available for public inspection at the HUD, Manufactured Housing and Construction Standards Division, Suite 3214, 490 L'Enfant Plaza East, Washington, DC 20024.</p> <p>...</p> <p>American Society for Testing and Materials 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, Telephone (610) 832-9585, FAX (610) 832-9555</p> <p>...</p> <p>ASTM A 500-78 Cold-Formed Welded and Seamless Carbon Steel Structural Tubing in Rounds and Shapes; Part 200, Subpart S</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by mandate and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>Moreover, 24 C.F.R. (Parts 200 to 499) contains a non-substantive list of standards incorporated by reference. Each entry on this list references a substantive regulation—here, 24 C.F.R. Part 200, Subpart S. But 24 C.F.R. Part 200, Subpart S does not refer to A500-78. This underscores the fact that PRO has not analyzed the substantive regulations at issue.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM A501	1976	Standard Specification for Hot-Formed Welded and Seamless Carbon Steel Structural Tubing	24 C.F.R. (Parts 200 to 499) (2005)	2009	<p>24 C.F.R. (Parts 200 to 499), "Minimum Property Standards for Care-Type Housing" (2005):</p> <p>The following publications are incorporated by reference in the HUD Minimum Property Standards (MPS) in 24 CFR part 200, subpart S. The MPS are available for public inspection and can be obtained for appropriate [sic] use at 490 L'Enfant Plaza East, Suite 3214, or at each HUD Regional, Area, and Service Office. Copies are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC. The individual standards referenced in the MPS are available at the address contained in the following table. They are also available for public inspection at the HUD, Manufactured Housing and Construction Standards Division, Suite 3214, 490 L'Enfant Plaza East, Washington, DC 20024.</p> <p>...</p> <p>American Society for Testing and Materials 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, Telephone (610) 832-9585, FAX (610) 832-9555</p> <p>...</p> <p>ASTM A 501-76 Hot-Formed Welded and Seamless Carbon Steel Structural Tubing; Part 200, Subpart S</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>Moreover, 24 C.F.R. (Parts 200 to 499) contains a non-substantive list of standards incorporated by reference. Each entry on this list references a substantive regulation—here, 24 C.F.R. Part 200, Subpart S. But 24 C.F.R. Part 200, Subpart S does not refer to A501-76. This underscores the fact that PRO has not analyzed the substantive regulations at issue.</p>
ASTM A502	1976	Standard Specification for Steel Structural Rivets	24 C.F.R. (Parts 200 to 499) (2005)	2009	<p>24 C.F.R. (Parts 200 to 499), "Minimum Property Standards for Care-Type Housing" (2005):</p> <p>The following publications are incorporated by reference in the HUD Minimum Property Standards (MPS) in 24 CFR part 200, subpart S. The MPS are available for public inspection and can be obtained for appropriate [sic] use at 490 L'Enfant Plaza East, Suite 3214, or at each HUD Regional, Area, and Service Office. Copies are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC. The individual standards referenced in the MPS are available at the address contained in the following table. They are also available for public inspection at the HUD, Manufactured Housing and Construction Standards Division, Suite 3214, 490 L'Enfant Plaza East, Washington, DC 20024.</p> <p>...</p> <p>American Society for Testing and Materials 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, Telephone (610) 832-9585, FAX (610) 832-9555</p> <p>...</p> <p>ASTM A 502-76 Steel Structural Rivets; Part 200, Subpart S</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>Moreover, 24 C.F.R. (Parts 200 to 499) contains a non-substantive list of standards incorporated by reference. Each entry on this list references a substantive regulation—here, 24 C.F.R. Part 200, Subpart S. But 24 C.F.R. Part 200, Subpart S does not refer to A502-76. This underscores the fact that PRO has not analyzed the substantive regulations at issue.</p>

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ASTM A514	1977	Standard Specification for High-Yield Strength, Quenched and Tempered Alloy Steel Plate, Suitable for Welding	24 C.F.R. (Parts 200 to 499) (2005)	2009	<p>24 C.F.R. (Parts 200 to 499), "Minimum Property Standards for Care-Type Housing" (2005):</p> <p>The following publications are incorporated by reference in the HUD Minimum Property Standards (MPS) in 24 CFR part 200, subpart S. The MPS are available for public inspection and can be obtained for appropriate [sic] use at 490 L'Enfant Plaza East, Suite 3214, or at each HUD Regional, Area, and Service Office. Copies are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC. The individual standards referenced in the MPS are available at the address contained in the following table. They are also available for public inspection at the HUD, Manufactured Housing and Construction Standards Division, Suite 3214, 490 L'Enfant Plaza East, Washington, DC 20024.</p> <p>...</p> <p>American Society for Testing and Materials 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, Telephone (610) 832-9585, FAX (610) 832-9555</p> <p>...</p> <p>ASTM A 514-77 High-Yield Strength, Quenched and Tempered Alloy Steel Plate, Suitable for Welding; Part 200, Subpart S</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by mandate and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>Moreover, 24 C.F.R. (Parts 200 to 499) contains a non-substantive list of standards incorporated by reference. Each entry on this list references a substantive regulation—here, 24 C.F.R. Part 200, Subpart S. But 24 C.F.R. Part 200, Subpart S does not refer to A514-77. This underscores the fact that PRO has not analyzed the substantive regulations at issue.</p>
ASTM A522 / A522M	1995b	Standard Specification for Forged or Rolled 8 and 9 % Nickel Alloy Steel Flanges, Fittings, Valves, and Parts for Low-Temperature Service	46 C.F.R. § 56.01-2 (2011)		<p>46 C.F.R. § 56.01-2, "Incorporation by Reference" (2011):</p> <p>(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 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 <a href="http://www.archives.gov/federalregister/codeofregulations/">http://www.archives.gov/federalregister/codeofregulations/</a>ibr/locations.html. The material is also available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG-521), 2100 2nd St, SW., Stop 7126, Washington, DC 20593-7126, and is available from the sources listed below.</p> <p>...</p> <p>(c) ASTM International (formerly American Society for Testing and Materials) (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959</p> <p>...</p> <p>(38) ASTM A 522/A 522M-95b, Standard Specification for Forged or Rolled 8 and 9% Nickel Alloy Steel Flanges, Fittings, Valves, and Parts for Low-Temperature Service ("ASTM A-522"), 56.50-105.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by mandate and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM A539	1990a	Standard Specification for Electric-Resistance-Welded Coiled Steel Tubing for Gas and Fuel Oil Lines	24 C.F.R. § 3280.4 (2004)	2007	<p>24 C.F.R. § 3280.4, "Incorporation by Reference" (2004):</p> <p>a) The specifications, standards and codes of the following organizations are incorporated by reference in 24 CFR part 3280 (this Standard) pursuant to 5 U.S.C. 552(a) and 1 CFR part 51 as though set forth in full. The incorporation by reference of these standards has been approved by the Director of the Federal Register. Reference standards have the same force and effect as this Standard (24 CFR part 3280) except that whenever reference standards and this Standard are inconsistent, the requirements of this Standard prevail to the extent of the inconsistency.</p> <p>(b) The abbreviations and addresses of organizations issuing the referenced standards appear below. Reference standards which are not available from their producer organizations may be obtained from the Office of Manufactured Housing and Regulatory Functions, Manufactured Housing and Construction Standards Division, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW room B-133 Washington, DC 20410.</p> <p>ASTM—AMERICAN SOCIETY FOR TESTING AND MATERIALS, 1916 RACE STREET, PHILADELPHIA, PENNSYLVANIA 19103</p> <p>...</p> <p>3280.703, "Minimum Standards":</p> <p>Heating, cooling and fuel burning appliances and systems in manufactured homes shall be free of defects, and shall conform to applicable standards in the following table unless otherwise specified in this standard. (See § 3280.4) When more than one standard is referenced, compliance with any one such standard shall meet the requirements of this standard.</p> <p>STANDARD SPECIFICATION FOR ELECTRIC-RESISTANCE-WELDED COILED STEEL TUBING FOR GAS AND FUEL OIL LINES—*ASTM A539-90A.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM A570	1979	Standard Specification for Hot-Rolled Carbon Steel Sheet and Strip, Structural Quality	24 C.F.R. (Parts 200 to 499) (2005)	2009	<p>24 C.F.R. (Parts 200 to 499), "Minimum Property Standards for Care-Type Housing" (2005):</p> <p>The following publications are incorporated by reference in the HUD Minimum Property Standards (MPS) in 24 CFR part 200, subpart S. The MPS are available for public inspection and can be obtained for appropriate [sic] use at 490 L'Enfant Plaza East, Suite 3214, or at each HUD Regional, Area, and Service Office. Copies are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC. The individual standards referenced in the MPS are available at the address contained in the following table. They are also available for public inspection at the HUD, Manufactured Housing and Construction Standards Division, Suite 3214, 490 L'Enfant Plaza East, Washington, DC 20024.</p> <p>...</p> <p>American Society for Testing and Materials 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, Telephone (610) 832-9585, FAX (610) 832-9555</p> <p>...</p> <p>ASTM A 570-79 Hot-Rolled Carbon Steel Sheet and Strip, Structural Quality; Part 200, Subpart S</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>Moreover, 24 C.F.R. (Parts 200 to 499) contains a non-substantive list of standards incorporated by reference. Each entry on this list references a substantive regulation—here, 24 C.F.R. Part 200, Subpart S. But 24 C.F.R. Part 200, Subpart S does not refer to A570-79. This underscores the fact that PRO has not analyzed the substantive regulations at issue.</p>
ASTM A572	1979	Standard Specification for High-Strength Low-Alloy Columbium-Vanadium Steels of Structural Quality	24 C.F.R. (Parts 200 to 499) (2005)	2009	<p>24 C.F.R. (Parts 200 to 499), "Minimum Property Standards for Care-Type Housing" (2005):</p> <p>The following publications are incorporated by reference in the HUD Minimum Property Standards (MPS) in 24 CFR part 200, subpart S. The MPS are available for public inspection and can be obtained for appropriate [sic] use at 490 L'Enfant Plaza East, Suite 3214, or at each HUD Regional, Area, and Service Office. Copies are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC. The individual standards referenced in the MPS are available at the address contained in the following table. They are also available for public inspection at the HUD, Manufactured Housing and Construction Standards Division, Suite 3214, 490 L'Enfant Plaza East, Washington, DC 20024.</p> <p>...</p> <p>American Society for Testing and Materials 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, Telephone (610) 832-9585, FAX (610) 832-9555</p> <p>...</p> <p>ASTM A 572-79 High-Strength Low-Alloy Columbium-Vanadium Steels of Structural Quality; Part 200, Subpart S</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>Moreover, 24 C.F.R. (Parts 200 to 499) contains a non-substantive list of standards incorporated by reference. Each entry on this list references a substantive regulation—here, 24 C.F.R. Part 200, Subpart S. But 24 C.F.R. Part 200, Subpart S does not refer to A572-79. This underscores the fact that PRO has not analyzed the substantive regulations at issue.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM A588	1979a	Standard Specification for High-Strength Low-Alloy Structural Steel with 50,000 psi Minimum Yield Point to 4 in. Thick	24 C.F.R. (Parts 200 to 499) (2005)	2009	<p>24 C.F.R. (Parts 200 to 499), "Minimum Property Standards for Care-Type Housing" (2005):</p> <p>The following publications are incorporated by reference in the HUD Minimum Property Standards (MPS) in 24 CFR part 200, subpart S. The MPS are available for public inspection and can be obtained for appropriate [sic] use at 490 L'Enfant Plaza East, Suite 3214, or at each HUD Regional, Area, and Service Office. Copies are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC. The individual standards referenced in the MPS are available at the address contained in the following table. They are also available for public inspection at the HUD, Manufactured Housing and Construction Standards Division, Suite 3214, 490 L'Enfant Plaza East, Washington, DC 20024.</p> <p>...</p> <p>American Society for Testing and Materials 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, Telephone (610) 832-9585, FAX (610) 832-9555</p> <p>...</p> <p>ASTM A 588-79a High-Strength Low-Alloy Structural Steel with 50,000 PSI Minimum Yield Point to 4 in. Thick; Part 200, Subpart S</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>Moreover, 24 C.F.R. (Parts 200 to 499) contains a non-substantive list of standards incorporated by reference. Each entry on this list references a substantive regulation—here, 24 C.F.R. Part 200, Subpart S. But 24 C.F.R. Part 200, Subpart S does not refer to A588-79a. This underscores the fact that PRO has not analyzed the substantive regulations at issue.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM A611	1972 (1979)	Standard Specification for Steel, Cold-Rolled Sheet, Carbon, Structural	24 C.F.R. (Parts 200 to 499) (2005)	2009	<p>24 C.F.R. (Parts 200 to 499), "Minimum Property Standards for Care-Type Housing" (2005):</p> <p>The following publications are incorporated by reference in the HUD Minimum Property Standards (MPS) in 24 CFR part 200, subpart S. The MPS are available for public inspection and can be obtained for appropriate [sic] use at 490 L'Enfant Plaza East, Suite 3214, or at each HUD Regional, Area, and Service Office. Copies are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC. The individual standards referenced in the MPS are available at the address contained in the following table. They are also available for public inspection at the HUD, Manufactured Housing and Construction Standards Division, Suite 3214 , 490 L'Enfant Plaza East, Washington, DC 20024 .</p> <p>...</p> <p>American Society for Testing and Materials 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, Telephone (610) 832-9585, FAX (610) 832-9555 13</p> <p>...</p> <p><b>ASTM A 611-72</b> Steel, Cold-Rolled Sheet, Carbon, Structural; Part 200, Subpart S</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM/II</i>, 896 F.3d at 450–51.</p> <p>Moreover, 24 C.F.R. (Parts 200 to 499) contains a non-substantive list of standards incorporated by reference. Each entry on this list references a substantive regulation—here, 24 C.F.R. Part 200, Subpart S. But 24 C.F.R. Part 200, Subpart S does not refer to A611-72 (1979). This underscores the fact that PRO has not analyzed the substantive regulations at issue.</p> <p>Finally, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>



No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM A615	1979	Standard Specification for Deformed and Plain Billet-Steel Bars for Concrete Reinforcement	24 C.F.R. (Parts 200 to 499) (2005)	2009	<p>24 C.F.R. (Parts 200 to 499), "Minimum Property Standards for Care-Type Housing" (2005):</p> <p>The following publications are incorporated by reference in the HUD Minimum Property Standards (MPS) in 24 CFR part 200, subpart S. The MPS are available for public inspection and can be dilated for appropriate [sic] use at 490 L'Enfant Plaza East, Suite 3214, or at each HUD Regional, Area, and Service Office. Copies are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC. The individual standards referenced in the MPS are available at the address contained in the following table. They are also available for public inspection at the HUD, Manufactured Housing and Construction Standards Division, Suite 3214, 490 L'Enfant Plaza East, Washington, DC 20024.</p> <p>...</p> <p>American Society for Testing and Materials 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, Telephone (610) 832-9585, FAX (610) 832-9555</p> <p>...</p> <p>ASTM A 615-79 Deformed and Plain Billet-Steel Bars for Concrete Reinforcement Part 200, Subpart S</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>Moreover, 24 C.F.R. (Parts 200 to 499) contains a non-substantive list of standards incorporated by reference. Each entry on this list references a substantive regulation—here, 24 C.F.R. Part 200, Subpart S. But 24 C.F.R. Part 200, Subpart S does not refer to A615-79. This underscores the fact that PRO has not analyzed the substantive regulations at issue.</p>
ASTM A616	1979	Standard Specification for Rail-Steel Deformed and Plain Bars for Concrete Reinforcement	24 C.F.R. (Parts 200 to 499) (2005)	2009	<p>24 C.F.R. (Parts 200 to 499), "Minimum Property Standards for Care-Type Housing" (2005):</p> <p>The following publications are incorporated by reference in the HUD Minimum Property Standards (MPS) in 24 CFR part 200, subpart S. The MPS are available for public inspection and can be obtained for appropriate [sic] use at 490 L'Enfant Plaza East, Suite 3214, or at each HUD Regional, Area, and Service Office. Copies are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC. The individual standards referenced in the MPS are available at the address contained in the following table. They are also available for public inspection at the HUD, Manufactured Housing and Construction Standards Division, Suite 3214, 490 L'Enfant Plaza East, Washington, DC 20024.</p> <p>...</p> <p>American Society for Testing and Materials 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, Telephone (610) 832-9585, FAX (610) 832-9555</p> <p>...</p> <p>ASTM A 616-79 Rail-Steel Deformed and Plain Bars for Concrete Reinforcement; Part 200, Subpart S</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>Moreover, 24 C.F.R. (Parts 200 to 499) contains a non-substantive list of standards incorporated by reference. Each entry on this list references a substantive regulation—here, 24 C.F.R. Part 200, Subpart S. But 24 C.F.R. Part 200, Subpart S does not refer to A616-79. This underscores the fact that PRO has not analyzed the substantive regulations at issue.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM A617	1979	Standard Specification for Axle-Steel Deformed and Plain Bars for Concrete Reinforcement	24 C.F.R. (Parts 200 to 499) (2005)	2009	<p>24 C.F.R. (Parts 200 to 499), "Minimum Property Standards for Care-Type Housing" (2005):</p> <p>The following publications are incorporated by reference in the HUD Minimum Property Standards (MPS) in 24 CFR part 200, subpart S. The MPS are available for public inspection and can be obtained for appropriate [sic] use at 490 L'Enfant Plaza East, Suite 3214, or at each HUD Regional, Area, and Service Office. Copies are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC. The individual standards referenced in the MPS are available at the address contained in the following table. They are also available for public inspection at to HUD, Manufactured Housing and Construction Standards Division, Suite 3214, 490 L'Enfant Plaza East, Washington, DC 20024.</p> <p>...</p> <p>American Society for Testing and Materials 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, Telephone (610) 832-9585, FAX (610) 832-9555</p> <p>...</p> <p>ASTM A 617-79 Axle-Steel Deformed and Plain Bars for Concrete Reinforcement; Part 200, Subpart S</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>Moreover, 24 C.F.R. (Parts 200 to 499) contains a non-substantive list of standards incorporated by reference. Each entry on this list references a substantive regulation—here, 24 C.F.R. Part 200, Subpart S. But 24 C.F.R. Part 200, Subpart S does not refer to A617-79. This underscores the fact that PRO has not analyzed the substantive regulations at issue.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM A633	1979a	Standard Specification for Normalized High-Strength Low Alloy Structural Steel	49 C.F.R. § 171.7 (2009)		<p>49 C.F.R. § 171.7, "Reference Material" (2009):</p> <p>(a) Matter incorporated by reference—</p> <p>(1) General. There is incorporated, by reference in parts 170-189 of this subchapter, matter referred to that is not specifically set forth. This matter is hereby made a part of the regulations in parts 170-189 of this subchapter. The matter subject to change is incorporated only as it is in effect on the date of issuance of the regulation referring to that matter. The material listed in paragraph (a)(3) has been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval and a notice of any change in the material will be published in the FEDERAL REGISTER. Matters referenced by footnote are included as part of the regulations of this subchapter.</p> <p>(2) Accessibility of materials. All incorporated matter is available for inspection at: (i) The Office of Hazardous Materials Safety, Office of Hazardous Materials Standards, East Building, PHH-10, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001. For information on the availability of this material at PHH-10, call 1-800-467-4922, or go to: <a href="http://www.phmsa.dot.gov">http://www.phmsa.dot.gov</a>; and (ii) The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <a href="http://www.archives.gov/federalregister/codeofregulations/ibr/locations.html">http://www.archives.gov/federalregister/codeofregulations/ibr/locations.html</a> (3) Table of material incorporated by reference. The following table sets forth material incorporated by reference. The first column lists the name and address of the organization from which the material is available and the name of the material. The second column lists the section(s) of this subchapter, other than § 171.7, in which the matter is referenced. The second column is presented for information only and may not be all inclusive.</p> <p>...</p> <p>American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 1942, telephone (610) 832-9585, <a href="http://www.astm.org">http://www.astm.org</a>; Noncurrent ASTM Standards are available from Engineering Societies Library, 354 East 47th Street, New York, NY 10017</p> <p>...</p> <p>ASTM A 633-79a Standard Specification for Normalized High-Strength Low-Alloy Structural Steel, 1979 Edition (178.338-2)</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM A82	1979	Standard Specification for Cold-Drawn Steel Wire for Concrete Reinforcement	24 C.F.R. (Parts 200 to 499) (2005)	2009	<p>24 C.F.R. (Parts 200 to 499), "Minimum Property Standards for Care-Type Housing" (2005):</p> <p>The following publications are incorporated by reference in the HUD Minimum Property Standards (MPS) in 24 CFR part 200, subpart S. The MPS are available for public inspection and can be obtained for appropriate [sic] use at 490 L'Enfant Plaza East, Suite 3214, or at each HUD Regional, Area, and Service Office. Copies are available for inspection at the Office of the Federal Register, 800 North C6p30l Street, NW, suite 700, Washington, DC. The individual standards referenced in the MPS are available at the address contained in the following table. They are also available for public inspection at</p> <p>HUD, Manufactured Housing and Construction Standards Division, Suite 3214, 490 L'Enfant Plaza East, Washington, DC 20024.</p> <p>...</p> <p>American Society for Testing and Materials 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, Telephone (610) 832-9585, FAX (610) 832-9555</p> <p>...</p> <p>ASTM A 82-79 Cold-Drawn Steel Wire for Concrete Reinforcement; Part 200, Subpart S</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>Moreover, 24 C.F.R. (Parts 200 to 499) contains a non-substantive list of standards incorporated by reference. Each entry on this list references a substantive regulation—here, 24 C.F.R. Part 200, Subpart S. But 24 C.F.R. Part 200, Subpart S does not refer to A82-79. This underscores the fact that PRO has not analyzed the substantive regulations at issue.</p>
ASTM B111	1995	Standard Specification for Copper and Copper-Alloy Seamless Condenser Tubes and Ferrule Stock	46 C.F.R. § 56.01-2 (2011)		<p>46 C.F.R. § 56.01-2, "Incorporation by Reference" (2011):</p> <p>(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 <a href="http://www.archives.gov/federalregister/codeofregulations/ibr/locations.html">http://www.archives.gov/federalregister/codeofregulations/ibr/locations.html</a>. The material is also available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG-521), 2100 2nd St, SW., Stop 7126, Washington, DC 20593-7126, and is available from the sources listed below.</p> <p>...</p> <p>(e) ASTM International (formerly American Society for Testing and Materials) (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959</p> <p>...</p> <p>(52) ASTM B 111-95, Standard Specification for Copper and Copper-Alloy Seamless Condenser Tubes and Ferrule Stock ("ASTM B 111"), 56.60-1.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM B122 / B 122M	1995	Standard Specification for Copper-Nickel-Tin Alloy, Copper-Nickel-Zinc Alloy (Nickel Silver), and Copper-Nickel Alloy Plate, Sheet, Strip and Rolled Bar	46 C.F.R. § 58.03-1 (2011)		<p>46 C.F.R. § 58.03-1, "Incorporation by Reference" (2011):</p> <p>(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 <a href="http://www.archives.gov/federalregister/codofllofederalregulations/ibr/locations.html">http://www.archives.gov/federalregister/codofllofederalregulations/ibr/locations.html</a>. This material is also available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG-521), 2100 2nd St SW., Stop 7126, Washington, DC 20593-7126, and is available from the sources listed below.</p> <p>...</p> <p>(g) ASTM International (formerly American Society for Testing and Materials) (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959</p> <p>...</p> <p>(3) ASTM B 122/B 122M-95, Standard Specification for Copper-Nickel-Tin Alloy, Copper-Nickel-Zinc Alloy (Nickel Silver), and Copper-Nickel Alloy Plate, Sheet, Strip, and Rolled Bar ("ASTM B 122"), 58.50-5.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>
ASTM B124	1996	Standard Specification for Copper and Copper-Alloy Forging Rod, Bar, and Shapes	46 C.F.R. § 56.01-2 (2011)		<p>46 C.F.R. § 56.01-2, "Incorporation by Reference" (2011):</p> <p>(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 <a href="http://www.archives.gov/federalregister/codofllofederalregulations/ibr/locations.html">http://www.archives.gov/federalregister/codofllofederalregulations/ibr/locations.html</a>. The material is also available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG-521), 2100 2nd St., SW., Stop 7126, Washington, DC 20593-7126, and is available from the sources listed below.</p> <p>...</p> <p>(e) ASTM International (formerly American Society for Testing and Materials) (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428-295</p> <p>...</p> <p>(53) ASTM B 124-96, Standard Specification for Copper and Copper Alloy Forging Rod, Bar, and Shapes ("ASTM B 124"), 56.60-2.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM B16	1992	Standard Specification for Free-Cutting Brass Rod, Bar and Shapes for Use in Screw Machines	46 C.F.R. § 56.01-2 (2011)		<p>46 C.F.R. § 56.01-2, "Incorporation by Reference" (2011):</p> <p>(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 <a href="http://www.archives.gov/federalregister/codeofregulations/ibr/locations.html">http://www.archives.gov/federalregister/codeofregulations/ibr/locations.html</a>. The material is also available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG-521), 2100 2nd St. SW., Stop 7126, Washington, DC 20593-7126, and is available from the sources listed below.</p> <p>...</p> <p>(e) ASTM International (formerly American Society for Testing and Materials) (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959</p> <p>...</p> <p>(42) ASTM B 16-92, Standard Specification for Free-Cutting Brass Rod, Bar, and Shapes for Use in Screw Machines ("ASTM B 16"), 56.60-2.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>
ASTM B209	1996	Standard Specification for Aluminum and Aluminum Alloy Sheet and Plate	46 C.F.R. § 58.03-1 (2011)		<p>46 C.F.R. § 58.03-1, "Incorporation by Reference" (2011):</p> <p>(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 <a href="http://www.archives.gov/federalregister/codeofregulations/ibr/locations.html">http://www.archives.gov/federalregister/codeofregulations/ibr/locations.html</a>. This material is also available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG-521), 2100 2nd St. SW., Stop 7126, Washington, DC 20593-7126, and is available from the sources listed below.</p> <p>...</p> <p>(g) ASTM International (formerly American Society for Testing and Materials) (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959</p> <p>...</p> <p>(6) ASTM B 209-96, Standard Specification for Aluminum and Aluminum-Alloy Sheet and Plate ("ASTM B 209"), 58.50-5; 58.50-10.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM B21	1996	Standard Specification for Naval Brass Rod, Bar, and Shapes	46 C.F.R. § 56.01-2 (2011)		<p>46 C.F.R. § 56.01-2, "Incorporation by Reference" (2011):</p> <p>(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 <a href="http://www.archives.gov/federalregister/codeofregulations/ibr/locations.html">http://www.archives.gov/federalregister/codeofregulations/ibr/locations.html</a>. This material is also available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG-521), 2100 2nd St. SW., Stop 7126, Washington, DC 20593-7126, and is available from the sources listed below.</p> <p>...</p> <p>(e) ASTM International (formerly American Society for Testing and Materials) (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959</p> <p>...</p> <p>(43) ASTM B 21-96, Standard Specification for Naval Brass Rod, Bar, and Shapes ("ASTM B 21"), 56.60-2.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by mandate and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>
ASTM B21	1983b	Standard Specification for Naval Brass Rod, Bar, and Shapes	46 C.F.R. § 56.01-2 (1996-2008)	2000	<p>46 C.F.R. § 56.01-2, "Incorporation by Reference" (1999):</p> <p>(a) Certain standards and specifications are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition of the Standard Specification other than the one listed in paragraph (b) of this section, notice of the change must be published in the Federal Register and the material made available to the public. All approved material is on file at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC, and is available from the sources indicated in paragraph (b).</p> <p>(b) The standards and specifications approved for incorporation by reference in this part, and the sections affected are:</p> <p>...</p> <p>AMERICAN SOCIETY FOR TESTING AND MATERIALS (ASTM)                  ASTM INTERNATIONAL HEADQUARTERS, 100 BARR HARBOR DRIVE, WEST CONSHOCKEN, PA 19428-2959</p> <p>...</p> <p>ASTM B 21-83B NAVAL BRASS ROD, BAR, AND SHAPES..56.60-2</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by mandate and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM B224	1980e 1	Standard Classification of Coppers	7 C.F.R. § 1755.390 (2010)		<p>7 C.F.R. § 1755.390, "RUS Specification for Filled Telephone Cables" (2010):</p> <p>(a) Scope. (1) This section covers the requirements for filled telephone cables intended for direct burial installation either by trenching or by direct plowing, for underground application by placement in a duct, or for aerial installations by attachment to a support strand.</p> <p>...</p> <p>(7) American Society for Testing and Materials specification (ASTM) A505-87, Standard Specification for Steel, Sheet and Strip, Alloy, Hot-Rolled and Cold-Rolled, General Requirements For; ASTM B 193-87, Standard Test Method for Resistivity of Electrical Conductor Materials; <b>ASTM B 224-80</b>, Standard Classification of Coppers; ASTM B 694-86, Standard Specification for Copper, Copper Alloy, and Copper-Clad Stainless Steel Sheet and Strip for Electrical Cable Shielding; ASTM D 4565-90a, Standard Test Methods for Physical and Environmental Performance Properties of Insulations and Jackets for Telecommunications Wire and Cable; and ASTM D 4566-90, Standard Test Methods for Electrical Performance Properties of Insulations and Jackets for Telecommunications Wire and Cable referenced in this section are incorporated by reference by RUS. These incorporations by references were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the ASTM standards are available for inspection during normal business hours at RUS, room 2845, U.S. Department of Agriculture, Washington, DC 20250, 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 <a href="http://www.archives.gov/federalregister/codeofcoderegulations/ibr/locations.html">http://www.archives.gov/federalregister/codeofcoderegulations/ibr/locations.html</a>. Copies are available from ASTM, 1916 Race Street, Philadelphia, PA 19103-1187, telephone number (215) 299-5585.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>



No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM B283	1996	Standard Specification for Copper and Copper-Alloy Die Forgings (Hot-Pressed)	46 C.F.R. § 56.01-2 (2011)		<p>46 C.F.R. § 56.01-2, "Incorporation by Reference" (2011):</p> <p>(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 <a href="http://www.archives.gov/federalregister/codeofregulations/ibr/locations.html">http://www.archives.gov/federalregister/codeofregulations/ibr/locations.html</a>. The material is also available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG-521), 2100 2nd St. SW., Stop 7126, Washington, DC 20593-7126, and is available from the sources listed below.</p> <p>...</p> <p>(e) ASTM International (formerly American Society for Testing and Materials) (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959</p> <p>...</p> <p>(63) ASTM B 283-96, Standard Specification for Copper and Copper-Alloy Die Forgings (Hot-Pressed) ("ASTM B 283"), 56.60-2.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by mandate and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>
ASTM B315	1993	Standard Specification for Seamless Copper Alloy Pipe and Tube	46 C.F.R. § 56.01-2 (2011)		<p>46 C.F.R. § 56.01-2, "Incorporation by Reference" (2011):</p> <p>(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 <a href="http://www.archives.gov/federalregister/codeofregulations/ibr/locations.html">http://www.archives.gov/federalregister/codeofregulations/ibr/locations.html</a>. The material is also available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG-521), 2100 2nd St. SW., Stop 7126, Washington, DC 20593-7126, and is available from the sources listed below.</p> <p>...</p> <p>(e) ASTM International (formerly American Society for Testing and Materials) (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959</p> <p>...</p> <p>(64) ASTM B 315-93, Standard Specification for Seamless Copper Alloy Pipe and Tube ("ASTM B 315"), 56.60-1.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by mandate and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM B42	1996	Standard Specification for Seamless Copper Pipe, Standard Sims	46 C.F.R. § 56.01-2 (2011)		<p>46 C.F.R. § 56.01-2, "Incorporation by Reference" (2011):                      (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 <a href="http://www.archives.gov/federalregister/codeofregulations/ibr/locations.html">http://www.archives.gov/federalregister/codeofregulations/ibr/locations.html</a>. The material is also available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG-521), 2100 2nd St. SW., Stop 7126, Washington, DC 20593-7126, and is available from the sources listed below.</p> <p>...</p> <p>(e) ASTM International (formerly American Society for Testing and Materials) (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959</p> <p>...</p> <p>(45) ASTM B 42-96, Standard Specification for Seamless Copper Pipe, Standard Sizes ("ASTM B 42"), 56.60-1.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM B557	1984	Standard Methods of Tension Testing Wrought and Cast Aluminum and Magnesium-Alloy Products	49 C.F.R. § 1713 (2009)		<p>49 C.F.R. § 171.7, "Reference Material" (2009):</p> <p>(a) Matter incorporated by reference—</p> <p>(1) General. There is incorporated, by reference in parts 170-189 of this subchapter, matter referred to that is not specifically set forth. This matter is hereby made a part of the regulations in parts 170-189 of this subchapter. The matter subject to change is incorporated only as it is in effect on the date of issuance of the regulation referring to that matter. The material listed in paragraph (a)(3) has been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval and a notice of any change in the material will be published in the FEDERAL REGISTER. Matters referenced by footnote are included as part of the regulations of this subchapter.</p> <p>(2) Accessibility of materials. All incorporated matter is available for inspection at: (i) The Office of Hazardous Materials Safety, Office of Hazardous Materials Standards, East Building, PHH-10, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001. For information on the availability of this material at PHH-10, call 1-800-467-4922, or go to: <a href="http://www.phmsa.dot.gov">http://www.phmsa.dot.gov</a>; and (ii) The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <a href="http://www.archives.gov/federalregister/codeofregulations/fbrllocations.html">http://www.archives.gov/federalregister/codeofregulations/fbrllocations.html</a>. (3) Table of material incorporated by reference. The following table sets forth material incorporated by reference. The first column lists the name and address of the organization from which the material is available and the name of the material. The second column lists the section(s) of this subchapter, other than §171.7, in which the matter is referenced. The second column is presented for information only and may not be all inclusive.</p> <p>...</p> <p>American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 1942, telephone (610) 832-9585, <a href="http://www.astm.org">http://www.astm.org</a>; Noncurrent ASTM Standards are available from Engineering Societies Library, 354 East 47th Street, New York, NY 10017</p> <p>...</p> <p>ASTM B 557-84 Tension Testing Wrought and Cast Aluminum and Magnesium-Alloy Products (178.46)</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM B580	1979	Standard Specification for Anodized Oxide Coatings on Aluminum	49 C.F.R. § 171.7 (2009)		<p>50 C.F.R. § 171.7, "Reference Material" (2009):</p> <p>(a) Matter incorporated by reference—</p> <p>(1) General. There is incorporated, by reference in parts 170-189 of this subchapter, matter referred to that is not specifically set forth. This matter is hereby made a part of the regulations in parts 170-189 of this subchapter. The matter subject to change is incorporated only as it is in effect on the date of issuance of the regulation referring to that matter. The material listed in paragraph (a)(3) has been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval and a notice of any change in the material will be published in the FEDERAL REGISTER. Matters referenced by footnote are included as part of the regulations of this subchapter.</p> <p>(2) Accessibility of materials. All incorporated matter is available for inspection at: (i) The Office of Hazardous Materials Safety, Office of Hazardous Materials Standards, East Building, PHH-10, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001. For information on the availability of this material at PHH-10, call 1-800-467-4922, or go to: <a href="http://www.phmsa.dot.gov">http://www.phmsa.dot.gov</a>; and (ii) The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <a href="http://www.archives.gov/federalregister/codeofregulations/fbrllocations.html">http://www.archives.gov/federalregister/codeofregulations/fbrllocations.html</a>. (3) Table of material incorporated by reference. The following table sets forth material incorporated by reference. The first column lists the name and address of the organization from which the material is available and the name of the material. The second column lists the section(s) of this subchapter, other than §171.7, in which the matter is referenced. The second column is presented for information only and may not be all inclusive.</p> <p>...</p> <p>American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 1942, telephone (610) 832-9585, <a href="http://www.astm.org">http://www.astm.org</a>: Noncurrent ASTM Standards are available from Engineering Societies Library, 354 East 47th Street, New York, NY 10017</p> <p>...</p> <p>ASTM B 580-79 Standard Specification for Anodic Oxide Coatings on Aluminum, (Re-approved 2000) (173.316, 173.318, 178.338-17)</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM/II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM B68	1995	Standard Specification for Seamless Copper Tube, Bright Annealed	46 C.F.R. § 56.01-2 (2011)		<p>46 C.F.R. § 56.01-2, "Incorporation by Reference" (2011):                      (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 <a href="http://www.archives.gov/federalregister/codofllofederalregulations/ibrlocations.html">http://www.archives.gov/federalregister/codofllofederalregulations/ibrlocations.html</a>. The material is also available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG-521), 2100 2nd St. SW., Stop 7126, Washington, DC 20593-7126, and is available from the sources listed below.</p> <p>...</p> <p>(e) ASTM International (formerly American Society for Testing and Materials) (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959</p> <p>...</p> <p>(47) ASTM B 68-95, Standard Specification for Seamless Copper Tube, Bright Annealed ("ASTM B 68"), 56.60-1.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM B694	1986	Standard Specification for Copper, Copper Alloy, and Copper-Clad Stainless Steel Sheet and Strip for Electrical Cable Shielding	7 C.F.R. § 1755.390 (2010)		<p>7 C.F.R. § 1755.390, "RUS Specification for Filled Telephone Cables" (2010):                      (a) Scope. (1) This section covers the requirements for filled telephone cables intended for direct burial installation either by trenching or by direct plowing, for underground application by placement in a duct, or for aerial installations by attachment to a support strand.</p> <p>...</p> <p>(7) American Society for Testing and Materials specifications (ASTM) A505-87, Standard Specification for Steel, Sheet and Strip, Alloy, Hot-Rolled and Cold-Rolled, General Requirements For, ASTM B 193-87, Standard Test Method for Resistivity of Electrical Conductor Materials; ASTM B 224-80, Standard Classification of Coppers; ASTM B 694-86, Standard Specification for Copper, Copper Alloy, and Copper-Clad Stainless Steel Sheet and Strip for Electrical Cable Shielding; ASTM D 4565-90a, Standard Test Methods for Physical and Environmental Performance Properties of Insulations and Jackets for Telecommunications Wire and Cable; and ASTM D 4566-90, Standard Test Methods for Electrical Performance Properties of Insulations and Jackets for Telecommunications Wire and Cable referenced in this section are incorporated by reference by RUS. These incorporations by references were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the ASTM standards are available for inspection during normal business hours at RUS, room 2845, U.S. Department of Agriculture, Washington, DC 20250, 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:  <a href="http://www.archives.gov/federalregister/codof/federalregulations/ibr/locations.html">http://www.archives.gov/federalregister/codof/federalregulations/ibr/locations.html</a>. Copies are available from ASTM, 1916 Race Street, Philadelphia, PA 19103-1187, telephone number (215) 299-5585.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM B75	1997	Standard Specification for Seamless Copper Tube	46 C.F.R. § 56.01-2 (2011)		<p>46 C.F.R. § 56.01-2, "Incorporation by Reference" (2011):</p> <p>(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 <a href="http://www.archives.gov/federalregister/codeofregulations/ibr/locations.html">http://www.archives.gov/federalregister/codeofregulations/ibr/locations.html</a>. The material is also available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG-521), 2100 2nd St. SW., Stop 7126, Washington, DC 20593-7126, and is available from the sources listed below.</p> <p>...</p> <p>(e) ASTM International (formerly American Society for Testing and Materials) (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959</p> <p>...</p> <p>(48) ASTM B 75-97, Standard Specification for Seamless Copper Tube ("ASTM B 75"), 56.60-1.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by mandate and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>
ASTM B85	1984	Standard Specification for Aluminum-Alloy Die Castings	46 C.F.R. § 56.01-2 (1997)	2000	<p>46 C.F.R. § 56.01-2, "Incorporation by Reference" (1997):</p> <p>(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 <a href="http://www.archives.gov/federalregister/codeofregulations/ibr/locations.html">http://www.archives.gov/federalregister/codeofregulations/ibr/locations.html</a>. The material is also available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG-521), 2100 2nd St. SW., Stop 7126, Washington, DC 20593-7126, and is available from the sources listed below.</p> <p>...</p> <p>American Society for Testing and Materials (ASTM), ASTM International Headquarters, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959</p> <p>...</p> <p>ASTM B 85-84 Aluminum-Alloy Die Castings. 56.60-2.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by mandate and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM B88	1996	Standard Specification for Seamless Copper Water Tube	46 C.F.R. § 56.01-2 (2011)		<p>46 C.F.R. § 56.01-2, "Incorporation by Reference" (2011):</p> <p>(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 <a href="http://www.archives.gov/federalregister/codeofregulations/ibr/locations.html">http://www.archives.gov/federalregister/codeofregulations/ibr/locations.html</a>. The material is also available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG-521), 2100 2nd St. SW., Stop 7126, Washington, DC 20593-7126, and is available from the sources listed below.</p> <p>...</p> <p>(e) ASTM International (formerly American Society for Testing and Materials) (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959</p> <p>...</p> <p>(50) ASTM B 88-96, Standard Specification for Seamless Copper Water Tube ("ASTM B 88"), 56.60-1.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by mandate and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>
ASTM B96	1993	Standard Specification for Copper-Silicon Alloy Plate, Sheet Strip, and Rolled Bar for General Purposes and Pressure Vessels	46 C.F.R. § 56.01-2 (2011)		<p>46 C.F.R. § 56.01-2, "Incorporation by Reference" (2011):</p> <p>(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 <a href="http://www.archives.gov/federalregister/codeofregulations/ibr/locations.html">http://www.archives.gov/federalregister/codeofregulations/ibr/locations.html</a>. The material is also available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG-521), 2100 2nd St. SW., Stop 7126, Washington, DC 20593-7126, and is available from the sources listed below.</p> <p>...</p> <p>(e) ASTM International (formerly American Society for Testing and Materials) (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959</p> <p>...</p> <p>(51) ASTM B 96-93, Standard Specification for Copper-Silicon Alloy Plate, Sheet, Strip, and Rolled Bar for General Purposes and Pressure Vessels ("ASTM 96"), 56.60-2.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by mandate and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>



No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM C150	1999a	Standard Specification for Portland Cement	30 C.F.R. § 250.198 (2007)	2010	<p>30 C.F.R. § 250.901, "Documents Incorporated by Reference" (2007):</p> <p>(a) MMS is incorporating by reference the documents listed in the table in paragraph (e) of this section. The Director of the Federal Register has approved this incorporation by reference according to 5 U.S.C. 552(a) and 1 CFR part 51.1--1</p> <p>...</p> <p>(d) You may inspect these documents at the Minerals Management Service, 381 Elden Street, Room 3313, Herndon, Virginia; 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: <a href="http://www.archives.gov/federalregister/codeofregulations/ibr/locations.html">http://www.archives.gov/federalregister/codeofregulations/ibr/locations.html</a>. You may obtain the documents from the publishing organizations at the addresses given in the following table:</p> <p>...</p> <p>(5) ASTM Standards..... American Society for Testing and Materials, 100 Bar Harbor Drive, P. O. Box C700, West Conshohocken, PA 19428-2959</p> <p>...</p> <p><b>ASTM Standard C 150-99</b>, Standard Specification for Portland Cement..... § 250.901(a)(13).</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM C177	1997	Standard Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Guarded Hot-Plate Apparatus	10 C.F.R. § 431.105 (2010)	2013	<p>10 C.F.R. § 431.105, "Materials Incorporated by Reference" (2010):</p> <p>(a) The Department incorporates by reference the following test procedures into Subpart G of Part 431. The Director of the Federal Register has approved the material listed in paragraph (b) of this section for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Any subsequent amendment to this material by the standard-setting organization will not affect the Department test procedures unless and until the Department amends its test procedures. The Department incorporates the material as it exists on the date of the approval and a notice of any change in the material will be published in the FEDERAL REGISTER.</p> <p>...</p> <p>(c) Availability of references—(1) Inspection of test procedures. The test procedures incorporated by reference are available for inspection at: (i) National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <a href="http://www.archives.gov/federalregister/codofregulations/ibr/locations.html">http://www.archives.gov/federalregister/codofregulations/ibr/locations.html</a>.</p> <p>...</p> <p>(2) Obtaining copies of Standards. Anyone can purchase a copy of the standard incorporated by reference from Global Engineering Documents, 15 Inverness Way West, Englewood, CO 80112, or <a href="http://global.ihs.com/">http://global.ihs.com/</a>, or <a href="http://webstore.ansi.org/ansidocstore/">http://webstore.ansi.org/ansidocstore/</a>.</p> <p>...</p> <p>(d) Reference standards—(1) General. The standards listed in this paragraph are referred to in the Department test procedures in this subpart, but they are not incorporated by reference. These sources are given here for information and guidance.</p> <p>...</p> <p>(ii) ASTM Standard Test Method C177-97, "Standard Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Guarded-Hot-Plate Apparatus."</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM C236	1989(1993) e 1	Standard Test Method for Steady-State Thermal Performance of Building Assemblies by Means of a Goaded Hot Box	10 C.F.R. § 434.701 (2012)		<p>10 C.F.R. § 434.701, "General" (2012):</p> <p>701.1 General. The standards, technical handbooks, papers, regulations, and portions thereof, that are referred to in the sections and subsections in the following list are hereby incorporated by reference into this part 434. The following standards have been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 522(a) and 1 CFR part 51. A notice of any change in these materials will be published in the FEDERAL REGISTER. The standards incorporated by reference are available for inspection at the U.S. Department of Energy, Office of Energy Efficiency, Hearings and Dockets, Forrestal Building 1000 Independence Avenue SW, Washington, DC 20585, 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 <a href="http://www.archives.gov/federalregister/codofederalregulations/ibrlocations.html">http://www.archives.gov/federalregister/codofederalregulations/ibrlocations.html</a>. The standards may be purchased at the addresses listed at the end of each standard. The following standards are incorporated by reference in this part:</p> <p>...</p> <p>RS-7 ... <b>ASTM C 236-89 (Reapproved 1993)</b>, Test Method for Steady-State Thermal Performance of Building Assemblies by Means of a Guarded Hot Box, American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. 434.402.1.1; 434.402.1.2.1; 434.402.1.2.2.</p> <p>30 C.F.R. § 250.901, "Documents Incorporated by Reference" (2007):</p> <p>(a) MMS is incorporating by reference the documents listed in the table in paragraph (c) of this section. The Director of the Federal Register has approved this incorporation by reference according to 5 U.S.C. 552(a) and 1 CFR part 51.</p> <p>...</p> <p>(d) You may inspect these documents at the Minerals Management Service, 381 Elden Street, Room 3313, Herndon, Virginia; 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: <a href="http://www.archives.gov/federalregister/codofederalregulations/ibrlocations.html">http://www.archives.gov/federalregister/codofederalregulations/ibrlocations.html</a>. You may obtain the documents from the publishing organizations at the addresses given in the following table:</p> <p>...</p> <p>(5) ASTM Standards American Society for Testing and Materials, 100 Bar Harbor Drive, P. O. Box C700, West Conshohocken, PA 19428-2959</p> <p>...</p> <p>ASTM Standard C 330-99, Standard Specification for Lightweight Aggregates for Structural Concrete.....§250.901(a)(14).</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>
ASTM C330	1999	Standard Specification for Lightweight Aggregates for Structural Concrete	30 C.F.R. § 250.198 (2007)	2010	<p>(a) MMS is incorporating by reference the documents listed in the table in paragraph (c) of this section. The Director of the Federal Register has approved this incorporation by reference according to 5 U.S.C. 552(a) and 1 CFR part 51.</p> <p>...</p> <p>(d) You may inspect these documents at the Minerals Management Service, 381 Elden Street, Room 3313, Herndon, Virginia; 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: <a href="http://www.archives.gov/federalregister/codofederalregulations/ibrlocations.html">http://www.archives.gov/federalregister/codofederalregulations/ibrlocations.html</a>. You may obtain the documents from the publishing organizations at the addresses given in the following table:</p> <p>...</p> <p>(5) ASTM Standards American Society for Testing and Materials, 100 Bar Harbor Drive, P. O. Box C700, West Conshohocken, PA 19428-2959</p> <p>...</p> <p>ASTM Standard C 330-99, Standard Specification for Lightweight Aggregates for Structural Concrete.....§250.901(a)(14).</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM C5	1979 (1997)	Standard Specification for Quicklime for Structural Purposes	24 C.F.R. (Parts 200 to 499) (2005)	2009	<p>24 C.F.R. (Parts 200 to 499), "Minimum Property Standards for Care-Type Housing" (2005):</p> <p>The following publications are incorporated by reference in the HUD Minimum Property Standards (MPS) in 24 CFR part 200, subpart S. The MPS are available for public inspection and can be obtained for appropriate [sic] use at 490 L'Enfant Plaza East, Suite 3214, or at each HUD Regional, Area, and Service Office. Copies are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC. The individual standards referenced in the MPS are available at the address contained in the following table. They are also available for public inspection at the HUD, Manufactured Housing and Construction Standards Division, Suite 3214, 490 L'Enfant Plaza East, Washington, DC 20024.</p> <p>...</p> <p>American Society for Testing and Materials                      100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, Telephone (610) 832-9585, FAX (610) 832-9555</p> <p>...</p> <p><b>ASTM C 5-79</b> Quicklime for Structural Purposes; Part 200, Subpart S</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM/II</i>, 896 F.3d at 450–51.</p> <p>Moreover, 24 C.F.R. (Parts 200 to 499) contains a non-substantive list of standards incorporated by reference. Each entry on this list references a substantive regulation—here, 24 C.F.R. Part 200, Subpart S. But 24 C.F.R. Part 200, Subpart S does not refer to C5-79 (1997). This underscores the fact that PRO has not analyzed the substantive regulations at issue.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM C509	1984	Standard Specification for Cellular Elastomeric Preformed Gasket and Sealing Material	10 C.F.R. § 440, Appendix A (2010)		<p>10 C.F.R. § 440, Appendix A, "Standards for Weatherization Materials" (2010): The following standards which are not otherwise set forth in part 440 are incorporated by reference and made a part of part 440. The following standards have been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on April 5, 1993 and a notice of any change in these materials will be published in the FEDERAL REGISTER. The standards incorporated by reference are 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 <a href="http://www.archives.gov/federalregister/codeofcoderegulations/ibr/locations.html">http://www.archives.gov/federalregister/codeofcoderegulations/ibr/locations.html</a>. The standards incorporated by reference in part 440 can be obtained from the following sources:</p> <p>...</p> <p>American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103; (215) 299-5400</p> <p>...</p> <p>Caulks and Sealants: Preformed gaskets and sealing materials ... ASTM C509-84</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM C516	1980 (1996) e 1	Standard Specification for Vermiculite Loose Fill Thermal Insulation	24 C.F.R. (Parts 200 to 499) (2005)	2009	<p>24 C.F.R. (Parts 200 to 499), "Minimum Property Standards for Care-Type Housing" (2005):</p> <p>The following publications are incorporated by reference in the HUD Minimum Property Standards (MPS) in 24 CFR part 200, subpart S. The MPS are available for public inspection and can be obtained for appropriate [sic] use at 490 L'Enfant Plaza East, Suite 3214, or at each HUD Regional, Area, and Service Office. Copies are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC. The individual standards referenced in the MPS are available at the address contained in the following table. They are also available for public inspection at the HUD, Manufactured Housing and Construction Standards Division, Suite 3214, 490 L'Enfant Plaza East, Washington, DC 20024.</p> <p>...</p> <p>American Society for Testing and Materials                      100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, Telephone (610) 832-9585, FAX (610) 832-9555</p> <p>...</p> <p><b>ASTM C 516-80</b> Standard Specification for Vermiculite Loose Fill Thermal Insulation (Reapproved 1985); Part 200, Subpart S</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM/II</i>, 896 F.3d at 450–51.</p> <p>Moreover, 24 C.F.R. (Parts 200 to 499) contains a non-substantive list of standards incorporated by reference. Each entry on this list references a substantive regulation—here, 24 C.F.R. Part 200, Subpart S. But 24 C.F.R. Part 200, Subpart S does not refer to C1516-80 (1996)e1. This underscores the fact that PRO has not analyzed the substantive regulations at issue.</p> <p>Finally, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM C518	1991	Standard Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Heat Flow Meter Apparatus	10 C.F.R. § 431.105 (2010)	2013	<p>10 C.F.R. § 431.105, "Materials Incorporated by Reference" (2010):</p> <p>(a) The Department incorporates by reference the following test procedures into Subpart G of Part 431. The Director of the Federal Register has approved the material listed in paragraph (b) of this section for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Any subsequent amendment to this material by the standard-setting organization will not affect the Department test procedures unless and until the Department amends its test procedures. The Department incorporates the material as it exists on the date of the approval and a notice of any change in the material will be published in the FEDERAL REGISTER.</p> <p>...</p> <p>(c) Availability of references—(1) Inspection of test procedures. The test procedures incorporated by reference are available for inspection at: (i) National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <a href="http://www.archives.gov/federalregister/codof/federalregulations/ibr/locations.html">http://www.archives.gov/federalregister/codof/federalregulations/ibr/locations.html</a>.</p> <p>...</p> <p>(2) Obtaining copies of Standards. Anyone can purchase a copy of the standard incorporated by reference from Global Engineering Documents, 15 Inverness Way West, Englewood, CO 80112, or <a href="http://global.ihc.com/">http://global.ihc.com/</a>, or <a href="http://webstore.ansi.org/ansidocstore/">http://webstore.ansi.org/ansidocstore/</a>.</p> <p>...</p> <p>(d) Reference standards—(1) General. The standards listed in this paragraph are referred to in the Department test procedures in this subpart, but they are not incorporated by reference. These sources are given here for information and guidance.</p> <p>...</p> <p>(2) List of References. (i) ASTM Standard Test Method C518-91, "Standard Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Heat Flow Meter Apparatus."</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM C549	1981 (1995) e 1	Standard Specification for Perlite Loose Fill Insulation	24 C.F.R. § 200, Appendix A (2010)		<p>24 C.F.R. § 200, APPENDIX A TO PART 200—STANDARDS INCORPORATED BY REFERENCE IN THE MINIMUM PROPERTY STANDARDS FOR HOUSING (HUD HANDBOOK 4910.1) (2010):</p> <p>The following publications are incorporated by reference in the HUD Minimum Property Standards (MPS) in 24 CFR part 200. The MPS are available for public inspection and can be obtained for appropriate use at 490 L'Enfant Plaza East, Suite 3214, or at each HUD Regional, Area, and Service Office. Copies are 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: <a href="http://www.archives.gov/federalregister/codofederalregulations/fbr/locations.html">http://www.archives.gov/federalregister/codofederalregulations/fbr/locations.html</a>. The individual standards referenced in the MPS are available at the address contained in the following table. They are also available for public inspection at the HUD, Manufactured Housing and Construction Standards Division, Suite 3214, 490 L'Enfant Plaza East, Washington, DC 20024.</p> <p>...</p> <p>American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103, Telephone (215) 299-5400</p> <p>...</p> <p><b>ASTM C 549-81</b> Standard Specification for Perlite Loose Fill Insulation <b>(Reapproved 1986)</b></p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>



No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM C564	1970 (1982)	Standard Specification for Rubber Gaskets for Cast Iron Soil Pipe and Fittings	24 C.F.R. (Parts 200 to 499) (2005)	2009	<p>24 C.F.R. (Parts 200 to 499), "Minimum Property Standards for Care-Type Housing" (2005):</p> <p>The following publications are incorporated by reference in the HUD Minimum Property Standards (MPS) in 24 CFR part 200, subpart S. The MPS are available for public inspection and can be obtained for appropriate [sic] use at 490 L'Enfant Plaza East, Suite 3214, or at each HUD Regional, Area, and Service Office. Copies are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC. The individual standards referenced in the MPS are available at the address contained in the following table. They are also available for public inspection at the HUD, Manufactured Housing and Construction Standards Division, Suite 3214, 490 L'Enfant Plaza East, Washington, DC 20024.</p> <p>...</p> <p>American Society for Testing and Materials                      100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, Telephone (610) 832-9585, FAX (610) 832-9555</p> <p>...</p> <p><b>ASTM C 564-70 (R 76)</b> Rubber Gaskets for Cast Iron Soil Pipe and Fittings; Part 200, Subpart S</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>Moreover, 24 C.F.R. (Parts 200 to 499) contains a non-substantive list of standards incorporated by reference. Each entry on this list references a substantive regulation—here, 24 C.F.R. Part 200, Subpart S. But 24 C.F.R. Part 200, Subpart S does not refer to C564-70 (1982). This underscores the fact that PRO has not analyzed the substantive regulations at issue.</p> <p>Finally, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM D1217	1993 (1998)	Standard Test Method for Density and Relative Density (Specific Gravity) of Liquids by Bingham Pycnometer	40 C.F.R. § 75.6 (2010)		<p>40 C.F.R. § 75.6, "Incorporation by reference" (2010):                      The materials listed in this section are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Those materials are incorporated as they existed on the date of approval, and a notice of any change in these materials will be published in the FEDERAL REGISTER.</p> <p>The materials are available for purchase at the corresponding address noted below and are available for inspection at the Public Information Reference Unit of the U.S. EPA, 401 M St., SW., Washington, DC and at the Library (MD-35), U.S. EPA, Research Triangle Park, North Carolina 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 <a href="http://www.archives.gov/federalregister/codeofregulations/ibr/locations.html">http://www.archives.gov/federalregister/codeofregulations/ibr/locations.html</a>.</p> <p>(a) The following materials are available for purchase from the following addresses: American Society for Testing and Material (ASTM), 100 Barr harbor Drive, P.O. Box C-700, West Conshohocken, Pennsylvania 19428-2959; and the University Microfilms International 300 North Zeeb Road, Ann Arbor, Michigan 48106.</p> <p>...</p> <p>(7) <b>ASTM D1217-993 (Reapproved 1998)</b>, Standard Test Method for Density and Relative Density (Specific Gravity) of Liquids by Bingham Pycnometer, for appendix D of this part.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>

ASTM D1246	1995 (1999)	Standard Test Method for Bromide Ion in Water	40 C.F.R. § 136.3(a) Table IB (2003)	<p>40 C.F.R. § 136.3, "Identification of test procedures" (2003): -0.</p> <p>(a) Parameters or pollutants, for which methods are approved, are listed together with test procedure descriptions and references in Tables IA, IB, IC, ID, IE, and IF. The full text of the referenced test procedures are incorporated by reference into Tables IA, IB, IC, ID, IE, and IF. The incorporation by reference of these documents, as specified in paragraph (b) of this section, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the documents may be obtained from the sources listed in paragraph (b) of this section. Information regarding obtaining these documents can be obtained from the EPA Office of Water Statistics and Analytical Support Branch at 202-566-1000. Documents may be inspected at EPA's Water Docket, EPA West, 1301 Constitution Avenue, NW., Room B135, Washington, DC (Telephone: 202-566-2426); or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. These test procedures are incorporated as they exist on the day of approval and a notice of any change in these test procedures will be published in the FEDERAL REGISTER. The discharge parameter values for which reports are required must be determined by one of the standard analytical test procedures incorporated by reference and described in Tables IA, IB, IC, IE, and IF, or by any alternate test procedure which has been approved by the Administrator under the provisions of paragraph (d) of this section and §§ 136.4 and 136.5. Under certain circumstances (paragraph (b) or (c) of this section or 40 CFR 401.13) other test procedures may be more advantageous when such other test procedures have been previously approved by the Regional Administrator of the Region in which the discharge will occur, and providing the Director of the State in which such discharge will occur does not object to the use of such alternate test procedure.</p> <p>...</p> <p>(b) The full texts of the methods from the following references which are cited in Tables IA, IB, IC, ID, IE, and IF are incorporated by reference into this regulation and may be obtained from the sources identified. All costs cited are subject to change and must be verified from the indicated sources. The full texts of all the test procedures cited are available for inspection at the National Exposure Research Laboratory, Office of Research and Development, U.S. Environmental Protection Agency, 26 West Martin Luther King Dr., Cincinnati, OH 45268 and the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.</p> <p>...</p> <p>Table IB: 11. Bromide, mg/L: Titrimetric          ..... <b>ASTM D1246-95(C)</b> .....</p> <p>...</p> <p>10) Annual Book of ASTM Standards, Water, and Environmental Technology, Section 11, Volumes 11.01 and 11.02, 1994, 1996, and 1999. Available from: ASTM International, 100 Barr Harbor Drive, P.O. Box C-700, West Conshohocken, PA 19428-2959. Tables IB, IC, ID, and IE.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>
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No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM D1253	1986 (1996)	Standard Test Method for Residual Chlorine in Water	40 C.F.R. § 141.131(a)(2) (2006-2008)		<p>40 C.F.R. § 141.131(a)(2) (2008):</p> <p>The following documents are incorporated by reference. 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. Copies may be inspected at EPA's Drinking Water Docket, 1301 Constitution Avenue, NW., EPA West, Room B102, Washington, DC 20460, 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 <a href="http://www.archives.gov/federalregister/codofllofederalregulations/ibrlocations.html">http://www.archives.gov/federalregister/codofllofederalregulations/ibrlocations.html</a>. . . . ASTM Methods D 1253-86 and D 1253-86 (Reapproved 1996) shall be followed in accordance with the Annual Book of ASTM Standards, Volume 11.01, American Society for Testing and Materials International, 1996 or any ASTM edition containing the IBR-approved version of the method may be used.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>
ASTM D1266	1998	Standard Test Method for Sulfur in Petroleum Products (Lamp Methods)	40 C.F.R. § 1065.1010 (2005)	2006	<p>40 C.F.R. § 1065.1010 "Reference materials." (2005):</p> <p>We have incorporated by reference the documents listed in this section. The Director of the Federal Register approved the incorporation by reference as prescribed in 5 U.S.C. 552(a) and 1 CFR part 51. Anyone may inspect copies at the U.S. EPA, Air and Radiation Docket and Information Center, 1301 Constitution Ave., NW., Room B102, EPA West Building, Washington, DC 20460 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 <a href="http://www.archives.gov/federalregister/codofllofederalregulations/ibrlocations.html">http://www.archives.gov/federalregister/codofllofederalregulations/ibrlocations.html</a>.</p> <p>(a) ASTM material. Table 1 of § 1065.1010 lists material from the American Society for Testing and Materials that we have incorporated by reference. The first column lists the number and name A1 material. The second column lists the sections of this part where we reference it. Anyone may purchase copies of these materials from the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428. Table 1 follows:</p> <p>TABLE 1 OF § 1065.1010—ASTM MATERIALS</p> <p>ASTM D 1266-98, Standard Test Method for Sulfur in Petroleum Products (Lamp Method)..... 1065.210</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM D129	1995	Standard Test Method for Sulfur in Petroleum Products (General Bomb Method)	42 C.F.R. § 60.17 (2011)		<p>40 C.F.R. § 60.17, "Incorporations by reference" (2011):</p> <p>The materials listed below are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register on the date listed. These materials are incorporated as they exist on the date of the approval, and a notice of any change in these materials will be published in the Federal Register. The materials are available for purchase at the corresponding address noted below, and all are available for inspection at the Library (C267-01), U.S. EPA, Research Triangle Park, NC 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>. (a) The following materials are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428-2959; or ProQuest, 300 North Zeeb Road, Ann Arbor, MI 48106.</p> <p>...</p> <p>(8) ASTM D129-64, 78, 95, 00, Standard Test Method for Sulfur in Petroleum Products (General Bomb Method), IBR approved for §§ 60.106(j)(2), 60.335(b)(10)(i), and appendix A: Method 19, 12.5.2.2.3.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>
ASTM D1298	1999	Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method	40 C.F.R. § 600.011 (2013)	2014	<p>40 C.F.R. § 600.011, "Incorporation by reference" (2013):</p> <p>(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 Environmental Protection Agency must publish a notice of the change in the Federal Register and the material must be available to the public. All approved material is available for inspection at U.S. EPA, Air and Radiation Docket and Information Center, 1301 Constitution Ave., NW., Room B102, EPA West Building, Washington, DC 20460, (202) 202-1744, and is available from the sources listed below. It is also 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a> and is available from the sources listed below:</p> <p>(b) American Society for Testing and Materials, 100 Barr Harbor Drive, P. O. Box C700, West Conshohocken, PA, 19428-2959, (610) 832-9585, <a href="http://www.astm.org/">http://www.astm.org/</a>.</p> <p>(2) <b>ASTM D 1298-99 (Reapproved 2005)</b> Standard Practice for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method, approved November 1, 2005, IBR approved for §§ 600.113-08(f) and (g), 600.113-12(f) and (g), 600.510-08(g), and 600.510-12(g).</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM D1335	1967 (1972)	Standard Method of Test for Tuft Bind of Pile Floor Coverings	24 C.F.R. § 200.942 (2015)		<p>24 C.F.R. § 200.942, "Supplementary specific procedural requirements under HUD building product standards and certification program for carpet and carpet with attached cushion" (2015):</p> <p>(a) Applicable standards.</p> <p>(v) ASTM D1335-67 (Reapproved 1972)—Standard Test Method for Tuft Bind of Pile Floor Coverings;</p> <p>...</p> <p>(2) These standards have been approved by the Director of the Federal Register for incorporation by reference. They are available from the...</p> <p>(ii) American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>
ASTM D1412	1993 (1997)	Standard Test Method for Equilibrium Moisture of Coal at 96 to 97 Percent Relative Humidity and 30 Degrees Celsius	30 C.F.R. § 870.18		<p>30 C.F.R. § 870.18, "General rules for calculating excess moisture" (1999):</p> <p>(c) The following definitions are applicable to §§ 870.19 and 870.20. ASTM standards D4596-93, Standard Practice for Collection of Channel Samples of Coal in a Mine; D5192-91, Standard Practice for Collection of Coal Samples from Core; and, <b>D1412-93</b>, Standard Test Method for Equilibrium Moisture of Coal at 96 to 97 Percent Relative Humidity and 30 °C are incorporated by reference as published in the 1994 Annual Book of ASTM Standards, Volume 05.05. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Each date of the approval, and a notice of any change in it will be published in the FEDERAL REGISTER. You may obtain copies from the ASTM, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428. A copy of the ASTM standards is available for inspection at the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 1951 Constitution Avenue, NW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol St., NW., Suite 700, Washington, DC.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM D1480	1993 (1997)	Standard Test Method for Density and Relative Density (Specific Gravity) of Viscous Materials by Bingham Pycnometer	40 C.F.R. § 75.6 (2010)		<p>40 C.F.R. § 75.6, "Incorporation by reference" (2010):                      The materials listed in this section are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they existed on the date of approval, and a notice of any change in these materials will be published in the FEDERAL REGISTER.</p> <p>The materials are available for purchase at the corresponding address noted below and are available for inspection at the Public Information Reference Unit of the U.S. EPA, 401 M St, SW., Washington, DC and at the Library (MD-35), U.S. EPA, Research Triangle Park, North Carolina 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: <a href="http://www.archives.gov/federalregister/codetofederalregulations/ibrlocations.html">http://www.archives.gov/federalregister/codetofederalregulations/ibrlocations.html</a>.</p> <p>(a) The following materials are available for purchase from the following addresses: American Society for Testing and Material (ASTM), 100 Barr harbor Drive, P.O. Box C-700, West Conshohocken, Pennsylvania 19428-2959; and the University Microfilms International 300 North Zeeb Road, Ann Arbor, Michigan 48106.</p> <p>(10) ASTM D1480-93 (Reapproved 1997), Standard Test Method for Density and Relative Density (Specific Gravity) of Viscous Materials by Bingham Pycnometer, for appendix D of this part</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM D1481	1993 (1997)	Standard Test Method for Density and Relative Density (Specific Gravity) of Viscous Materials by Lipkin Bicapillary Pycnometer	40 C.F.R. § 75.6 (2008-2018)		<p>40 C.F.R. § 75.6, "Incorporation by reference" (2010):                      The materials listed in this section are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they existed on the date of approval, and a notice of any change in these materials will be published in the FEDERAL REGISTER.</p> <p>The materials are available for purchase at the corresponding address noted below and are available for inspection at the Public Information Reference Unit of the U.S. EPA, 401 M St., SW., Washington, Park, North Carolina or at the National Archives and Records Administration (NARA). For information on the availability of this material at DC and at the Library (MD-35), U.S. EPA, Research Triangle NARA, call 202-741-6030, or go to: <a href="http://www.archives.gov/federalregister/codof/federalregulations/thrllocations.html">http://www.archives.gov/federalregister/codof/federalregulations/thrllocations.html</a></p> <p>(a) The following materials are available for purchase from the following addresses: American Society for Testing and Material (ASTM), 100 Barr harbor Drive, P.O. Box C-700, West Conshohocken, Pennsylvania 19428-2959; and the University Microfilms International 300 North Zeeb Road, Ann Arbor, Michigan 48106.</p> <p>(11) ASTM D1481-93 (Reapproved 1997), Standard Test Method for Density and Relative Density (Specific Gravity) of Viscous Materials by Lipkin Bicapillary Pycnometer, for appendix D of this part.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>



No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM D1518	1985 (1998) e1	Standard Test Method for Thermal Transmittance of Textile Materials	46 C.F.R. § 160.174-3 (2014)		<p>46 C.F.R. § 160.174-3, "Incorporation by reference" (2014):</p> <p>(a) Certain materials are incorporated by reference into this subchapter with the approval of the Director of the Federal Register. The Office of the Federal Register publishes a table, "Material Approved for Incorporation by Reference," which appears in the Finding Aids section of this volume. In that table is found citations to the particular sections of this part where the material is incorporated and date of the approval by the Director of the Federal Register. To enforce any edition other than the one listed in paragraph (b) of the section, notice of change must be published in the Federal Register and the material made available. All approved material is on file at the Office of the Federal Register, Washington, DC 20408, and at Coast Guard Headquarters. Contact Commandant (CG-ENG-4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue, SE., Washington, DC 20593-7509, Washington, DC 20593-7126.</p> <p>(b) The materials approved for incorporation by reference in this subpart are: AMERICAN SOCIETY FOR TESTING AND MATERIALS (ASTM) 100 BARR HARBOR DRIVE, WEST CONSHOCKEN, PA 19428-2959.</p> <p>...</p> <p><b>ASTM D 1518-85 (1990)</b>, STANDARD TEST METHOD FOR THERMAL TRANSMITTANCE OF TEXTILE MATERIALS-160.174-17</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM D1535	1989	Standard Test Method for Specifying Color by the Munsell System	7 C.F.R. § 1755.910 (2014)		<p>7 C.F.R. § 1755.910, "RUS specification for outside plant housings and serving area interface systems"<sup>4</sup>; (2014):</p> <p>(7) The American Society for Testing and Materials Specifications (ASTM).....ASTM D 1535-89, Standard Test Method for Specifying Color by the Munsell System; ASTM D 1654-92, Standard Test Method for Evaluation of Painted or Coated Specimens Subjected to Corrosive Environments; ASTM D 1693-70 (Reapproved 1988), Standard Test Method for Environmental Stress-Cracking of Ethylene Plastics; ASTM D 2197-86 (Reapproved 1991), Standard Test Method for Adhesion of Organic Coatings by Scrape Adhesion; ASTM D 2247-92, Standard Practice for Testing Water Resistance of Coatings in 100% Relative Humidity; ASTM D 2565-92, Standard Practice for Operating Xenon Arc-Type Light-Exposure Apparatus With and Without Water for Exposure of Plastics; ASTM D 2794-92, Standard Test Method for Resistance of Organic Coatings to the Effects of Rapid Deformation (Impact); ASTM D 3928-89, Standard Test Method for Evaluation of Gloss or Sheen Uniformity; ASTM D 4568-86, Standard Test Methods for Evaluating Compatibility Between Cable Filling and Flooding Compounds and Polyolefin Cable Materials; ASTM G 21-90, Standard Practice for Determining Resistance of Synthetic Polymeric Materials to Fungi; and ASTM G 23-90, Standard Practice for Operating Light-Exposure Apparatus (Carbon-Arc Type) With and Without Water for Exposure of Nonmetallic Materials, referenced in this section are incorporated by reference by RUS. These incorporations by references were approved by the Director of the Federal Register in accordance with U.S.C. 552(a) and 7 CFR part 51. Copies of the ASTM standards are available for inspection during normal business hours 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/fix_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/fix_locations.html</a>. Copies are available from ASTM, 1916 Race Street, Philadelphia, Pennsylvania 19103-1187, telephone number (215) 299-5585.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM D1552	1995	Standard Test Method for Sulfur in Petroleum Products (High-Temperature Method)	41 C.F.R. § 60.17 (2011)		<p>40 C.F.R. § 60.17, "Incorporations by reference" (2011) :</p> <p>The materials listed below are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register on the date listed. These materials are incorporated as they exist on the date of the approval, and a notice of any change in these materials will be published in the Federal Register. The materials are available for purchase at the corresponding address noted below, and all are available for inspection at the Library (C267-01), U.S. EPA, Research Triangle Park, NC 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>.</p> <p>(a) The following materials are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428-2959; or ProQuest, 300 North Zeeb Road, Ann Arbor, MI 48106.</p> <p>...</p> <p>(24) ASTM D1552-83, 95, 01, Standard Test Method for Sulfur in Petroleum Products (High-Temperature Method), IBR approved for §§ 60.106(j)(2), 60.335(b)(10)(i), and appendix A: Method 19, Section 12.5.2.2.3.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

<p>ASTM D1688</p>	<p>1995</p>	<p>Standard Test Methods for in Water</p>	<p>40 C.F.R. § 136.3(a) Table 1B (2003)</p>	<p>40 C.F.R. § 136.3, "Identification of test procedures" (2003):</p> <p>(a) Parameters or pollutants, for which methods are approved, are listed together with test procedure descriptions and references in Tables IA, IB, IC, ID, IE, and IF. The full text of the referenced test procedures are incorporated by reference into Tables IA, IB, IC, ID, IE, and IF. The incorporation by reference of these documents, as specified in paragraph (b) of this section, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the documents may be obtained from the sources listed in paragraph (b) of this section. Information regarding obtaining these documents can be obtained from the EPA Office of Water Statistics and Analytical Support Branch at 202-566-1000. Documents may be inspected at EPA's Water Docket, EPA West, 1301 Constitution Avenue, NW., Room B135, Washington, DC (Telephone: 202-566-2426); or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. These test procedures are incorporated as they exist on the day of approval and a notice of any change in these test procedures will be published in the FEDERAL REGISTER. The discharge parameter values for which reports are required must be determined by one of the standard analytical test procedures incorporated by reference and described in Tables IA, IB, IC, IE, and IF, or by any alternate test procedure which has been approved by the Administrator under the provisions of paragraph (d) of this section and §§ 136.4 and 136.5. Under certain circumstances (paragraph (b) or (c) of this section or 40 CFR 401.13) other test procedures may be more advantageous when such other test procedures have been previously approved by the Regional Administrator of the Region in which the discharge will occur, and providing the Director of the State in which such discharge will occur does not object to the use of such alternate test procedure.</p> <p>...</p> <p>(b) The full texts of the methods from the following references which are cited in Tables IA, IB, IC, ID, IE, and IF are incorporated by reference into this regulation and may be obtained from the sources identified. All costs cited are subject to change and must be verified from the indicated sources. The full texts of all the test procedures cited are available for inspection at the National Exposure Research Laboratory, Office of Research and Development, U.S. Environmental Protection Agency, 26 West Martin Luther King Dr., Cincinnati, OH 45268 and the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.</p> <p>...</p> <p>Table IB: 22. Copper-Total, 4 mg/L; Digestion followed by: AA direct aspiration.....<b>D1688-95(A or B)</b></p> <p>...</p> <p>10) Annual Book of ASTM Standards, Water, and Environmental Technology, Section 11, Volumes 11.01 and 11.02, 1994, 1996, and 1999. Available from: ASTM International, 100 Barr Harbor Drive, P.O. Box C-700, West Conshohocken, PA 19428-2959. Tables IB, IC, ID, and IE.</p>
<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>				

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM D1785	1986	Standard Specification for Poly (Vinyl Chloride)(PVC) Plastic Pipe, Schedules 40, 80, and 120	46 C.F.R. § 56.01-2 (1997)		<p>46 C.F.R. § 56.01-2, "Incorporation by Reference" (1997):</p> <p>(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 <a href="http://www.archives.gov/federalregister/codofllofederalregulations/ibr/location.html">http://www.archives.gov/federalregister/codofllofederalregulations/ibr/location.html</a>. The material is also available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG-521), 2100 2nd St., SW., Stop 7126, Washington, DC 20593-7126, and is available from the sources listed below.</p> <p>...</p> <p>American Society for Testing and Materials (ASTM), ASTM International Headquarters, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959</p> <p>...</p> <p><b>ASTM D 1785-83</b> Poly(Vinyl Chloride)(PVC) Plastic Pipe, Schedules 40, 80, and 120. 56.60-25.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by mandate and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>
ASTM D1835	1997	Standard Specification for Liquefied Petroleum (LP) Gases	41 C.F.R. §60.17 (2011)		<p>C.F.R. § 60.17, "Incorporations by reference" (2011) :</p> <p>The materials listed below are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register on the date listed. These materials are incorporated as they exist on the date of the approval, and a notice of any change in these materials will be published in the Federal Register. The materials are available for purchase at the corresponding address noted below, and all are available for inspection at the Library (C267-01), U.S. EPA, Research Triangle Park, NC 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>.</p> <p>(a) The following materials are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428-2959; or ProQuest, 300 North Zeeb Road, Ann Arbor, MI 48106.</p> <p>...</p> <p>(27) ASTM D1835-87, 91, 97, 03a, Standard Specification for Liquefied Petroleum (LP) Gases, IBR approved for §§ 60.41Da of subpart Da of this part, 60.41b of subpart Db of this part, 60.41c of subpart Dc of this part.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by mandate and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM D1890	1996	Standard Test Method for Beta Particle Radioactivity of Water	40 C.F.R. § 136.3(b)(15)(xxvi ii) and Table IE (2012-2018)		<p>40 C.F.R. § 136.3, "Identification of test procedures" (2003):</p> <p>(b) 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. All approved material is available for inspection at EPA's Water Docket, EPA West, 1301 Constitution Avenue NW., Room 3334, Washington, DC 20004, Telephone: 202-566-2426, and is available from the sources listed below. It is also 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: <a href="https://www.archives.gov/federal-register/cfr/ibr-locations.html">https://www.archives.gov/federal-register/cfr/ibr-locations.html</a>.</p> <p>...</p> <p>(15) ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959, or online at <a href="http://www.astm.org">http://www.astm.org</a>.</p> <p>...</p> <p>(xxviii) ASTM D1890-96, Standard Test Method for Beta Particle Radioactivity of Water. April 1996. Table IE.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM D1943	1996	Standard Test Method for Alpha Particle Radioactivity of Water	40 C.F.R. § 136.3(a) Table IE (2010)		<p>40 C.F.R. § 136.3, "Identification of test procedures" (2010):</p> <p>(a) Parameters or pollutants, for which methods are approved, are listed together with test procedure descriptions and references in Tables IA, IB, IC, ID, IE, IF, IG, and IH. In the event of a conflict between the reporting requirements of 40 CFR Parts 122 and 125 and any reporting requirements associated with the methods listed in these tables, the provisions of 40 CFR Parts 122 and 125 are controlling and will determine a permittee's reporting requirements. The full text of the referenced test procedures are incorporated by reference into Tables IA, IB, IC, ID, IE, IF, IG, and IH. The incorporation by reference of these documents, as specified in paragraph (b) of this section, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the documents may be obtained from the sources listed in paragraph (b) of this section. Documents may be inspected at EPA's Water Docket, EPA West, 1301 Constitution Avenue, NW., Room B102, Washington, DC (Telephone: 202-566-2426); 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>. These test procedures are incorporated as they exist on the day of approval and a notice of any change in these test procedures will be published in the Federal Register. The discharge parameter values for which reports are required must be determined by one of the standard analytical test procedures incorporated by reference and described in Tables IA, IB, IC, ID, IE, IF, IG, and IH or by any alternate test procedure which has been approved by the Administrator under the provisions of paragraph (d) of this section and §§ 136.4 and 136.5. Under certain circumstances paragraph (c) of this section, § 136.5(a) through (d) or 40 CFR 401.13, other additional or alternate test procedures may be used.</p> <p>...</p> <p>Table IE: 1. Alpha-Total, pCi per liter...D1943-90, 96.</p> <p>...</p> <p>10) ASTM International. Annual Book of ASTM Standards, Water, and Environmental Technology, Section 11, Volumes 11.01 and 11.02, 1994, 1996, 1999, Volume 11.02, 2000, and individual standards published after 2000. Available from: ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959, or <a href="http://www.astm.org">http://www.astm.org</a>. Tables IA, IB, IC, ID, IE, and IH.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM/II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

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ASTM D1945	1996	Standard Test Method for Analysis of Natural Gas by Chromatography	41 C.F.R. § 60.17 (2019)		<p>40 C.F.R. § 60.17, "Incorporations by reference" (2019) :</p> <p>(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 EPA 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 EPA Docket Center, Public Reading Room, EPA WIC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, telephone number 202-566-1744, and is available from the sources listed below. It is also 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 <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a> . . . . .</p> <p>(74) ASTM D1945-96, Standard Method for Analysis of Natural Gas by Gas Chromatography, IBR approved for §60.45(f).</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM/II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>
ASTM D1946	1990 (1994) e1	Standard Practice for Analysis of Reformed Gas by Gas Chromatography	40 C.F.R. § 75.6 (2010)		<p>40 C.F.R. § 75.6, "Incorporation by reference" (2010):</p> <p>The materials listed in this section are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they existed on the date of approval, and a notice of any change in these materials will be published in the FEDERAL REGISTER.</p> <p>The materials are available for purchase at the corresponding address noted below and are available for inspection at the Public Information Reference Unit of the U.S. EPA, 401 M St., SW., Washington, DC and at the Library (MD-35), U.S. EPA, Research Triangle Park, North Carolina 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: <a href="http://www.archives.gov/federalregister/codeofregulations/ibr/location.html">http://www.archives.gov/federalregister/codeofregulations/ibr/location.html</a>.</p> <p>(a) The following materials are available for purchase from the following addresses: American Society for Testing and Material (ASTM), 100 Barr harbor Drive, P.O. Box C-700, West Conshohocken, Pennsylvania 19428-2959; and the University Microfilms International 300 North Zeeb Road, Ann Arbor, Michigan 48106.</p> <p>...</p> <p>(15) <b>ASTM D1946-90 (Reapproved 2006)</b>, Standard Practice for Analysis of Reformed Gas by Gas Chromatography, for appendices F and G of this part.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM/II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>



No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM D2013	1986 (1994)	Standard Method of Preparing Coal Samples for Analysis	41 C.F.R. § 60.17 (2011)		<p>40 C.F.R. § 60.17, "Incorporations by reference" (2011) :</p> <p>The materials listed below are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register on the date listed. These materials are incorporated as they exist on the date of the approval, and a notice of any change in these materials will be published in the Federal Register. The materials are available for purchase at the corresponding address noted below, and all are available for inspection at the Library (C267-01), U.S. EPA, Research Triangle Park, NC 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>. (a) The following materials are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428-2959; or ProQuest, 300 North Zeeb Road, Ann Arbor, MI 48106.</p> <p>...</p> <p>(30) <b>ASTM D2013-72, 86</b>, Standard Method of Preparing Coal Samples for Analysis, IBR approved for appendix A: Method 19, Section 12.5.2.1.3.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by mandate and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>
ASTM D2015	1996	Standard Test Method for Gross Calorific Value of Coal and Coke by the Adiabatic Bomb Calorimeter	4 C.F.R. § 60.17 (2015)		<p>40 C.F.R. § 60.17, "Incorporations by reference" (2015) :</p> <p>(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 EPA 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 EPA Docket Center, Public Reading Room, EPA WIC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, telephone number 202-566-1744, and is available from the sources listed below. It is also 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 <a href="http://www.archives.gov/federalregister/codeofregulations/ibr/location.html">http://www.archives.gov/federalregister/codeofregulations/ibr/location.html</a>.</p> <p>...</p> <p>(g) The following material is available for purchase from ASTM International, 100 Barr Harbor Drive, P.O. Box CB700, West Conshohocken, Pennsylvania 19428-2959, (800) 262-1373, <a href="http://www.astm.org">http://www.astm.org</a>.</p> <p>...</p> <p>(82) ASTM D2015-96, Standard Test Method for Gross Calorific Value of Solid Fuel by the Adiabatic Bomb Calorimeter, IBR approved for §§ 60.45(f), 60.46(c), and appendix A-7 to part 60: Method 19, Section 12.5.2.1.3.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by mandate and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

ASTM D2036	1998	Standard Test Method for Cyanides in Water	40 C.F.R. § 136.3(a) Table IB (2003)	<p>40 C.F.R. § 136.3, "Identification of test procedures" (2003):</p> <p>(a) Parameters or pollutants, for which methods are approved, are listed together with test procedure descriptions and references in Tables IA, IB, IC, ID, IE, and IF. The full text of the referenced test procedures are incorporated by reference into Tables IA, IB, IC, ID, IE, and IF. The incorporation by reference of these documents, as specified in paragraph (b) of this section, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the documents may be obtained from the sources listed in paragraph (b) of this section. Information regarding obtaining these documents can be obtained from the EPA Office of Water Statistics and Analytical Support Branch at 202-566-1000. Documents may be inspected at EPA's Water Docket, EPA West, 1301 Constitution Avenue, NW., Room B135, Washington, DC (Telephone: 202-566-2426); or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. These test procedures are incorporated as they exist on the day of approval and a notice of any change in these test procedures will be published in the FEDERAL REGISTER. The discharge parameter values for which reports are required must be determined by one of the standard analytical test procedures incorporated by reference and described in Tables IA, IB, IC, IE, and IF, or by any alternate test procedure which has been approved by the Administrator under the provisions of paragraph (d) of this section and §§ 136.4 and 136.5. Under certain circumstances (paragraph (b) or (c) of this section or 40 CFR 401.13) other test procedures may be more advantageous when such other test procedures have been previously approved by the Regional Administrator of the Region in which the discharge will occur, and providing the Director of the State in which such discharge will occur does not object to the use of such alternate test procedure.</p> <p>...</p> <p>(b) The full texts of the methods from the following references which are cited in Tables IA, IB, IC, ID, IE, and IF are incorporated by reference into this regulation and may be obtained from the sources identified. All costs cited are subject to change and must be verified from the indicated sources. The full texts of all the test procedures cited are available for inspection at the National Exposure Research Laboratory, Office of Research and Development, U.S. Environmental Protection Agency, 26 West Martin Luther King Dr., Cincinnati, OH 45268 and the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.</p> <p>...</p> <p>Table IB: 23. Cyanide-Total, mg/L: Manual distillation with MgCl<sub>2</sub>... <b>D2036-98(A)</b></p> <p>...</p> <p>10) Annual Book of ASTM Standards, Water, and Environmental Technology, Section 11, Volumes 11.01 and 11.02, 1994, 1996, and 1999. Available from: ASTM International, 100 Barr Harbor Drive, P.O. Box C-700, West Conshohocken, PA 19428-2959. Tables IB, IC, ID, and IE.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>
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No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM D2163	1991 (1996)	Standard Test Method for Analysis of Liquefied Petroleum (LP) Gases and Propane Concentrates by Gas Chromatography	40 C.F.R. § 1065.1010(a) and Table 1 (2003-2008)	2008	<p>40 C.F.R. § 1065.1010 "Reference materials" (2008): Documents listed in this section have been incorporated by reference into this part. The Director of the Federal Register approved the incorporation by reference as prescribed in 5 U.S.C. 552(a) and 1 CFR part 51. Anyone may inspect copies at the U.S. EPA, Air and Radiation Docket and Information Center, 1301 Constitution Ave., NW., Room B102, EPA West Building, Washington, DC 20460 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: <a href="http://www.archives.gov/federalregister/codeofregulations/ibr/location.s.html">http://www.archives.gov/federalregister/codeofregulations/ibr/location.s.html</a>.</p> <p>(a) ASTM material. Table 1 of this section lists material from the American Society for Testing and Materials that we have incorporated by reference. The first column lists the number and name of the material. The second column lists the sections of this part where we reference it. Anyone may purchase copies of these materials from the American Society for Testing and Materials, 100 Barr Harbor Dr., P.O. Box C700, West Conshohocken, PA 19428 or <a href="http://www.astm.com">www.astm.com</a>. Table 1 follows: ):</p> <p>TABLE 1 OF § 1065.1010-ASTM MATERIALS)</p> <p>...</p> <p>ASTM D 2163-91 (Reapproved 1996), Standard Test Method for Analysis of Liquefied Petroleum (LP) Gases and Propane Concentrates by Gas Chromatography 1065.720</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>
ASTM D2216	1998	Standard Test Method for Laboratory Determination of Water (Moisture) Content of Soil and Rock by Mass	40 C.F.R. § 258.41 (2014)		<p>40 C.F.R. § 258.41, "Project XL Bioreactor Landfill Projects" (2014): (a)(4)(iii)(A) The GCL shall be formulated and manufactured from polypropylene geotextiles and high swelling containment resistant sodium bentonite. The bentonite-geotextile liner shall be manufactured using a minimum of one pound per square foot as determined using the Standard Test Method for Measuring Mass per Unit Area of Geotextiles, ASTM D-5261-92 (reapproved in 1996). The high swelling sodium montmorillonite clay shall be at 12% moisture content as determined by the Standard Test Method for Laboratory Determination of Water (Moisture) Content of Soil and Rock by Mass, ASTM D2216-98. The Director of the Federal Register approves this incorporation by reference with 5 U.S.C. 552(a) and 1 CFR part 51. These methods are available from The American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959. These methods may be inspected at EPA's docket office located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia, 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: <a href="http://www.archives.gov/federalregister/codeofregulations/ibr/location.s.html">http://www.archives.gov/federalregister/codeofregulations/ibr/location.s.html</a>.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM D2234	1998	Standard Practice for Collection of a Gross Sample of Coal	41 C.F.R. § 60.17(2011)		<p>40 C.F.R. § 60.17, "Incorporations by reference" (2011) :</p> <p>The materials listed below are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register on the date listed. These materials are incorporated as they exist on the date of the approval, and a notice of any change in these materials will be published in the Federal Register. The materials are available for purchase at the corresponding address noted below, and all are available for inspection at the Library (C267-01), U.S. EPA, Research Triangle Park, NC 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>. (a) The following materials are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428-2959; or ProQuest, 300 North Zeeb Road, Ann Arbor, MI 48106.</p> <p>...</p> <p>(33) ASTM D2234-76, 96, 97b, 98, Standard Methods for Collection of a Gross Sample of Coal, IBR approved for appendix A: Method 19, Section 12.5.2.1.1.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM D2460	1997	Standard Test Method for Alpha-Particle-Emitting Isotopes of Radium in Water	40 C.F.R. § 136.3(a) Table IE (2010)		<p>40 C.F.R. § 136.3, "Identification of test procedures" (2010):</p> <p>(a) Parameters or pollutants, for which methods are approved, are listed together with test procedure descriptions and references in Tables IA, IB, IC, ID, IE, IF, IG, and IH. In the event of a conflict between the reporting requirements of 40 CFR Parts 122 and 125 and any reporting requirements associated with the methods listed in these tables, the provisions of 40 CFR Parts 122 and 125 are controlling and will determine a permittee's reporting requirements. The full text of the referenced test procedures are incorporated by reference into Tables IA, IB, IC, ID, IE, IF, IG, and IH. The incorporation by reference of these documents, as specified in paragraph (b) of this section, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the documents may be obtained from the sources listed in paragraph (b) of this section. Documents may be inspected at EPA's Water Docket, EPA West, 1301 Constitution Avenue, NW., Room B102, Washington, DC (Telephone: 202-566-2426); 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>. These test procedures are incorporated as they exist on the day of approval and a notice of any change in these test procedures will be published in the Federal Register. The discharge parameter values for which reports are required must be determined by one of the standard analytical test procedures incorporated by reference and described in Tables IA, IB, IC, ID, IE, IF, IG, and IH or by any alternate test procedure which has been approved by the Administrator under the provisions of paragraph (d) of this section and §§ 136.4 and 136.5. Under certain circumstances paragraph (c) of this section, § 136.5(a) through (d) or 40 CFR 401.13, other additional or alternate test procedures may be used.</p> <p>...</p> <p>Table IE: 5. (a) Radium Total pCi per liter(b) Ra, pCi per liter...D2460-90, 97.</p> <p>...</p> <p>10) ASTM International. Annual Book of ASTM Standards, Water, and Environmental Technology, Section 11, Volumes 11.01 and 11.02, 1994, 1996, 1999, Volume 11.02, 2000, and individual standards published after 2000. Available from: ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959, or <a href="http://www.astm.org">http://www.astm.org</a>. Tables IA, IB, IC, ID, IE, and IH.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM/II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM D2502	1992 (1996)	Standard Test Method for Estimation of Molecular Weight (Relative Molecular Mass) of Petroleum Oils from Viscosity Measurements	40 C.F.R. § 75.6 (2010)		<p>40 C.F.R. § 75.6, "Incorporation by reference" (2010):                      The materials listed in this section are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they existed on the date of approval, and a notice of any change in these materials will be published in the FEDERAL REGISTER.</p> <p>The materials are available for purchase at the corresponding address noted below and are available for inspection at the Public Information Reference Unit of the U.S. EPA, 401 M St., SW., Washington, DC and at the Library (MD-35), U.S. EPA, Research Triangle Park, North Carolina 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: <a href="http://www.archives.gov/federalregister/codeofregulations/fbrlocation.html">http://www.archives.gov/federalregister/codeofregulations/fbrlocation.html</a>.</p> <p>(a) The following materials are available for purchase from the following addresses: American Society for Testing and Material (ASTM), 100 Barr harbor Drive, P.O. Box C-700, West Conshohocken, Pennsylvania 19428-2959; and the University Microfilms International 300 North Zeeb Road, Ann Arbor, Michigan 48106.</p> <p>...</p> <p>(21) ASTM D2502-92 (Reapproved 1996), Standard Test Method for Estimation of Molecular Weight (Relative Molecular Mass) of Petroleum Oils from Viscosity Measurements, for appendix G of this part.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM D2503	1992 (1997)	Standard Test Method for Relative Molecular Mass (Molecular Weight) of Hydrocarbons by Thermoelectric Measurement of Vapor Pressure	40 C.F.R. § 75.6 (2010)		<p>40 C.F.R. § 75.6, "Incorporation by reference" (2010):                      The materials listed in this section are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they existed on the date of approval, and a notice of any change in these materials will be published in the FEDERAL REGISTER.</p> <p>The materials are available for purchase at the corresponding address noted below and are available for inspection at the Public Information Reference Unit of the U.S. EPA, 401 M St., SW., Washington, DC and at the Library (MD-35), U.S. EPA, Research Triangle Park, North Carolina 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: <a href="http://www.archives.gov/federalregister/codetofederalregulations/ibr/location.html">http://www.archives.gov/federalregister/codetofederalregulations/ibr/location.html</a>.</p> <p>(a) The following materials are available for purchase from the following addresses: American Society for Testing and Material (ASTM), 100 Barr harbor Drive, P.O. Box C-700, West Conshohocken, Pennsylvania 19428-2959; and the University Microfilms International 300 North Zeeb Road, Ann Arbor, Michigan 48106.</p> <p>...</p> <p>(22) ASTM D2503-92 (Reapproved 1997), Standard Test Method for Relative Molecular Mass (Molecular Weight) of Hydrocarbons by Thermoelectric Measurement of Vapor Pressure, for appendix G of this part.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM/II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM D2597	1994 (1999)	Standard Test Method for Analysis of Demethanized Hydrocarbon Liquid Mixtures Containing Nitrogen and Carbon Dioxide by Gas Chromatography	41 C.F.R. § 60.17 (2011)		<p>40 C.F.R. § 60.17, "Incorporations by reference" (2011) :</p> <p>The materials listed below are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register on the date listed. These materials are incorporated as they exist on the date of the approval, and a notice of any change in these materials will be published in the Federal Register. The materials are available for purchase at the corresponding address noted below, and all are available for inspection at the Library (C267-01), U.S. EPA, Research Triangle Park, NC 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>. (a) The following materials are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428-2959; or ProQuest, 300 North Zeeb Road, Ann Arbor, MI 48106.</p> <p>...</p> <p>(38) ASTM D2597-94 (Reapproved 1999), Standard Test Method for Analysis of Demethanized Hydrocarbon Liquid Mixtures Containing Nitrogen and Carbon Dioxide by Gas Chromatography. IBR approved for § 60.335(b)(9)(i).</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>
ASTM D2622	1998	Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry	41 C.F.R. § 60.17 (2011)		<p>40 C.F.R. § 60.17, "Incorporations by reference" (2011) :</p> <p>The materials listed below are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register on the date listed. These materials are incorporated as they exist on the date of the approval, and a notice of any change in these materials will be published in the Federal Register. The materials are available for purchase at the corresponding address noted below, and all are available for inspection at the Library (C267-01), U.S. EPA, Research Triangle Park, NC 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>. (a) The following materials are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428-2959; or ProQuest, 300 North Zeeb Road, Ann Arbor, MI 48106.</p> <p>...</p> <p>(39) ASTM D2622-87, 94, 98, Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry, IBR approved for §§ 60.106(j)(2) and 60.335(b)(10)(i).</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>



No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM D2724	1987 (1995)	Standard Test Methods for Bonded, Fused, and Laminated Apparel Fabrics	49 C.F.R. § 238 Appendix B (2010)		<p>49 C.F.R. § 238 APPENDIX B TO PART 238, "TEST METHODS AND PERFORMANCE CRITERIA FOR THE FLAMMABILITY AND SMOKE EMISSION CHARACTERISTICS OF MATERIALS USED IN PASSENGER CARS AND LOCOMOTIVE CABS"</p> <p>(a) Incorporation by reference. Certain documents are incorporated by reference into this appendix with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may inspect a copy of each document during normal business hours at the Federal Railroad Administration, Docket Clerk, 1200 New Jersey Avenue, SE., Washington, DC 20950 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: <a href="http://www.archives.gov/federalregister/codeofregulations/ibr/location">http://www.archives.gov/federalregister/codeofregulations/ibr/location</a>s.html. The documents incorporated by reference into this appendix and the sources from which you may obtain these documents are listed below:</p> <p>(1) American Society for Testing and Materials (ASTM), 100 Barr Harbor Dr., West Conshohocken, PA 19428-2959.</p> <p>...</p> <p>(ii) <b>ASTM D 2724-87</b>, Standard Test Methods for Bonded, Fused, and Laminated Apparel Fabrics.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM/II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>
ASTM D2777	1998	Standard Practice for Determination of Precision and Bias of Applicable Test Methods of Committee D-19 on Water	46 C.F.R. § 162.050-4 (2011)		<p>46 C.F.R. § 162.050-4, "Incorporation by reference: Where can I get a copy of the publications mentioned in this part?" (2011)</p> <p>(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 (2011) CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish a 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 <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>. Also, it is available for inspection at the Coast Guard, Office of Design and Engineering Standards (CG-521), 2100 2nd St., SW., Stop 7126, Washington, DC 20593-7126, telephone 202-372-1379, and is available from the sources indicated in paragraph (b) of this section.</p> <p>(b) American Society for Testing and Materials 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959.</p> <p>(1) ASTM D2777-98, Standard Practice for Determination of Precision and Bias of Applicable Test Methods of Committee D-19 on Water ("ASTM D2777-98"), incorporation by reference approved for §162.050-15.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM/II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

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ASTM D287	1992 (1995)	Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method)	40 C.F.R. § 94.5 (2014)		<p>40 C.F.R. § 94.5, "Reference materials" (2014):</p> <p>The materials listed in this section are 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, a document must be published in the Federal Register and the material must be available to the public. All approved materials are available for inspection at the Air and Radiation Docket and Information Center (Air Docket) in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742. These approved materials are also 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 <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>. In addition, these materials are available from the sources listed below.</p> <p>(a) ASTM material. Copies of these materials may be obtained from ASTM International, 100 Barr Harbor Dr., P.O. Box C700, West Conshohocken, PA 19428-2959, or by calling (877) 909-ASTM, or at <a href="http://www.astm.org">http://www.astm.org</a>.</p> <p>...</p> <p>(4) <b>ASTM D287-92 (Reapproved 2000)</b>, Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method), IBR approved for § 94.108.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>

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ASTM D2879	1997	Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope	41 C.F.R. § 60.17 (2011)		<p>40 C.F.R. § 60.17, "Incorporations by reference" (2011) :</p> <p>The materials listed below are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register on the date listed. These materials are incorporated as they exist on the date of the approval, and a notice of any change in these materials will be published in the Federal Register. The materials are available for purchase at the corresponding address noted below, and all are available for inspection at the Library (C267-01), U.S. EPA, Research Triangle Park, NC 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>. (a) The following materials are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428-2959; or ProQuest, 300 North Zeeb Road, Ann Arbor, MI 48106.</p> <p>...</p> <p>(41) ASTM D2879-83, 96, 97, Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope, IBR approved for §§ 60.111(b)(3), 60.116b(e)(3)(ii), 60.116b(f)(2)(i), 60.485(e)(1), and 60.485a(e)(1).</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by mandate and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>
ASTM D2986	1995a (1999)	Standard Practice for Evaluation of Air, Assay Media by the Monodisperse DOP (Diocetyl Phthalate) Smoke Test	40 C.F.R. § 86.1 (2008)	2014	<p>C.F.R. § 86.1, "Reference materials" (2008):</p> <p>(a) The documents in paragraph (b) of this section have been incorporated by reference. The incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at U.S. EPA, OAR, 401 M St., SW., Washington, DC 20460, 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: <a href="http://www.archives.gov/federalregister/codeofregulations/ibr/location">http://www.archives.gov/federalregister/codeofregulations/ibr/location</a> s.html. (b) The following paragraphs and tables set forth the material that has been incorporated by reference in this part. (1) ASTM material. The following table sets forth material from the American Society for Testing and Materials that has been incorporated by reference. The first column lists the number and name of the material. The second column lists the section(s) of this part, other than this section, in which the matter is referenced. Copies of these materials may be obtained from American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959.</p> <p>...</p> <p>ASTM D2986-95a, (Reapproved 1999) Standard Practice for Evaluation of Air Assay Media by the Monodisperse DOP (Diocetyl Phthalate) Smoke Test....86.1310-2007.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by mandate and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

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ASTM D3120	1996	Standard Test Method for Trace Quantities of Sulfur in Light Liquid Petroleum Hydrocarbons by Oxidative Microcoulometry	40 C.F.R. § 80.580(b) (2001-2003)	2004	<p>40 C.F.R. § 80.580 "What are the sampling and testing methods for sulfur?" (2003)</p> <p>...</p> <p>(b) Incorporation by reference. ASTM Standard Methods D 2622-98, "Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry," D 3120-96, "Standard Test Method for Trace Quantities of Sulfur in Light Liquid Petroleum Hydrocarbons by Oxidative Microcoulometry," D 6428-99, "Test Method for Total Sulfur in Liquid Aromatic Hydrocarbons and Their Derivatives by Oxidative Combustion and Electrochemical Detection," and D 5453-00, "Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor Fuels and Oils by Ultraviolet Fluorescence," are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428-2959. Copies may be inspected at the Air Docket Section (LE-131), Room M-1500, U.S. Environmental Protection Agency, Docket No. A-99-06, 401 M Street, SW, Washington, DC 20460, or at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by mandate and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>
ASTM D3173	1987 (1996)	Standard Test Method for Moisture in the Analysis Sample of Coal and Coke	41 C.F.R. § 60.17 (2011)		<p>40 C.F.R. § 60.17, "Incorporations by reference" (2011) :</p> <p>The materials listed below are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register on the date listed. These materials are incorporated as they exist on the date of the approval, and a notice of any change in these materials will be published in the Federal Register. The materials are available for purchase at the corresponding address noted below, and all are available for inspection at the Library (C267-01), U.S. EPA, Research Triangle Park, NC 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>. (a) The following materials are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428-2959; or ProQuest, 300 North Zeeb Road, Ann Arbor, MI 48106.</p> <p>...</p> <p>(45) <b>ASTM D3173-73, 87</b>, Standard Test Method for Moisture in the Analysis Sample of Coal and Coke, IBR approved for appendix A: Method 19, Section 12.5.2.1.3.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by mandate and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>

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ASTM D3178	1989 (1997)	Standard Test Methods for Carbon and Hydrogen in the Analysis Sample of Coal and Coke	41 C.F.R. § 60.17 (2011)		<p>40 C.F.R. § 60.17, "Incorporations by reference" (2011) :</p> <p>The materials listed below are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register on the date listed. These materials are incorporated as they exist on the date of the approval, and a notice of any change in these materials will be published in the Federal Register. The materials are available for purchase at the corresponding address noted below, and all are available for inspection at the Library (C267-01), U.S. EPA, Research Triangle Park, NC 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>. (a) The following materials are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428-2959; or ProQuest, 300 North Zeeb Road, Ann Arbor, MI 48106.</p> <p>...</p> <p>(48) <b>ASTM D3178-73 (Reapproved 1979), 89</b>, Standard Test Methods for Carbon and Hydrogen in the Analysis Sample of Coal and Coke, IBR approved for § 60.45(f)(5)(i).</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>

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ASTM D3236	1988 (1999)	Standard Test Method for Apparent Viscosity of Hot Melt Adhesives and Coating Materials	21 C.F.R. § 177.1520 (2013)		<p>21 C.F.R. § 177.1520, "Olefin polymers" (2013):</p> <p>(b) The basic olefin polymers identified in paragraph (a) of this section may contain optional adjunct substances required in the production of such basic olefin polymers. The optional adjunct substances required in the production of the basic olefin polymers or finished food-contact articles may include substances permitted for such use by applicable regulations in parts 170 through 189 of this chapter, substances generally recognized as safe in food and food packaging, substances used in accordance with a prior sanction or approval, and the following:</p> <p>...</p> <p>Petroleum hydrocarbon resins (cyclopentadiene-type), hydrogenated (CAS Reg. No. 68132-00-3) produced by the thermal polymerization of dicyclopentadiene and cyclohexadiene codimers (consisting of a mixture of cyclopentadiene, methyl cyclopentadiene, and C4-C5 acyclic dienes), followed by hydrogenation and having a ring-and-ball softening point of 119 °C minimum as determined by ASTM Method E 28-67 (Reapproved 1982), "Standard Test Method for Softening Point by Ring-and-Ball Apparatus," and a minimum viscosity of 3,000 centipoise, measured at 160 °C, as determined by <b>ASTM Method D 3236-88</b>, "Standard Test Method for Apparent Viscosity of Hot Melt Adhesives and Coating Materials," both of which are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, Philadelphia, PA 19428-2959, or from the Center For Food Safety and Applied Nutrition (HFS-200), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, or may be examined 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: <a href="http://www.archives.gov/federalregister/codof/federalregulations/ibr/location.s.html">http://www.archives.gov/federalregister/codof/federalregulations/ibr/location.s.html</a>.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>

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ASTM D3246	1996	Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry	41 C.F.R. § 60.17 (2011)		<p>40 C.F.R. § 60.17, "Incorporations by reference" (2011) :</p> <p>The materials listed below are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register on the date listed. These materials are incorporated as they exist on the date of the approval, and a notice of any change in these materials will be published in the Federal Register. The materials are available for purchase at the corresponding address noted below, and all are available for inspection at the Library (C267-01), U.S. EPA, Research Triangle Park, NC 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>. (a) The following materials are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428-2959; or ProQuest, 300 North Zeeb Road, Ann Arbor, MI 48106.</p> <p>...</p> <p>(49) ASTM D3246-81, 92, 96, Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry, IBR approved for § 60.335(b)(10)(ii).</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>
ASTM D3286	1996	Standard Test Method for Gross Calorific Value of Coal and Coke by the Isoperibol	41 C.F.R. § 60.17 (2011)		<p>40 C.F.R. § 60.17, "Incorporations by reference" (2011) :</p> <p>The materials listed below are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register on the date listed. These materials are incorporated as they exist on the date of the approval, and a notice of any change in these materials will be published in the Federal Register. The materials are available for purchase at the corresponding address noted below, and all are available for inspection at the Library (C267-01), U.S. EPA, Research Triangle Park, NC 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>.</p> <p>The following materials are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428-2959; or ProQuest, 300 North Zeeb Road, Ann Arbor, MI 48106.</p> <p>...</p> <p>(52) ASTM D3286-85, 96, Standard Test Method for Gross Calorific Value of Coal and Coke by the Isoperibol Bomb Calorimeter, IBR approved for appendix A: Method 19, Section 12.5.2.1.3.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

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ASTM D3371	1995	Standard Test Method for Nitriles in Aqueous Solution by Gas-Liquid Chromatography	40 C.F.R. § 136.3(a) Table IF (2014)		<p>40 C.F.R. § 136.3, "Identification of test procedures" (2014):</p> <p>(a) Parameters or pollutants, for which methods are approved, are listed together with test procedure descriptions and references in Tables IA, IB, IC, ID, IE, IF, IG, and IH. The methods listed in Tables IA, IB, IC, ID, IE, IF, IG, and IH are incorporated by reference, see paragraph (b) of this section ....</p> <p>...                      acetonitrile .....75-05-8 .....                      1666/1671/D3371/D3695.</p> <p>...                      (b) The documents required in this section are incorporated by reference into this section with approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.</p> <p>Copies of the documents may be obtained from the sources listed in paragraph (b) of this section. Documents may be inspected at EPA's Water Docket, EPA West, 1301 Constitution Avenue NW., Room B102, Washington, DC (Telephone: 202-566-2426); 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: <a href="http://www.archives.gov/federalregister/codeofregulations/ibr/locations.html">http://www.archives.gov/federalregister/codeofregulations/ibr/locations.html</a>. These test procedures are incorporated as they exist on the day of approval and a notice of any change in these test procedures will be published in the FEDERAL REGISTER. The full texts of the methods from the following references which are cited in Tables IA, IB, IC, ID, IE, IF, IG and IH are incorporated by reference into this regulation and may be obtained from the source identified. All costs cited are subject to change and must be verified from the indicated source.</p> <p>...                      (15) ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959, or online at <a href="http://www.astm.org">http://www.astm.org</a>.</p> <p>...                      (xxxvi) ASTM D3371-95, Standard Test Method for Nitriles in Aqueous Solution by Gas-Liquid Chromatography, February 1996, Table IF.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM/II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>



No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM D3454	1997	Standard Test Method for Radium-226 in Water	40 C.F.R. § 136.3(a) Table IE (2010)		<p>40 C.F.R. § 136.3, "Identification of test procedures" (2010):</p> <p>(a) Parameters or pollutants, for which methods are approved, are listed together with test procedure descriptions and references in Tables IA, IB, IC, ID, IE, IF, IG, and IH. In the event of a conflict between the reporting requirements of 40 CFR Parts 122 and 125 and any reporting requirements associated with the methods listed in these tables, the provisions of 40 CFR Parts 122 and 125 are controlling and will determine a permittee's reporting requirements. The full text of the referenced test procedures are incorporated by reference into Tables IA, IB, IC, ID, IE, IF, IG, and IH. The incorporation by reference of these documents, as specified in paragraph (b) of this section, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the documents may be obtained from the sources listed in paragraph (b) of this section. Documents may be inspected at EPA's Water Docket, EPA West, 1301 Constitution Avenue, NW., Room B102, Washington, DC (Telephone: 202-566-2426); 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>. These test procedures are incorporated as they exist on the day of approval and a notice of any change in these test procedures will be published in the Federal Register. The discharge parameter values for which reports are required must be determined by one of the standard analytical test procedures incorporated by reference and described in Tables IA, IB, IC, ID, IE, IF, IG, and IH or by any alternate test procedure which has been approved by the Administrator under the provisions of paragraph (d) of this section and §§ 136.4 and 136.5. Under certain circumstances paragraph (c) of this section, § 136.5(a) through (d) or 40 CFR 401.13, other additional or alternate test procedures may be used.</p> <p>...</p> <p>Table IE: 5. (a) Radium Total pCi per liter(b) Ra, pCi per liter...Scintillation counter...D3454-91, 97.</p> <p>...</p> <p>10) ASTM International. Annual Book of ASTM Standards, Water, and Environmental Technology, Section 11, Volumes 11.01 and 11.02, 1994, 1996, 1999, Volume 11.02, 2000, and individual standards published after 2000. Available from: ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959, or <a href="http://www.astm.org">http://www.astm.org</a>. Tables IA, IB, IC, ID, IE, and IH.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM/II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM D3588	1998	Standard Practice for Calculating Heat Value, Compressibility Factor, and Relative Density of Gaseous Fuels	40 C.F.R. § 75.6 (2010)		<p>40 C.F.R. § 75.6, "Incorporation by reference" (2010):</p> <p>The materials listed in this section are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they existed on the date of approval, and a notice of any change in these materials will be published in the FEDERAL REGISTER.</p> <p>The materials are available for purchase at the corresponding address noted below and are available for inspection at the Public Information Reference Unit of the U.S. EPA, 401 M St., SW., Washington, DC and at the Library (MD-35), U.S. EPA, Research Triangle Park, North Carolina 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: <a href="http://www.archives.gov/federalregister/codereferenceincorporations/ibr/location.html">http://www.archives.gov/federalregister/codereferenceincorporations/ibr/location.html</a>.</p> <p>(a) The following materials are available for purchase from the following addresses: American Society for Testing and Material (ASTM), 100 Barr harbor Drive, P.O. Box C-700, West Conshohocken, Pennsylvania 19428-2959; and the University Microfilms International 300 North Zeeb Road, Ann Arbor, Michigan 48106.</p> <p>...</p> <p>(31) ASTM D3588-98, Standard Practice for Calculating Heat Value, Compressibility Factor, and Relative Density of Gaseous Fuels, for appendices D and F to this part.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM/II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No.¹	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference²	ASTM's Response³
ASTM D3697	1992 (1996)	Standard Test Method for Antimony in Water	21 C.F.R. § 165.110 (2015)		<p>21 C.F.R. § 165.110, "Bottled water" (2015):</p> <p>(b)(2)(E) Analyses to determine compliance with the requirements of paragraph (b)(4)(iii)(A) of this section shall be conducted in accordance with an applicable method and applicable revisions to the methods listed in paragraphs (b)(4)(iii)(E)(1) through (b)(4)(iii)(E)(14) of this section and described, unless otherwise noted, in "Methods for Chemical Analysis of Water and Wastes," U.S. EPA Environmental Monitoring and Support Laboratory (EMSL), Cincinnati, OH 45258 (EPA-600/4-79-020), March 1983, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this publication are available from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5825 Port Royal Rd., Springfield, VA 22161, or may be examined at the Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locati ons.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locati ons.html</a>.</p> <p>...</p> <p>(iv) Method <b>D-3697-92</b> "Standard Test Method for Antimony in Water," contained in the Annual Book of ASTM Standards, vols. 11.01 and 11.02, 1995, American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this publication are available from American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428, or may be examined at the Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locati ons.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locati ons.html</a>.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM/II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM D396	1998	Standard Specification for Fuel Oils	41 C.F.R. § 60.17 (2011)		<p>40 C.F.R. § 60.17, "Incorporations by reference" (2011) :</p> <p>The materials listed below are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register on the date listed. These materials are incorporated as they exist on the date of the approval, and a notice of any change in these materials will be published in the Federal Register. The materials are available for purchase at the corresponding address noted below, and all are available for inspection at the Library (C267-01), U.S. EPA, Research Triangle Park, NC 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>. (a) The following materials are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428-2959; or ProQuest, 300 North Zeeb Road, Ann Arbor, MI 48106.</p> <p>...</p> <p>(14) ASTM D396-78, 89, 90, 92, 96, 98, Standard Specification for Fuel Oils, IBR approved for §§ 60.41b of subpart Db of this part, 60.41c of subpart Dc of this part, 60.111(b) of subpart K of this part, and 60.111a(b) of subpart Ka of this part.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM D4177	1995	Standard Practice for Automatic Sampling of Petroleum and Petroleum Products	41 C.F.R. § 60.17 (2011)		<p>40 C.F.R. § 60.17, "Incorporations by reference" (2011) :</p> <p>The materials listed below are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register on the date listed. These materials are incorporated as they exist on the date of the approval, and a notice of any change in these materials will be published in the Federal Register. The materials are available for purchase at the corresponding address noted below, and all are available for inspection at the Library (C267-01), U.S. EPA, Research Triangle Park, NC 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>. (a) The following materials are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428-2959; or ProQuest, 300 North Zeeb Road, Ann Arbor, MI 48106.</p> <p>...</p> <p>(60) ASTM D4177-95, Standard Practice for Automatic Sampling of Petroleum and Petroleum Products, IBR approved for appendix A: Method 19, Section 12.5.2.2.1.</p> <p>(61) ASTM D4177-95 (Reapproved 2000), Standard Practice for Automatic Sampling of Petroleum and Petroleum Products, IBR approved for § 60.4415(a)(1).</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>
ASTM D4239	1997e1	Standard Test Methods for Sulfur in the Analysis Sample of Coal and Coke Using High Temperature Tube Furnace Combustion Methods	41 C.F.R. § 60.17 (2011)		<p>40 C.F.R. § 60.17, "Incorporations by reference" (2011) :</p> <p>The materials listed below are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register on the date listed. These materials are incorporated as they exist on the date of the approval, and a notice of any change in these materials will be published in the Federal Register. The materials are available for purchase at the corresponding address noted below, and all are available for inspection at the Library (C267-01), U.S. EPA, Research Triangle Park, NC 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>. (a) The following materials are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428-2959; or ProQuest, 300 North Zeeb Road, Ann Arbor, MI 48106.</p> <p>...</p> <p>(62) <b>ASTM D4239-85, 94, 97</b>, Standard Test Methods for Sulfur in the Analysis Sample of Coal and Coke Using High Temperature Tube Furnace Combustion Methods, IBR approved for appendix A: Method 19, Section 12.5.2.1.3.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM D4268	1993	Standard Test Method for Testing Fiber Ropes	33 C.F.R. § 164.03 (2014)		<p>33 C.F.R. § 164.03, "Incorporation by reference" (2014):</p> <p>(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 paragraph (b) of 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 Navigation Systems Division (CG-553), Coast Guard Headquarters, 2100 2nd St. SW., Stop 7580, Washington, DC 20593-7580 and 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>. All approved material is available from the sources indicated in paragraph (b) of this section.</p> <p>(b) The materials approved for incorporation by reference in this part and the sections affected are as follows:</p> <p>...</p> <p>ASTM D4268-93, Standard Test Method for Testing Fiber Ropes.....164.74.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by mandate and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>
ASTM D4294	1998	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectrometry	40 C.F.R. § 75.6 (2010)		<p>40 C.F.R. § 75.6, "Incorporation by reference" (2010):</p> <p>The materials listed in this section are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they existed on the date of approval, and a notice of any change in these materials will be published in the FEDERAL REGISTER.</p> <p>The materials are available for purchase at the corresponding address noted below and are available for inspection at the Public Information Reference Unit of the U.S. EPA, 401 M St., SW., Washington, DC and at the Library (MD-35), U.S. EPA, Research Triangle Park, North Carolina 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: <a href="http://www.archives.gov/federalregister/codeofregulations/ibr/location.html">http://www.archives.gov/federalregister/codeofregulations/ibr/location.html</a>.</p> <p>(a) The following materials are available for purchase from the following addresses: American Society for Testing and Material (ASTM), 100 Barr harbor Drive, P.O. Box C-700, West Conshohocken, Pennsylvania 19428-2959; and the University Microfilms International 300 North Zeeb Road, Ann Arbor, Michigan 48106.</p> <p>...</p> <p>(36) ASTM D4294-98, Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry, for appendices A and D of this part.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by mandate and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM D4329	1999	Standard Practice for Fluorescent UV Exposure of Plastics	49 C.F.R. § 571.5 (2014)		<p>49 C.F.R. § 571.5, "Matter incorporated by reference" (2014):</p> <p>(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 National Highway Traffic Safety Administration (NHTSA) 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 NHTSA, 1200 New Jersey Avenue SE., Washington, DC 20590, and at the National Archives and Records Administration (NARA). For information on the availability of this material at NHTSA, or if you experience difficulty obtaining the standards referenced below, contact NHTSA Office of Technical Information Services, phone number (202) 366-2588.</p> <p>For information on the availability of this material at NARA, call (202) 741-6030, or go to: <a href="http://www.archives.gov/federal-register/cfr/ibr-locations.html">http://www.archives.gov/federal-register/cfr/ibr-locations.html</a>.</p> <p>...</p> <p>(d) ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959. Telephone: (610) 832-9500; Fax (610) 832-9555; Web site: <a href="http://www.astm.org">http://www.astm.org</a>.</p> <p>...</p> <p>(22) ASTM D4329-99, "Standard Practice for Fluorescent UV Exposure of Plastics," approved January 10, 1999, into § 571.106.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM D4809	1995	Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter (Precision Method)	40 C.F.R. § 61.18 (2014)		<p>40 C.F.R. § 61.18, "Incorporations by reference" (2014):                      The materials listed below are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and a notice of any change in these materials will be published in the Federal Register. The materials are available for inspection at the corresponding address noted below, and at U.S. EPA's Air Docket at 1200 Pennsylvania Avenue, NW, Washington, DC 20460, 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>.</p> <p>(a) The following materials are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM) International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA, 19428-2959; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, MI 48106.</p> <p>...</p> <p>(13) ASTM D4809-95, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter (Precision Method), IBR approved for § 61.245(e)(3).</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>



No.¹	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference²	ASTM's Response³
ASTM D4891	1989 (1994) E I	Standard Test Method for Heating Value of Gases in Natural Gas Range by Stoichiometric Combustion	40 C.F.R. § 75.6 (2010)		<p>40 C.F.R. § 75.6, "Incorporation by reference" (2010):</p> <p>The materials listed in this section are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they existed on the date of approval, and a notice of any change in these materials will be published in the FEDERAL REGISTER.</p> <p>The materials are available for purchase at the corresponding address noted below and are available for inspection at the Public Information Reference Unit of the U.S. EPA, 401 M St., SW., Washington, DC and at the Library (MD-35), U.S. EPA, Research Triangle Park, North Carolina 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: <a href="http://www.archives.gov/federalregister/codereferenceincorporations/ibr/location.html">http://www.archives.gov/federalregister/codereferenceincorporations/ibr/location.html</a>.</p> <p>(a) The following materials are available for purchase from the following addresses: American Society for Testing and Material (ASTM), 100 Barr harbor Drive, P.O. Box C-700, West Conshohocken, Pennsylvania 19428-2959; and the University Microfilms International 300 North Zeeb Road, Ann Arbor, Michigan 48106.</p> <p>...</p> <p>(39) <b>ASTM D4891-89 (Reapproved 2006)</b>, Standard Test Method for Heating Value of Gases in Natural Gas Range by Stoichiometric Combustion, for appendices D and F to this part.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM D4986	1998	Standard Test Method for Horizontal Burning Characteristics of Cellular Polymeric Materials	46 C.F.R. § 32.01-1 (2014)		<p>46 C.F.R. § 32.01-1, "Incorporation by reference" (2014):</p> <p>(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the Federal Register and make the material available to the public. All approved material is on file at the Coast Guard Headquarters. Contact Commandant (CG-ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593-7509. You may also inspect this material 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>. All material is available from the sources indicated in paragraph (b) of this section.</p> <p>...</p> <p>(c) ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959, 877-909-2786, <a href="http://www.astm.org">http://www.astm.org</a>.</p> <p>(1) ASTM D4986-98, Standard Test Method for Horizontal Burning Characteristics of Cellular Polymeric Materials, incorporation by reference approved for § 32.57-10.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

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ASTM D512	1989 (1999)	Standard Test Methods for Chloride Ion In Water	40 C.F.R. § 136.3(a) Table IB (2010)	2012	<p>40 C.F.R. § 136.3, "Identification of test procedures" (2010):</p> <p>(a) Parameters or pollutants, for which methods are approved, are listed together with test procedure descriptions and references in Tables IA, IB, IC, ID, IE, IF, IG, and IH. In the event of a conflict between the reporting requirements of 40 CFR Parts 122 and 125 and any reporting requirements associated with the methods listed in these tables, the provisions of 40 CFR Parts 122 and 125 are controlling and will determine a permittee's reporting requirements. The full text of the referenced test procedures are incorporated by reference into Tables IA, IB, IC, ID, IE, IF, IG, and IH. The incorporation by reference of these documents, as specified in paragraph (b) of this section, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the documents may be obtained from the sources listed in paragraph (b) of this section. Documents may be inspected at EPA's Water Docket, EPA West, 1301 Constitution Avenue, NW., Room B102, Washington, DC (Telephone: 202-566-2426); 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>. These test procedures are incorporated as they exist on the day of approval and a notice of any change in these test procedures will be published in the Federal Register. The discharge parameter values for which reports are required must be determined by one of the standard analytical test procedures incorporated by reference and described in Tables IA, IB, IC, ID, IE, IF, IG, and IH or by any alternate test procedure which has been approved by the Administrator under the provisions of paragraph (d) of this section and §§ 136.4 and 136.5. Under certain circumstances paragraph (c) of this section, § 136.5(a) through (d) or 40 CFR 401.13, other additional or alternate test procedures may be used. ...</p> <p>Table IB: 16. Chloride, mg/L... Titrimetric: (silver nitrate) ... <b>D512-89(99) (B)</b> ... or ... (Mercuric nitrate)...D512-89 (99) (A).</p> <p>... 10) ASTM International. Annual Book of ASTM Standards, Water, and Environmental Technology, Section 11, Volumes 11.01 and 11.02, 1994, 1996, 1999, Volume 11.02, 2000, and individual standards published after 2000. Available from: ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959, or <a href="http://www.astm.org">http://www.astm.org</a>. Tables IA, IB, IC, ID, IE, and IH.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>

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ASTM D5257	1997	Standard Test Method for Dissolved Hexavalent Chromium in Water by Ion Chromatography	40 C.F.R. § 136.3(a) Table IB (2010)	2012	<p>40 C.F.R. § 136.3, "Identification of test procedures" (2010):</p> <p>(a) Parameters or pollutants, for which methods are approved, are listed together with test procedure descriptions and references in Tables IA, IB, IC, ID, IE, IF, IG, and IH. In the event of a conflict between the reporting requirements of 40 CFR Parts 122 and 125 and any reporting requirements associated with the methods listed in these tables, the provisions of 40 CFR Parts 122 and 125 are controlling and will determine a permittee's reporting requirements. The full text of the referenced test procedures are incorporated by reference into Tables IA, IB, IC, ID, IE, IF, IG, and IH. The incorporation by reference of these documents, as specified in paragraph (b) of this section, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the documents may be obtained from the sources listed in paragraph (b) of this section. Documents may be inspected at EPA's Water Docket, EPA West, 1301 Constitution Avenue, NW., Room B102, Washington, DC (Telephone: 202-566-2426); 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>. These test procedures are incorporated as they exist on the day of approval and a notice of any change in these test procedures will be published in the Federal Register. The discharge parameter values for which reports are required must be determined by one of the standard analytical test procedures incorporated by reference and described in Tables IA, IB, IC, ID, IE, IF, IG, and IH or by any alternate test procedure which has been approved by the Administrator under the provisions of paragraph (d) of this section and §§ 136.4 and 136.5. Under certain circumstances paragraph (c) of this section, § 136.5(a) through (d) or 40 CFR 401.13, other additional or alternate test procedures may be used. ...</p> <p>Table IB: 18. Chromium VI dissolved, mg/L...Ion Chromatography...D5257-97.</p> <p>...</p> <p>10) ASTM International. Annual Book of ASTM Standards, Water, and Environmental Technology, Section 11, Volumes 11.01 and 11.02, 1994, 1996, 1999, Volume 11.02, 2000, and individual standards published after 2000. Available from: ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959, or <a href="http://www.astm.org">http://www.astm.org</a>. Tables IA, IB, IC, ID, IE, and IH.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM/II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

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ASTM D5373	1993 (1997)	Standard Methods for Instrumental Determination of Carbon, Hydrogen, and Nitrogen in Laboratory Samples of Coal and Coke	40 C.F.R. § 75.6 (2004)	2008	<p>40 C.F.R. § 75.6, "Incorporation by reference" (2004):</p> <p>The materials listed in this section are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they existed on the date of approval, and a notice of any change in these materials will be published in the Federal Register.</p> <p>The materials are available for purchase at the corresponding address noted below and are available for inspection at the Public Information Reference Unit of the U.S. EPA, 401 M St., SW., Washington, DC and at the Library (MD-35), U.S. EPA, Research Triangle Park, North Carolina 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>.</p> <p>(a) The following materials are available for purchase from the following addresses: American Society for Testing and Material (ASTM), 1916 Race Street, Philadelphia, Pennsylvania 19103; and the University Microfilms International 300 North Zeeb Road, Ann Arbor, Michigan 48106.</p> <p>...</p> <p>(40) <b>ASTM D5373-93</b>, "Standard Methods for Instrumental Determination of Carbon, Hydrogen, and Nitrogen in Laboratory Samples of Coal and Coke," for appendix G to this part.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>

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ASTM D5489	1996	Standard Guide for Care Symbols for Care Instructions Textile Products	16 C.F.R. § 423.8 (2014)		<p>16 C.F.R. § 423.8, "Exemptions" (2014):</p> <p>(g) The symbol system developed by the American Society for Testing and Materials (ASTM) and designated as <b>ASTM Standard D5489-96c</b> Guide to Care Symbols for Care Instructions on Consumer Textile Products may be used on care labels or care instructions in lieu of terms so long as the symbols fulfill the requirements of this part. In addition, symbols from the symbol system designated as <b>ASTM Standard D5489-96c</b> may be combined with terms so long as the symbols and terms used fulfill the requirements of this part. Provided, however, that for the 18-month period beginning on July 1, 1997, such symbols may be used on care labels in lieu of terms only if an explanation of the meaning of the symbols used on the care label in terms is attached to, or provided with, the item of textile wearing apparel. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of <b>ASTM Standard D5489-96c</b> Guide to Care Symbols for Care Instructions on Textile Products may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428, or may be inspected at the Federal Trade Commission, room 130, 600 Pennsylvania Avenue, NW., Washington, DC, 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>

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ASTM D5673	1996	Standard Test Method for Elements in Water by Inductively Coupled Plasma- Mass Spectrometry	40 C.F.R. § 444.12 (2004)		<p>40 C.F.R. § 444.12, "Monitoring Requirements" (2004):</p> <p>(b) Incorporation by reference:</p> <p>(1) Compliance with the monitoring requirements may be accomplished using approved test procedures listed in the table to this paragraph. Most of these test procedures have previously been incorporated by reference at 40 CFR 136.3(a), Table IB. The test procedures for the regulated pollutants (arsenic, cadmium, chromium (total), copper, pH, lead, mercury, TSS, silver, titanium, and zinc) listed in the table to this paragraph are also incorporated by reference into this regulation. The full texts of the test procedures listed in this paragraph are available from the sources indicated in paragraph (b)(2) of this section. In addition to those test procedures incorporated by reference at 40 CFR 136.3(a), Table IB, you may also use EPA Method 200.8, "Determination of Trace Elements in Water and Wastes by Inductively Coupled Plasma-Mass Spectrometry," from "Methods for Determination of Metals in Environmental Samples-Supplement I," EPA-600/R-94-111, May 1994, and ASTM Method D 5673-96, "Standard Test Method for Elements in Water by Inductively Coupled Plasma-Mass Spectrometry," from 1999 Annual Book of ASTM Standards, for determination of arsenic, cadmium, chromium (total), copper, lead, silver, and zinc. The full texts of these methods are incorporated by reference into this regulation and may be obtained from the sources identified in paragraph (b)(2) of this section.</p> <p>(2) The full texts of the methods from the following references which are cited in the table in paragraph (b)(1) of this section are incorporated by reference into this regulation and may be obtained from the sources identified. All costs cited are subject to change and must be verified from the indicated sources. The full texts of all the test procedures cited are available for inspection at the Analytical Methods Staff, Office of Water, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>.</p> <p>...</p> <p>(3) "ANNUAL BOOK OF ASTM STANDARDS-WATER AND ENVIRONMENTAL TECHNOLOGY," SECTION 11, VOLUMES 11.01 (WATER I) AND 11.02 (WATER II), 1994. [1996 FOR D5673-96; SEE NOTE 17]. AMERICAN SOCIETY FOR TESTING AND MATERIALS, 1916 RACE STREET, PHILADELPHIA, PA 19103.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM/II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

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ASTM D5865	1998a	Standard Test Method for Gross Calorific Value of Coal and Coke	40 C.F.R. § 60.17 (2011)		<p>40 C.F.R. § 60.17, "Incorporations by reference" (2011) :</p> <p>The materials listed below are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register on the date listed. These materials are incorporated as they exist on the date of the approval, and a notice of any change in these materials will be published in the Federal Register. The materials are available for purchase at the corresponding address noted below, and all are available for inspection at the Library (C267-01), U.S. EPA, Research Triangle Park, NC 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>. (a) The following materials are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428-2959; or ProQuest, 300 North Zeeb Road, Ann Arbor, MI 48106.</p> <p>...</p> <p>(78) <b>ASTM D5865-98</b>, Standard Test Method for Gross Calorific Value of Coal and Coke, IBR approved for § 60.45(f)(5Xii), 60.46(c)(2), and appendix A: Method 19, Section 12.5.2.1.3.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>



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ASTM D611	1982 (1998)	Standard Test Methods for Aniline Point of Petroleum Products and Hydrocarbon Solvents	D611 - 12(1982), 21 C.F.R. § 176.170 (2014)		<p>21 C.F.R. § 176.170, "Components of paper and paperboard in contact with aqueous and fatty foods" (2014):</p> <p>(b)(2) Substances identified in this paragraph (b)(2) follow:</p> <p>...                  Pentaerythritol tetrastearate                  Petroleum alicyclic hydrocarbon resins, or the hydrogenated product thereof, meeting the following specifications: Softening point 97 °C minimum, as determined by ASTM method E28-67 (Reapproved 1982), "Standard Test Method for Softening Point by Ring and Ball Apparatus;" aniline point 120 °C minimum, as determined by <b>ASTM method D611-82</b>, "Standard Test Methods for Aniline Point and Mixed Aniline Point of Petroleum Products and Hydrocarbon Solvents," which are incorporated by reference (Copies may be obtained from the American Society for Testing Materials, 100 Barr Harbor Dr., West Conshohocken, Philadelphia, PA 19428-2959, or may be examined 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>). Specific gravity 0.96-0.99 (20 °C/20 °C). Such petroleum hydrocarbon resins are produced by the catalytic polymerization of dienes and olefins from low-boiling distillates of cracked petroleum stocks that contain no material boiling over 200 °C and that meet the ultraviolet absorbance limits prescribed in § 172.880(b) of this chapter when subjected to the analytical procedure described in § 172.886(b) of this chapter, modified as follows: Treat the product as in the first paragraph under "Procedure" in § 172.250(b)(3) of this chapter. Then proceed with § 172.886(b) of this chapter, starting with the paragraph commencing with "Promptly complete transfer of the sample * * *"</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>

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ASTM D6216	1998	Standard Practice for Opacity Monitor Manufacturers to Certify Conformance with Design and Performance Specifications	41 C.F.R. § 60.17 (2011)	2019	<p>40 C.F.R. § 60.17, "Incorporations by reference" (2011) :</p> <p>The materials listed below are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register on the date listed. These materials are incorporated as they exist on the date of the approval, and a notice of any change in these materials will be published in the Federal Register. The materials are available for purchase at the corresponding address noted below, and all are available for inspection at the Library (C267-01), U.S. EPA, Research Triangle Park, NC 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>. (a) The following materials are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428-2959; or ProQuest, 300 North Zeeb Road, Ann Arbor, MI 48106.</p> <p>...</p> <p>(79) ASTM D6216-98, Standard Practice for Opacity Monitor Manufacturers to Certify Conformance with Design and Performance Specifications, IBR approved for appendix B, Performance Specification 1.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

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ASTM D6228	1998	Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Flame Photometric Detection	41 C.F.R. § 60.17 (2011)		<p>40 C.F.R. § 60.17, "Incorporations by reference" (2011):</p> <p>The materials listed below are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register on the date listed. These materials are incorporated as they exist on the date of the approval, and a notice of any change in these materials will be published in the Federal Register. The materials are available for purchase at the corresponding address noted below, and all are available for inspection at the Library (C267-01), U.S. EPA, Research Triangle Park, NC 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>. (a) The following materials are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428-2959; or ProQuest, 300 North Zeeb Road, Ann Arbor, MI 48106.</p> <p>...</p> <p>(80) ASTM D6228-98, Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Flame Photometric Detection, IBR approved for § 60.334(h)(1).</p> <p>(81) ASTM D6228-98 (Reapproved 2003), Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Flame Photometric Detection, IBR approved for §§ 60.4360 and 60.4415.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM D6420	1999	Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry	40 C.F.R. § 63.14(h)(89) (2019)		<p>40 C.F.R. § 63.14, "Incorporations by reference" (2019):</p> <p>(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 EPA 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 Air and Radiation Docket and Information Center, U.S. EPA, 401 M St. SW., Washington, DC, telephone number 202-566, and is available from the sources listed below. It is also 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 <a href="http://www.archives.gov/federal-register/cfr/ibr-locations.html">www.archives.gov/federal-register/cfr/ibr-locations.html</a>. ...</p> <p>(h) ASTM International, 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428-2959, Telephone (610) 832-9585, <a href="http://www.astm.org">http://www.astm.org</a>; also available from ProQuest, 789 East Eisenhower Parkway, Ann Arbor, MI 48106-1346, Telephone (734) 761-4700, <a href="http://www.proquest.com">http://www.proquest.com</a>.</p> <p>...</p> <p>(89) ASTM D6420-99, Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry, IBR approved for §§63.5799, 63.5850, and Table 4 of Subpart UUUU.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM/II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM D6503	1999	Standard Test Method for Enterococci in Water Using Enterolert	40 C.F.R. § 136.3(a) Table IA (2010)		<p>40 C.F.R. § 136.3, "Identification of test procedures" (2010):</p> <p>(a) Parameters or pollutants, for which methods are approved, are listed together with test procedure descriptions and references in Tables IA, IB, IC, ID, IE, IF, IG, and IH. In the event of a conflict between the reporting requirements of 40 CFR Parts 122 and 125 and any reporting requirements associated with the methods listed in these tables, the provisions of 40 CFR Parts 122 and 125 are controlling and will determine a permittee's reporting requirements. The full text of the referenced test procedures are incorporated by reference into Tables IA, IB, IC, ID, IE, IF, IG, and IH. The incorporation by reference of these documents, as specified in paragraph (b) of this section, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the documents may be obtained from the sources listed in paragraph (b) of this section. Documents may be inspected at EPA's Water Docket, EPA West, 1301 Constitution Avenue, NW., Room B102, Washington, DC (Telephone: 202-566-2426); 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>. These test procedures are incorporated as they exist on the day of approval and a notice of any change in these test procedures will be published in the Federal Register. The discharge parameter values for which reports are required must be determined by one of the standard analytical test procedures incorporated by reference and described in Tables IA, IB, IC, ID, IE, IF, IG, and IH or by any alternate test procedure which has been approved by the Administrator under the provisions of paragraph (d) of this section and §§ 136.4 and 136.5. Under certain circumstances paragraph (c) of this section, § 136.5(a) through (d) or 40 CFR 401.13, other additional or alternate test procedures may be used.</p> <p>...</p> <p>Table IA: 7. Enterococci, number per 100 mL 20....MPN 7.9, multiple tube/multiple well...D6503-99 10.</p> <p>...</p> <p>10) ASTM International. Annual Book of ASTM Standards, Water, and Environmental Technology, Section 11, Volumes 11.01 and 11.02, 1994, 1996, 1999, Volume 11.02, 2000, and individual standards published after 2000. Available from: ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959, or <a href="http://www.astm.org">http://www.astm.org</a>. Tables IA, IB, IC, ID, IE, and IH.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM/II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM D665	1998c 1	Standard Test Method for Rust-Preventing Characteristics of Inhibited Mineral Oil in the Presence of Water	46 C.F.R. § 61.03-1 (2014)		<p>46 C.F.R. § 61.03-1, "Incorporation by reference" (2014):</p> <p>(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 paragraph (b) of this section, the Coast Guard must publish a 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 Coast Guard Headquarters. Contact Commandant (CG-ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593-7509. The material is also available from the sources indicated in paragraph (b) of this section 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>.</p> <p>(b) The material approved for incorporation by reference in this part and the sections affected are as follows:</p> <p>AMERICAN SOCIETY FOR TESTING AND MATERIALS (ASTM)                  100 BARR HARBOR DRIVE, WEST CONSHOHOCKEN, PA 19428-2959.  <b>ASTM D 665-98</b>, STANDARD TEST METHOD FOR RUST-PREVENTING CHARACTERISTICS OF INHIBITED MINERAL OIL IN THE PRESENCE OF WATER</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM D814	1995	Standard Test Method for Rubber Property--Vapor Transmission of Volatile Liquids	40 C.F.R. § 1051.810 (2007)	2008	<p>40 C.F.R. § 1051.810, "What materials does this part reference?" (2007): Documents listed in this section have been incorporated by reference into this part. The Director of the Federal Register approved the incorporation by reference as prescribed in 5 U.S.C. 552(a) and 1 CFR part 51. Anyone may inspect copies at the U.S. EPA, Air and Radiation Docket and Information Center, 1301 Constitution Ave., NW., Room B102, EPA West Building, Washington, DC 20460 or at the National Archives and Records Administration (NARA). For 202-741-6030, or go <a href="http://www.archives.gov/federalregister/codeofregulations/ibr/location.s.html">http://www.archives.gov/federalregister/codeofregulations/ibr/location.s.html</a>. information on the availability of this material at NARA, call to: (a) ASTM material. Table 1 of this section lists material from the American Society for Testing and Materials that we have incorporated by reference. The first column lists the number and name of the material. The second column lists the sections of this part where we reference it. Anyone may purchase copies of these materials from the American Society for Testing and Materials, 100 Barr Harbor Dr., P.O. Box C700, West Conshohocken, PA 19428 or <a href="http://www.astm.com">www.astm.com</a>. Table 1 follows:</p> <p>TABLE 1 OF § 1051.810-ASTM MATERIALS</p> <p>...</p> <p><b>ASTM D814-95 (reapproved 2000)</b>, Standard Test Method for Rubber Property Vapor Transmission of Volatile Liquids.....1051.245</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM D86	2007	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure	40 C.F.R. § 80.47(r) (2017)		<p>(r) Materials incorporated by reference. The published materials identified 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, a document must be published in the FEDERAL REGISTER and the material must be available to the public. All approved materials are available for inspection at the Air and Radiation Docket and Information Center (Air Docket) in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742. These approved materials are also 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 <a href="http://www.archives.gov/federalregister/codeofregulations/ibr/location">http://www.archives.gov/federalregister/codeofregulations/ibr/location</a>s.html. In addition, these materials are available from the sources listed below.</p> <p>(1) ASTM International material. The following standards are available from ASTM International, 100 Barr Harbor Dr., P.O. Box C700, West Conshohocken, PA 19428-2959, (877) 909-ASTM, or <a href="http://www.astm.org">http://www.astm.org</a>:</p> <p>(i) ASTM D86-07, Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure, approved January 15, 2007 ("ASTM D86").</p>	<p>PRO misleadingly implies that 40 C.F.R. § 80.46(d) (2017) IBR<sup>3</sup> ed D86-07; 40 C.F.R. § 80.46(h)(1)(i) defines "ASTM D86" as D86-12.</p>
ASTM D975	1998b	Standard Specification for Diesel Fuel Oils	41 C.F.R. § 60.17 (2011)		<p>40 C.F.R. § 60.17, "Incorporations by reference" (2011) :</p> <p>The materials listed below are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register on the date listed. These materials are incorporated as they exist on the date of the approval, and a notice of any change in these materials will be published in the Federal Register. The materials are available for purchase at the corresponding address noted below, and all are available for inspection at the Library (C267-01), U.S. EPA, Research Triangle Park, NC 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>. (a) The following materials are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428-2959; or ProQuest, 300 North Zeeb Road, Ann Arbor, MI 48106.</p> <p>...</p> <p>(15) <b>ASTM D975-78, 96, 98a</b>, Standard Specification for Diesel Fuel Oils, IBR approved for §§ 60.111(b) of subpart K of this part and 60.111a(b) of subpart Ka of this part.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>



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ASTM D975	2007	Standard Specification for Diesel Fuel Oils	40 C.F.R. § 1065.1010 (2011)	2014	<p>40 C.F.R. § 1065.1010, "Reference materials" (2011): Documents listed in this section have been incorporated by reference into this part. The Director of the Federal Register approved the incorporation by reference as prescribed in 5 U.S.C. 552(a) and 1 CFR part 51. Anyone may inspect copies at the U.S. EPA, Air and Radiation Docket and Information Center, 1301 Constitution Ave., NW., Room B102, EPA West Building, Washington, DC 20460 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>.</p> <p>(a) ASTM material. Table 1 of this section lists material from the American Society for Testing and Materials that we have incorporated by reference. The first column lists the number and name of the material. The second column lists the sections of this part where we reference it. Anyone may purchase copies of these materials from the American Society for Testing and Materials, 100 Barr Harbor Dr., P.O. Box C700, West Conshohocken, PA 19428 or <a href="http://www.astm.com">www.astm.com</a>. Table 1 follows:</p> <p>...</p> <p><b>ASTM D975-07b</b>, Standard Specification for Diesel Fuel Oils</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by mandate and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>
ASTM E11	1995	Standard Specification for Wire Cloth and Sieves for Testing Purposes	33 C.F.R. § 159.4 (2014)		<p>33 C.F.R. § 159.4, "Incorporation by reference" (2014):</p> <p>(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 paragraph (b) of 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 Engineering Division, U.S. Coast Guard Marine Safety Center, 2100 2nd St. SW., Stop 7102, Washington, DC 20593-7102, and 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>. All approved material is available from the sources indicated in paragraph (b) of this section.</p> <p>(b) The material approved for incorporation by reference in this part, and the sections affected, are as follows:</p> <p>AMERICAN SOCIETY FOR TESTING AND MATERIALS (ASTM)              100 BARR HARBOR DRIVE, WEST CONSHOHOCKEN, PA 19428-2959.              ASTM E 11-95, STANDARD SPECIFICATION FOR WIRE CLOTH AND SIEVES FOR TESTING PURPOSES-159.125</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM E1337	1990 (1996)	Standard Test Method for Determining Longitudinal Peak Braking Coefficient of Paved Surfaces Using a Standard Reference Test Tire	49 C.F.R. § 571.126 (2007-2009)	2012	<p>49 C.F.R. § 571.126 (2008):</p> <p>S3.2 Incorporation by reference. ASTM E1337-90 (Reapproved 1996), Standard Test Method for Determining Longitudinal Peak Braking Coefficient of Paved Surfaces Using a STD Reference Tire, and ASTM E1136-93 (1993), Standard Specification for a Radial Standard Reference Test Tire, are incorporated by reference in S6.2.2 of this section. The Director of the Federal Register has approved the incorporation by reference of this material in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of ASTM E1337-90 (rev. 1996) and ASTM E1136-93 (1993) may be obtained from the ASTM Web site at <a href="http://www.astm.org">http://www.astm.org</a>, or by contacting ASTM, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959. Copies of ASTM E1337-90 (Reapproved 1996) and ASTM E1136-93 (1993) may be inspected at NHTSA's Office of Rulemaking, 400 Seventh Street, SW., Washington, DC 20590, 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: <a href="http://www.archives.gov/federalregister/codeofregulations/ibr/location.html">http://www.archives.gov/federalregister/codeofregulations/ibr/location.html</a>.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by mandate and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>
ASTM E145	1994e 1	Standard Specification for Gravity-Convection and Forced-Ventilation Ovens	40 C.F.R. § 63.14 (2011)		<p>40 C.F.R. § 63.14, "Incorporations by reference" (2011):</p> <p>(a) The materials listed in this section are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and notice of any change in these materials will be published in the Federal Register. The materials are available for purchase at the corresponding addresses noted below, and all are available for inspection at the National Archives and Records Administration (NARA), at the Air and Radiation Docket and Information Center, U.S. EPA, 401 M St., SW., Washington, DC, and at the EPA Library (MD-35), U.S. EPA, Research Triangle Park, North Carolina. For information on the availability of this material at NARA, call 202-741-6030, or go to: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>.</p> <p>(b) The following materials are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428-2959; or ProQuest, 300 North Zeeb Road, Ann Arbor, MI 48106.</p> <p>...</p> <p>(34) <b>E145-94 (Reapproved 2001)</b>, Standard Specification for Gravity-Convection and Forced-Ventilation Ovens, IBR approved for § 63.4581, appendix A.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>

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ASTM E169	1987	Standard Practices for General Techniques of Ultraviolet-Visible Quantitative Analysis	40 C.F.R. § 260.11 (2011)		<p>40 C.F.R. § 260.11, "References" (2011):</p> <p>(a) When used in parts 260 through 268 and 278 of this chapter, the following publications are incorporated by reference. These incorporations by reference were approved by the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the FEDERAL REGISTER. Copies may be inspected at the Library, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW. (3403T), Washington, DC 20460, libraryhq@epa.gov; 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: <a href="http://www.archives.gov/federalregister/codofregulations/ibr/location.html">http://www.archives.gov/federalregister/codofregulations/ibr/location.html</a>.</p> <p>(b) The following materials are available for purchase from the American Society for Testing and Materials, 100 Barr Harbor Drive, P. O. Box C700, West Conshohocken, PA 19428-2959. ...</p> <p>(8) ASTM E 169-87, "Standard Practices for General Techniques of Ultraviolet-Visible Quantitative Analysis," IBR approved for §264.1063.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>
ASTM E185	1982	Standard Practice for Conducting Surveillance Tests for Light-Water Cooled Nuclear Power Reactor Vessels	10 C.F.R. § 50 App. H (2014)		<p>10 C.F.R. § 50 Appendix H, "Reactor Vessel Material Surveillance Program Requirements" (2014):</p> <p>I. Introduction</p> <p>The purpose of the material surveillance program required by this appendix is to monitor changes in the fracture toughness properties of ferritic materials in the reactor vessel beltline region of light water nuclear power reactors which result from exposure of these materials to neutron irradiation and the thermal environment. Under the program, fracture toughness test data are obtained from material specimens exposed in surveillance capsules, which are withdrawn periodically from the reactor vessel. These data will be used as described in section IV of appendix G to part 50.</p> <p>ASTM E 185-73, "Standard Recommended Practice for Surveillance Tests for Nuclear Reactor Vessels"; ASTM E 185-79, "Standard Practice for Conducting Surveillance Tests for Light-Water Cooled Nuclear Power Reactor Vessels"; and ASTM E 185-82, "Standard Practice for Conducting Surveillance Tests for Light-Water Cooled Nuclear Power Reactor Vessels"; which are referenced in the following paragraphs, have been approved for incorporation by reference by the Director of the Federal Register. Copies of ASTM E 185-73, -79, and -82, may be purchased from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103 and are available for inspection at the NRC Library, 11545 Rockville Pike, Two White Flint North, Rockville, MD 20852-2738.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM E23	1982	Standard Test Methods for Notched Bar Impact Testing of Metallic Materials	46 C.F.R. § 56.012 (1997)	2000	<p>46 C.F.R. § 56.01-2, "Incorporation by Reference" (1997):                      (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 <a href="http://www.archives.gov/federalregister/codof/federalregulations/ibr/location.shtml">http://www.archives.gov/federalregister/codof/federalregulations/ibr/location.shtml</a>. The material is also available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG-521), 2100 2nd St., SW., Stop 7126, Washington, DC 20593-7126, and is available from the sources listed below.</p> <p>...</p> <p>American Society for Testing and Materials (ASTM), ASTM International Headquarters, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959</p> <p>...</p> <p>ASTM E 23-82 Notched Bar Impact Testing of Metallic Materials. 56.50-105.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM E260	1996	Standard Practice for Packed Column Gas Chromatography	40 C.F.R. § 63.14 (2011)		<p>40 C.F.R. § 63.14, "Incorporations by reference" (2011):</p> <p>(a) The materials listed in this section are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and notice of any change in these materials will be published in the Federal Register. The materials are available for purchase at the corresponding addresses noted below, and all are available for inspection at the National Archives and Records Administration (NARA), at the Air and Radiation Docket and Information Center, U.S. EPA, 401 M St., SW., Washington, DC, and at the EPA Library (MD-35), U.S. EPA, Research Triangle Park, North Carolina. For information on the availability of this material at NARA, call 202-741-6030, or go to: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>.</p> <p>(b) The following materials are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428-2959; or ProQuest, 300 North Zeeb Road, Ann Arbor, MI 48106.</p> <p>...</p> <p>(18) ASTM E260-91, 96, General Practice for Packed Column Gas Chromatography, IBR approved for §§ 63.750(b)(2) and 63.786(b)(5).</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM E283	1991 (1999)	Standard Test Method for Determining Rate of Air Leakage Through Exterior Windows, Curtain Walls, and Doors Under Specified Pressure Differences Across the Specimen	10 C.F.R. § 434.701 (2012)		<p>10 C.F.R. § 434.701, "General" (2012):</p> <p>701.1 General. The standards, technical handbooks, papers, regulations, and portions thereof, that are referred to in the sections and subsections in the following list are hereby incorporated by reference into this part 434. The following standards have been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 522(a) and 1 CFR part 51. A notice of any change in these materials will be published in the FEDERAL REGISTER. The standards incorporated by reference are available for inspection at the U.S. Department of Energy, Office of Energy Efficiency, Hearings and Dockets, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, 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: <a href="http://www.archives.gov/federalregister/codof/federalregulations/ibr/location">http://www.archives.gov/federalregister/codof/federalregulations/ibr/location</a> s.html. The standards may be purchased at the addresses listed at the end of each standard. The following standards are incorporated by reference in this part:</p> <p>...  <b>ASTM E 283-91</b>, Test Method for Determining the Rate of Air Leakage Through Exterior Windows, Curtain Walls, and Doors Under Specified Pressure Difference Across the Specimen, American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103...434.402.2; 434.402.2.1.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>Moreover, 10 C.F.R. §§ 434.402.2-434.402.2.2 do not refer to E283-91 (1999). . This underscores the fact that PRO has not analyzed the substantive regulations at issue.</p> <p>Finally, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM E29	1990	Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications	40 C.F.R. § 86.1 (2008)	2014	<p>40 C.F.R. § 86.1, "Reference materials" (2008):</p> <p>(a) The documents in paragraph (b) of this section have been incorporated by reference. The incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at U.S. EPA, OAR, 401 M St., SW., Washington, DC 20460, 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: <a href="http://www.archives.gov/federalregister/codof/federalregulations/ibr/location.html">http://www.archives.gov/federalregister/codof/federalregulations/ibr/location.html</a>. (b) The following paragraphs and tables set forth the material that has been incorporated by reference in this part. (1) ASTM material. The following table sets forth material from the American Society for Testing and Materials that has been incorporated by reference. The first column lists the number and name of the material. The second column lists the section(s) of this part, other than this section, in which the matter is referenced. Copies of these materials may be obtained from American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959.</p> <p>...</p> <p>ASTM E29-90, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications...86.609-84; 86.609-96; 86.609-97; 86.609-98; 86.1009-84; 86.1009-96; 86.1442; 86.1708-99; 86.1709-99; 86.1710-99; 86.1728-99.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM/II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM E408	1971	Standard Methods of Test for Total Normal Emission of Surfaces Using Inspection-Meter Techniques	16 C.F.R. § 460.5 (2014)		<p>16 C.F.R. § 460.5, "R-value Tests" (2014):                      R-value measures resistance to heat flow. R-values given in labels, fact sheets, ads, or other promotional materials must be based on tests done under the methods listed below. They were designed by the American Society of Testing and Materials (ASTM). The test methods are:</p> <p>...</p> <p>(b) Single sheet systems of aluminum foil must be tested with <b>ASTM E 408-71 (Reapproved 2002)</b>, "Standard Test Methods for Total Normal Emission of Surfaces Using Inspection-Meter Techniques," or ASTM C 1371-04a, "Standard Test Method for Determination of Emission of Materials Near Room Temperature Using Portable Emissometers." This tests the emissivity of the foil—its power to radiate heat. To get the R-value for a specific emissivity level, air space, and direction of heat flow, use the tables in the most recent edition of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers' (ASHRAE) Fundamentals Handbook, if the product is intended for applications that meet the conditions specified in the tables. You must use the R-value shown for 50[degrees] Fahrenheit, with a temperature differential of 30[degrees] Fahrenheit.</p> <p>...</p> <p>(e) The standards listed above are incorporated by reference into this section. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at the Federal Trade Commission, Consumer Response Center, Room 130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>. Copies of materials and standards incorporated by reference may be obtained from the issuing organizations listed in this section.</p> <p>(1) The American Society of Testing and Materials, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>



No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM E424	1971	Standard Methods of Test for Solar Energy Transmittance and Reflectance (Terrestrial) of Sheet Materials	24 C.F.R. (Parts 200 to 499) (2005)	2009	<p>24 C.F.R. (Parts 200 to 499), 'Minimum Property Standards for Care-Type Housing' (2005):</p> <p>The following publications are incorporated by reference in the HUD Minimum Property Standards (MPS) in 24 CFR part 200, subpart S. The MPS are available for public inspection and can be obtained for appropriate [sic] use at 490 L'Enfant Plaza East, Suite 3214, or at each HUD Regional, Area, and Service Office. Copies are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC. The individual standards referenced in the MPS are available at the address contained in the following table. They are also available for public inspection at the Manufactured Housing and Construction Standards Division, Suite 3214, 490 L'Enfant Plaza East, Washington, DC 20024.</p> <p>...</p> <p>American Society for Testing and Materials                      100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, Telephone (610) 832-9585, FAX (610) 832-9555</p> <p>...</p> <p>ANSI/ASTM E 424-71 Test for Solar Energy Transmittance and Reflectance (Terrestrial) of Sheet Materials; Part 200, Subpart S</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>Moreover, 24 C.F.R. (Parts 200 to 499) contains a non-substantive list of standards incorporated by reference. Each entry on this list references a substantive regulation—here, 24 C.F.R. Part 200, Subpart S. But 24 C.F.R. Part 200, Subpart S does not refer to E424-71. This underscores the fact that PRO has not analyzed the substantive regulations at issue.</p>
ASTM E606	1980	Standard Recommended Practice for Constant-Amplitude Low-Cycle Fatigue Testing	24 C.F.R. (Parts 200 to 499) (2005)	2009	<p>24 C.F.R. (Parts 200 to 499), 'Minimum Property Standards II' (2005):</p> <p>The following publications are incorporated by reference in the HUD Minimum Property Standards (MPS) in 24 CFR part 200, subpart S. The MPS are available for public inspection and can be obtained for appropriate [sic] use at 490 L'Enfant Plaza East, Suite 3214, or at each HUD Regional, Area, and Service Office. Copies are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC. The individual standards referenced in the MPS are available at the address contained in the following table. They are also available for public inspection at the HUD, Manufactured Housing and Construction Standards Division, Suite 3214, 490 L'Enfant Plaza East, Washington, DC 20024.</p> <p>...</p> <p>American Society for Testing and Materials                      100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, Telephone (610) 832-9585, FAX (610) 832-9555</p> <p>...</p> <p>ASTM E 606-80, Standard Recommended Practice for Constant-Amplitude Low-Cycle Fatigue Testing. 200.946.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>Moreover, 24 C.F.R. (Parts 200 to 499) contains a non-substantive list of standards incorporated by reference. Each entry on this list references a substantive regulation—here, 24 C.F.R. Part 200, Subpart S. But 24 C.F.R. Part 200, Subpart S does not refer to E606-80. This underscores the fact that PRO has not analyzed the substantive regulations at issue.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM E681	1985	Standard Test Method for Concentration Limits of Flammability of Chemicals	49 C.F.R. § 171.7 (2002)	2004	<p>49 C.F.R. § 171.7, "Reference material" (2002):</p> <p>(a) Matter incorporated by reference-(1) General. There is incorporated, by reference in parts 170-189 of this subchapter, matter referred to that is not specifically set forth. This matter is hereby made a part of the regulations in parts 170-189 of this subchapter. The matter subject to change is incorporated only as it is in effect on the date of issuance of the regulation referring to that matter. The material listed in paragraph (a)(3) has been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval and a notice of any change in the material will be published in the FEDERAL REGISTER. Matters referenced by footnote are included as part of the regulations of this subchapter.</p> <p>(2) Accessibility of materials. All incorporated matter is available for inspection at: (i) The Office of Hazardous Materials Safety, Office of Hazardous Materials Standards, Room 8422, NASSIF Building, 400 7th Street, SW., Washington, DC 20590; and (ii) The Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.</p> <p>(3) Table of material incorporated by reference. The following table sets forth material incorporated by reference. The first column lists the name and address of the organization from which the material is available and the name of the material. The second column lists the section(s) of this subchapter, other than § 171.7, in which the matter is referenced. The second column is presented for information only and may not be all inclusive.</p> <p>...</p> <p>American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428 Noncurrent ASTM Standards are available from: Engineering Societies Library, 354 E. 47th Street</p> <p>...</p> <p>ASTM E 681-85 Standard Test Method for Concentration Limits of Flammability of Chemicals ..... 173.115</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM/II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM E695	1979 (1997) e1	Standard Method of Measuring Relative Resistance of Wall, Floor, and Roof Construction to Impact Loading	24 C.F.R. (Parts 200 to 499) (2005)	2009	<p>24 C.F.R. (Parts 200 to 499), "Minimum Property Standards II" (2005):</p> <p>The following publications are incorporated by reference in the HUD Minimum Property Standards (MPS) in 24 CFR part 200, subpart S. The MPS are available for public inspection and can be obtained for appropriate use at 490 L'Enfant Plaza East, Suite 3214, or at each HUD Regional, Area, and Service Office. Copies are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC. The individual standards referenced in the MPS are available at the address contained in the following table. They are also available for public inspection at the HUD, Manufactured Housing and Construction Standards Division, Suite 3214, 490 L'Enfant Plaza East, Washington, DC 20024.</p> <p>...</p> <p>American Society for Testing and Materials                  100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, Telephone (610) 832-9585, FAX (610) 832-9555</p> <p>...</p> <p><b>ASTM E 695-79 (Reapproved 1991)</b>, Standard Method of Measuring Relative Resistance of Wall, Floor and Roof Construction to Impact Loading. 200.946.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>Moreover, 24 C.F.R. (Parts 200 to 499) contains a non-substantive list of standards incorporated by reference. Each entry on this list references a substantive regulation—here, 24 C.F.R. Part 200, Subpart S. But 24 C.F.R. Part 200, Subpart S does not refer to E695-79 (1997)e1. This underscores the fact that PRO has not analyzed the substantive regulations at issue.</p> <p>Finally, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM E711	1987 (1992)	Standard Test Method for Gross Calorific Value of Refuse-Derived Fuel by the Bomb Calorimeter	40 C.F.R. § 63.14 (2011)		<p>40 C.F.R. § 63.14, "Incorporations by reference" (2011):</p> <p>(a) The materials listed in this section are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and notice of any change in these materials will be published in the Federal Register. The materials are available for purchase at the corresponding addresses noted below, and all are available for inspection at the National Archives and Records Administration (NARA), at the Air and Radiation Docket and Information Center, U.S. EPA, 401 M St., SW., Washington, DC, and at the EPA Library (MD-35), U.S. EPA, Research Triangle Park, North Carolina. For information on the availability of this material at NARA, call 202-741-6030, or go to: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>.</p> <p>(b) The following materials are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428-2959; or ProQuest, 300 North Zeeb Road, Ann Arbor, MI 48106.</p> <p>...</p> <p>(50) <b>ASTM E711-87 (Reapproved 2004)</b> Standard Test Method for Gross Calorific Value of Refuse-Derived Fuel by the Bomb Calorimeter, approved August 28, 1987, IBR approved for table 6 to subpart DDDDD of this part and table 5 to subpart JJJJJ of this part.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM E72	1980	Standard Methods of Conducting Strength Tests of Panels for Building Construction	30 C.F.R. § 75.333 (2014)		<p>30 C.F.R. § 75.333, "Ventilation controls" (2014):                      (e)(1)(i) Except as provided in paragraphs (e)(2), (e)(3) and (e)(4) of this section all overcasts, undercasts, shaft partitions, permanent stoppings, and regulators, installed after June 10, 1996, shall be constructed in a traditionally accepted method and of materials that have been demonstrated to perform adequately or in a method and of materials that have been tested and shown to have a minimum strength equal to or greater than the traditionally accepted in-mine controls. Tests may be performed under ASTM E72-80, "Standard Methods of Conducting Strength Tests of Panels for Building Construction" (Section 12- Transverse Load-Specimen Vertical, load, only), or the operator may conduct comparative in-mine tests. In-mine tests shall be designed to demonstrate the comparative strength of the proposed construction and a traditionally accepted in-mine control. The publication ASTM E72-80, "Standard Methods of Conducting Strength Tests of Panels for Building Construction" is incorporated by reference and may be inspected at any MSHA Coal Mine Safety and Health district office, or at MSHA's Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2352, Arlington, Virginia 22209-3939, and 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>. In addition, copies of the document can be purchased from the American Society for Testing (ASTM), 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959; <a href="http://www.astm.org">http://www.astm.org</a>. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM/II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM E773	1997	Standard Test Method for Accelerated Weathering of Sealed Insulating Glass Units	24 C.F.R. § 3280.4 (2014)		<p>24 C.F.R. § 3280.4, "Incorporation by Reference" (2014):</p> <p>(a) The specifications, standards and codes of the following organizations are incorporated by reference in 24 CFR part 3280 (this Standard) pursuant to 5 U.S.C. 552(a) and 1 CFR part 51 as though set forth in full. The incorporation by reference of these standards has been approved by the Director of the Federal Register. Reference standards have the same force and effect as this Standard (24 CFR part 3280) except that whenever reference standards and this Standard are inconsistent, the requirements of this Standard prevail to the extent of the inconsistency.</p> <p>(b) The abbreviations and addresses of organizations issuing the referenced standards appear below. Reference standards which are not available from their producer organizations may be obtained from the Office of Manufactured Housing and Regulatory Functions, Manufactured Housing and Construction Standards Division, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., room B-133, Washington, DC 20410.</p> <p>...</p> <p>ASTM-AMERICAN SOCIETY FOR TESTING AND MATERIALS, 1916 RACE STREET, PHILADELPHIA, PENNSYLVANIA 19103</p> <p>...</p> <p>(28) ASTM E 773-97, Standard Test Methods for Accelerated Weathering of Sealed Insulating Glass Units, IBR approved for § 3280.403(d).</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM E774	1997	Standard Specifications for the Classification of the Durability of Sealed Insulating Glass Units	24 C.F.R. § 3280.4 (2014)		<p>24 C.F.R. § 3280.4, "Incorporation by Reference" (2014):</p> <p>(a) The specifications, standards and codes of the following organizations are incorporated by reference in 24 CFR part 3280 (this Standard) pursuant to 5 U.S.C. 552(a) and 1 CFR part 51 as though set forth in full. The incorporation by reference of these standards has been approved by the Director of the Federal Register. Reference standards have the same force and effect as this Standard (24 CFR part 3280) except that whenever reference standards and this Standard are inconsistent, the requirements of this Standard prevail to the extent of the inconsistency.</p> <p>(b) The abbreviations and addresses of organizations issuing the referenced standards appear below. Reference standards which are not available from their producer organizations may be obtained from the Office of Manufactured Housing and Regulatory Functions, Manufactured Housing and Construction Standards Division, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., room B-133, Washington, DC 20410.</p> <p>...</p> <p>ASTM-AMERICAN SOCIETY FOR TESTING AND MATERIALS, 1916 RACE STREET, PHILADELPHIA, PENNSYLVANIA 19103</p> <p>...</p> <p>(29) ASTM E 774-97, Standard Specification for the Classification of the Durability of Sealed Insulating Glass Units, IBR approved for § 3280.403(d).</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM E775	1987 (1992)	Standard Test Methods for Total Sulfur in the Analysis Sample of Refuse-Derived Fuel	40 C.F.R. § 49.123 (2014)		<p>40 C.F.R. § 49.123, "General provisions" (2014):</p> <p>(e) Incorporation by reference. The materials listed in this section are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and a notice of any change in these materials will be published in the Federal Register. The materials are available for purchase at the corresponding addresses noted below, or are available for inspection at EPA's Air and Radiation Docket and Information Center, located at 1301 Constitution Avenue, NW, Room B102, Mail Code 6102T, Washington, D.C. 20004, at EPA Region 10, Office of Air, Waste, and Toxics, 10th Floor, 1200 Sixth Avenue, Seattle, Washington 98101, 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>.</p> <p>(1) The materials listed below are available for purchase from at least one of the following addresses: ASTM International, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, Michigan 48106.</p> <p>...</p> <p>(xiii) <b>ASTM E775-87 (Reapproved 2004)</b>, Standard Test Methods for Total Sulfur in the Analysis Sample of Refuse-Derived Fuel, IBR approved for § 49.130(e)(3).</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>



No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM E776	1987 (1992)	Standard Test Method for Forms of Chlorine in Refuse-Derived Fuel	40 C.F.R. § 63.14 (2011)		<p>40 C.F.R. § 63.14, "Incorporations by reference" (2011):</p> <p>(a) The materials listed in this section are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and notice of any change in these materials will be published in the Federal Register. The materials are available for purchase at the corresponding addresses noted below, and all are available for inspection at the National Archives and Records Administration (NARA), at the Air and Radiation Docket and Information Center, U.S. EPA, 401 M St., SW., Washington, DC, and at the EPA Library (MD-35), U.S. EPA, Research Triangle Park, North Carolina. For information on the availability of this material at NARA, call 202-741-6030, or go to: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>.</p> <p>(b) The following materials are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428-2959; or ProQuest, 300 North Zeeb Road, Ann Arbor, MI 48106.</p> <p>...</p> <p>(51) <b>ASTM E776-87 (Reapproved 2009)</b> Standard Test Method for Forms of Chlorine in Refuse-Derived Fuel, approved July 1, 2009, IBR approved for table 6 to subpart DDDDD of this part.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM E885	1988	Standard Test Methods for Analyses of Metals in Refuse-Derived Fuel by Atomic Absorption Spectroscopy	40 C.F.R. § 63.14 (2011)	2013	<p>40 C.F.R. § 63.14, "Incorporations by reference" (2011):</p> <p>(a) The materials listed in this section are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and notice of any change in these materials will be published in the Federal Register. The materials are available for purchase at the corresponding addresses noted below, and all are available for inspection at the National Archives and Records Administration (NARA), at the Air and Radiation Docket and Information Center, U.S. EPA, 401 M St., SW., Washington, DC, and at the EPA Library (MD-35), U.S. EPA, Research Triangle Park, North Carolina. For information on the availability of this material at NARA, call 202-741-6030, or go to: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>.</p> <p>(b) The following materials are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428-2959; or ProQuest, 300 North Zeeb Road, Ann Arbor, MI 48106.</p> <p>...</p> <p>(53) <b>ASTM E885-88 (Reapproved 1996)</b>, Standard Test Methods for Analyses of Metals in Refuse-Derived [sic] Fuel by Atomic Absorption Spectroscopy, 1 IBR approved for table 6 to subpart DDDDD of this part 63.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM E96	1995	Standard Test Methods for Water Vapor Transmission of Materials	24 C.F.R. § 3280.4 (2014)		<p>24 C.F.R. § 3280.4, "Incorporation by Reference" (2014):</p> <p>(a) The specifications, standards and codes of the following organizations are incorporated by reference in 24 CFR part 3280 (this Standard) pursuant to 5 U.S.C. 552(a) and 1 CFR part 51 as though set forth in full. The incorporation by reference of these standards has been approved by the Director of the Federal Register. Reference standards have the same force and effect as this Standard (24 CFR part 3280) except that whenever reference standards and this Standard are inconsistent, the requirements of this Standard prevail to the extent of the inconsistency.</p> <p>(b) The abbreviations and addresses of organizations issuing the referenced standards appear below. Reference standards which are not available from their producer organizations may be obtained from the Office of Manufactured Housing and Regulatory Functions, Manufactured Housing and Construction Standards Division, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., room B-133, Washington, DC 20410.</p> <p>...</p> <p>ASTM-AMERICAN SOCIETY FOR TESTING AND MATERIALS, 1916 RACE STREET, PHILADELPHIA, PENNSYLVANIA 19103</p> <p>...</p> <p>(26) ASTM E 96-95 Standard Test Methods for Water Vapor Transmission of Materials, IBR approved for § 3280.504(a).</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM/II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM F1003	1986 (1992)	Standard Specification for Searchlights on Motor Lifeboats	46 C.F.R. § 199.05 (2014)		<p>46 C.F.R. § 199.05, "Incorporation by reference" (2014):</p> <p>(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 paragraph (b) of 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 Coast Guard Headquarters. Contact Commandant (CG-ENG-4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593-7509. You may also contact the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>. All approved material is available from the sources indicated in paragraph (b) of this section.</p> <p>(b) The material approved for incorporation by reference in this part and the sections affected are as follows:</p> <p>American Society for Testing and Materials (ASTM)                      100 Barr Harbor Drive, West Conshohocken, PA 19428-2959</p> <p>...</p> <p>ASTM F 1003-86 (1992), Standard Specification for Searchlights on Motor Lifeboats 199.175</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

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ASTM F1006	1986 (1997)	Standard Specification for Entrainment Separators for Use in Marine Piping Applications	46 C.F.R. § 56.01-2 (1997)	2000	<p>46 C.F.R. § 56.01-2, "Incorporation by Reference" (1997):</p> <p>(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 <a href="http://www.archives.gov/federalregister/codofllofederalregulations/ibr/location.s.html">http://www.archives.gov/federalregister/codofllofederalregulations/ibr/location.s.html</a>. The material is also available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG-521), 2100 2nd St., SW., Stop 7126, Washington, DC 20593-7126, and is available from the sources listed below.</p> <p>...</p> <p>American Society for Testing and Materials (ASTM), ASTM International Headquarters, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959</p> <p>...</p> <p><b>ASTM F 1006-86</b> Entrainment Separators for Use in Marine Piping Applications. 56.60-1.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by mandate and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>
ASTM F1007	1986 (1996) e1	Standard Specification for Pipe-Line Expansion Joints of the Packed Slip Type for Marine Application	46 C.F.R. § 56.01-2 (2004)	2013	<p>46 C.F.R. § 56.01-2, "Incorporation by Reference" (2004):</p> <p>(a) Certain standards and specifications are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of the change must be published in the FEDERAL REGISTER and the material made available to the public. All approved material is available from the sources indicated in paragraph (b) 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: <a href="http://www.archives.gov/federalregister/codofllofederalregulations/ibr/location.s.html">http://www.archives.gov/federalregister/codofllofederalregulations/ibr/location.s.html</a>.</p> <p>(b) The standards and specifications approved for incorporation by reference in this part, and the sections affected are:</p> <p>...</p> <p>American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959.</p> <p>...</p> <p><b>ASTM F 1007-86 (1996)</b>, Standard Specification for Pipe-Line Expansion Joints of the Packed Slip Type for Marine Application.....56.60-1</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by mandate and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>

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ASTM F1014	1992	Standard Specification for Flashlights on Vessels	46 C.F.R. § 199.05 (2014)		<p>46 C.F.R. § 199.05, "Incorporation by reference" (2014):</p> <p>(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 paragraph (b) of 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 Coast Guard Headquarters. Contact Commandant (CG-ENG-4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593-7509. You may also contact the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>. All approved material is available from the sources indicated in paragraph (b) of this section.</p> <p>(b) The material approved for incorporation by reference in this part and the sections affected are as follows:</p> <p>American Society for Testing and Materials (ASTM)                      100 Barr Harbor Drive, West Conshohocken, PA 19428-2959</p> <p>...</p> <p>ASTM F 1014-92, Standard Specification for Flashlights on Vessels 199.175.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by mandate and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>
ASTM F1020	1986 (1996) e1	Standard Specification for Line-Blind Valves for Marine Applications	46 C.F.R. § 56.012	2013	<p>46 C.F.R. § 56.012-2, "Incorporation by Reference" (2004):</p> <p>(a) Certain standards and specifications are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of the change must be published in the FEDERAL REGISTER and the material made available to the public. All approved material is available from the sources indicated in paragraph (b) 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: <a href="http://www.archives.gov/federalregister/codofregulations/ibr/locations.html">http://www.archives.gov/federalregister/codofregulations/ibr/locations.html</a>.</p> <p>(b) The standards and specifications approved for incorporation by reference in this part, and the sections affected are:</p> <p>...</p> <p>American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959.</p> <p>...</p> <p><b>ASTM F 1020-86 (1996)</b>, Standard Specification for Line-Blind Valves for Marine Applications .....56.60-1</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>

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ASTM F1120	1987 (1998)	Standard Specification for Circular Metallic Bellows Type Expansion Joints for Piping Applications	46 C.F.R. § 56.01-2 (1997)	2000	<p>46 C.F.R. § 56.01-2, "Incorporation by Reference" (2004):</p> <p>(a) Certain standards and specifications are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of the change must be published in the FEDERAL REGISTER and the material made available to the public. All approved material is available from the sources indicated in paragraph (b) 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: <a href="http://www.archives.gov/federalregister/codeofregulations/ibr/location.html">http://www.archives.gov/federalregister/codeofregulations/ibr/location.html</a>.</p> <p>(b) The standards and specifications approved for incorporation by reference in this part, and the sections affected are:</p> <p>...</p> <p>American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959.</p> <p>...</p> <p>ASTM F 1120-87 (1993), Standard Specification for Circular Metallic Bellows Type Expansion Joints for Piping Applications .....56.01-1</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>
ASTM F1121	1987 (1998)	Standard Specification for International Shore Connections for Marine Fire Applications	46 C.F.R. § 193.01-3 (2014)		<p>46 C.F.R. § 193.01-3, "Incorporation by reference" (2014):</p> <p>(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 <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>. Also, it is available for inspection at the Coast Guard Headquarters, Contact Commandant (CG-ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593-7509; telephone 202-372-1405. The material is also available from the sources listed below.</p> <p>(b) ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959, 877-909-2786, <a href="http://www.astm.org">http://www.astm.org</a>.</p> <p>(1) <b>ASTM F1121-87 (Reapproved 2010)</b>, Standard Specification for International Shore Connections for Marine Fire Applications, (approved March 1, 2010), incorporation by reference approved for § 193.10-10.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM F1122	<b>1987 (1998)</b>	Standard Specification for Quick Disconnect Couplings	33 C.F.R. § 154.106 (2014)		<p>33 C.F.R. § 154.106, "Incorporation by reference" (2014):</p> <p>(a) Certain material is incorporated by reference (IBR) 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 a 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 Coast Guard, Office of Design and Engineering Standards (CG-ENG), 2100 2nd Street SW., Stop 7126, Washington, DC 20593-7126, telephone 202-372-1418 and 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 <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>. Also, it is available from the sources indicated in this section.</p> <p>...</p> <p>(e) ASTM International (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959.</p> <p>...</p> <p>(4) <b>ASTM F 1122-87 (Reapproved 1992)</b>, Standard Specification for Quick Disconnect Couplings ("ASTM F 1122"), IBR approved for § 154.500(d).</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by mandate and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>
ASTM F1123	<b>1987 (1998)</b>	Standard Specification for Non-Metallic Expansion Joints	46 C.F.R. § 56.01-2 (1997)	2000	<p>46 C.F.R. § 56.01-2, "Incorporation by Reference" (1997):</p> <p>(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 <a href="http://www.archives.gov/federalregister/codeofederalregulations/ibrlocation.html">http://www.archives.gov/federalregister/codeofederalregulations/ibrlocation.html</a>. The material is also available for inspection at the U.S. Coast Guard Office of Design and Engineering Standards (CG-521), 2100 2nd St., SW., Stop 7126, Washington, DC 20593-7126, and is available from the sources listed below.</p> <p>...</p> <p>American Society for Testing and Materials (ASTM), ASTM International Headquarters, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959</p> <p>...</p> <p><b>ASTM F 1123-87</b> Non-Metallic Expansion Joints for Use in Marine Piping Applications. 56.60-1.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by mandate and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>



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ASTM F1139	1988 (1998)	Standard Specification for Steam Traps and Drains	46 C.F.R. § 56.01-2 (1997)	2000	<p>46 C.F.R. § 56.01-2, "Incorporation by Reference" (1997):</p> <p>(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 <a href="http://www.archives.gov/federalregister/codeofregulations/ibr/location.html">http://www.archives.gov/federalregister/codeofregulations/ibr/location.html</a>. The material is also available for inspection at the U.S. Coast Guard, Office Standards (CG-521), 2100 2nd St., SW., Stop 7126, Washington, DC 20593-7126, and is available from the sources listed below.</p> <p>...</p> <p>American Society for Testing and Materials (ASTM), ASTM International Headquarters, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959</p> <p>...</p> <p><b>ASTM F 1139-88</b> Steam Traps and Drains. 56.60-1.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by mandate and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>
ASTM F1155	1998	Standard Practice for Selection and Application of Piping System Materials	33 C.F.R. § 154.106 (2014)		<p>33 C.F.R. § 154.106, "Incorporation by reference" (2014):</p> <p>(a) Certain material is incorporated by reference (IBR) 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 a 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 Coast Guard, Office of Design and Engineering Standards (CG-ENG), 2100 2nd Street SW., Stop 7126, Washington, DC 20593-7126, telephone 202-372-1418 and 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 <a href="http://www.archives.gov/federal_register/code_of_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_regulations/ibr_locations.html</a>.</p> <p>Also, it is available from the sources indicated in this section.</p> <p>...</p> <p>(e) ASTM International (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959.</p> <p>...</p> <p>(5) ASTM F1155-98, Standard Practice for Selection and Application of Piping System Materials ("ASTM F1155"), IBR approved for Appendix A, 7.1, 8.4 to part 154.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM F1172	1988 (1998)	Standard Specification for Fuel Oil Meters of the Volumetric Positive Displacement Type	46 C.F.R. § 56.01-2 (1997)	2000	<p>46 C.F.R. § 56.01-2, "Incorporation by Reference" (1997):</p> <p>(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 <a href="http://www.archives.gov/federalregister/codeofcodofllofederalregulations/ibr/location">http://www.archives.gov/federalregister/codeofcodofllofederalregulations/ibr/location</a> s.html. The material is also available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG-521), 2100 2nd St., SW., Stop 7126, Washington, DC 20593-7126, and is available from the sources listed below.</p> <p>...</p> <p>American Society for Testing and Materials (ASTM), ASTM International Headquarters, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959</p> <p>...</p> <p><b>ASTM F 1172-88</b> Fuel Oil Meters of the Volumetric Positive Displacement Type. 56.60-1.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>
ASTM F1173	1995	Standard Specification for Thermosetting Resin Fiberglass Pipe and Fittings to be Used for Marine Applications	46 C.F.R. § 56.01-2 (1997)		<p>46 C.F.R. § 56.01-2, "Incorporation by Reference" (1997):</p> <p>(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 <a href="http://www.archives.gov/federalregister/codeofcodofllofederalregulations/ibr/location">http://www.archives.gov/federalregister/codeofcodofllofederalregulations/ibr/location</a> s.html. The material is also available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG-521), 2100 2nd St., SW., Stop 7126, Washington, DC 20593-7126, and is available from the sources listed below.</p> <p>...</p> <p>American Society for Testing and Materials (ASTM), ASTM International Headquarters, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959</p> <p>...</p> <p>ASTM F 1173-95 Epoxy Resin Fiberglass Pipe and Fittings to be Used for Marine Applications. 56.60-1; 56.60-25.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM F1193	2006	Standard Practice for Quality, Manufacture, and Construction of Amusement Rides and Devices	40 C.F.R. § 799.5087 (2014)	Va. 13 VAC 5-31-40 (2010) Ind. 685 IAC 1-2-9 Fla. FAC 5F-8.0011 Colo. 7 C.C.R. 1101-12 Mass. 520 CMR 5.01 Tenn. Comp. R. & Regs. 0800-03-04	<p>40 C.F.R. § 799.5087, "Chemical testing requirements for second group of high production volume chemicals (HPV2)" (2014):</p> <p>(h) How must I conduct my testing? (1) The tests that are required for each chemical substance are indicated in Table 2 in paragraph (j) of this section. The test methods that must be followed are provided in Table 3 in paragraph (j) of this section. You must proceed in accordance with these test methods as required according to Table 3 in paragraph (j) of this section, or as appropriate if more than one alternative is allowed according to Table 3 in paragraph (j) of this section. Included in Table 3 in paragraph (j) of this section are the following 18 test methods which are incorporated by reference:</p> <p>...</p> <p>(vi) Standard Guide for Conducting Daphnia Magna Life-Cycle Toxicity Tests, <b>ASTM E 1193-97 (Reapproved 2004)</b>, approved April 1, 2004.</p> <p>...</p> <p>(2) The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies of the ASTM test methods from the American Society for Testing and Materials, 100 Bar Harbor Dr., P.O. Box C700, West Conshohocken, PA 19428-2959, telephone number: (610) 832-9585; web address: <a href="http://www.astm.org">http://www.astm.org</a>; copies of the ISO test methods from the International Organization for Standardization, 1, ch. de la Voie-Creuse, Case postale, 56 CH-1211 Geneve 20 Switzerland, telephone number: +41 22 749 01 11, web address: <a href="http://www.iso.org">http://www.iso.org</a>; and a copy of the OECD guideline from the Organization for Economic Cooperation and Development, 2, rue André Pascal, 75775 Paris Cedex 16 France, telephone number: +33 1 45 24 82 00, web address: <a href="http://www.oecd.org">http://www.oecd.org</a>. You may inspect each test method and guideline at the EPA Docket Center, EPA West, Rm. B102, 1301 Constitution Ave., NW., Washington, DC 20004; telephone number: (202) 566-1744, 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: <a href="http://www.archives.gov/federal-register/cfr/ibr-locations.html">http://www.archives.gov/federal-register/cfr/ibr-locations.html</a>.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not even included the incorporating language or undertaken any analysis of these claimed state regulations.</p> <p>And indeed:</p> <p>Va. 13 VAC 5-31-40 (2010) incorporates ASTM F1193-16, not ASTM F1193-06.</p> <p>Fla. FAC 5F-8.0011 was transferred to 5J-18.0011, which incorporates ASTM F1193-18, not ASTM F1193-06.</p> <p>Colo. 7 C.C.R. 1101-12 – 7 CCR 1101-12:1-5 incorporates ASTM F1193-18, not ASTM F1193-06.</p> <p>Tenn. Comp. R. &amp; Regs. 0800-03-04.12(1)(g) incorporates ASTM F1193-06, "Sections 1 through 7," not ASTM F1193-06 in its entirety. PRO offered no evidence that Ind. 685 IAC 1-2-9 or Mass. 520 CMR 5.01 impose binding legal obligations.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM F1199	1988 (1998)	Standard Specification for Cast (All Temperatures and Pressures) and Welded Pipe Line Strainers (150 psig and 150 Degrees F Maximum)	46 C.F.R. § 56.01-2 (1997)	2000	<p>46 C.F.R. § 56.01-2, "Incorporation by Reference" (1997):</p> <p>(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 <a href="http://www.archives.gov/federalregister/codofllofederalregulations/ibr/location.s.html">http://www.archives.gov/federalregister/codofllofederalregulations/ibr/location.s.html</a>. The material is also available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG-521), 2100 2nd St., SW., Stop 7126, Washington, DC 20593-7126, and is available from the sources listed below.</p> <p>...</p> <p>American Society for Testing and Materials (ASTM), ASTM International Headquarters, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959</p> <p>...</p> <p><b>ASTM F 1199-88</b> Cast and Welded Pipe Line Strainers. 56.60-1.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by mandate and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>
ASTM F1200	1988 (1998)	Standard Specification for Fabricated (Welded) Pipe Line Strainers (Above 150 psig and 150°F)	46 C.F.R. § 56.01-2 (1997)	2000	<p>46 C.F.R. § 56.01-2, "Incorporation by Reference" (1997):</p> <p>(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 <a href="http://www.archives.gov/federalregister/codofllofederalregulations/ibr/location.s.html">http://www.archives.gov/federalregister/codofllofederalregulations/ibr/location.s.html</a>. The material is also available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG-521), 2100 2nd St., SW., Stop 7126, Washington, DC 20593-7126, and is available from the sources listed below.</p> <p>...</p> <p>American Society for Testing and Materials (ASTM), ASTM International Headquarters, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959</p> <p>...</p> <p><b>ASTM F 1200-88</b> Fabricated (Welded) Pipe Line Strainers. 56.60-1.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by mandate and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>

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ASTM F1201	1988 (1998)	Standard Specification for Fluid Conditioner Fittings in Piping Applications Above Zero Degrees F	46 C.F.R. § 56.01-2 (1997)	2000	<p>46 C.F.R. § 56.01-2, "Incorporation by Reference" (1997):</p> <p>(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 <a href="http://www.archives.gov/federalregister/codeofregulations/ibr/location.html">http://www.archives.gov/federalregister/codeofregulations/ibr/location.html</a>. The material is also available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG-521), 2100 2nd St. SW., Stop 7126, Washington, DC 20593-7126, and is available from the sources listed below.</p> <p>...</p> <p>American Society for Testing and Materials (ASTM), ASTM International Headquarters, 100 Ban' Harbor Drive, West Conshohocken, PA 19428-2959</p> <p>...</p> <p><b>ASTM F 1201-88</b> Fluid Conditioner Fittings in Piping Applications Above 0°F. 56.60-1.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by mandate and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>
ASTM F1271	1990 (1995) e1	Standard Specification for Impact Attenuation of Surfacing Materials Within the Use Zone of Playground Equipment	46 C.F.R. § 39.10-5 (2009)		<p>46 C.F.R. § 39.10-5, "Incorporation by reference" (2009):</p> <p>(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the Federal Register and the material made available to the public. All approved material is on file at the U.S. Coast Guard, Office of Operating and Environmental Standards (CG-522), 2100 2nd St. SW., Stop 7126, Washington, DC 20593-7126, 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>. All material is available from the sources indicated in paragraph (b) of this section.</p> <p>(b) The material approved for incorporation by reference in this part, and the sections affected are:</p> <p>...</p> <p>American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959</p> <p><b>ASTM F 1271-90 (1995)</b>-Standard Specification for Spill Valves for Use in Marine Tank Liquid Overpressure Protection Applications....39.20-9</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by mandate and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>

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ASTM F1273	1991	(1996) e 1	F1273		<p>33 C.F.R. § 154.106, "Incorporation by reference" (2014):</p> <p>(a) Certain material is incorporated by reference (IBR) 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 a 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 Coast Guard, Office of Design and Engineering Standards (CG-ENG), 2100 2nd Street SW., Stop 7126, Washington, DC 20593-7126, telephone 202-372-1418 and 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 <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>.</p> <p>Also, it is available from the sources indicated in this section.</p> <p>...</p> <p>(e) ASTM International (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959.</p> <p>...</p> <p>(6) <b>ASTM F1273-91 (Reapproved 2007)</b> Standard Specification for Tank Vent Flame Arresters ("ASTM F1273"), approved December 1, 2007, IBR approved for §§ 154.2001 and 154.2105(j).</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>

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ASTM F1321	1992	Standard Guide for Conducting a Stability Test (Lightweight Survey and Inclining Experiment) to Determine Light Ship Displacement and Centers of Gravity of a Vessel	46 C.F.R. § 28.40 (2011)		<p>46 C.F.R. § 28.40, "Incorporation by reference" (2011):</p> <p>(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the Federal Register and make the material available to the public. All approved material is on file at the U.S. Coast Guard, Office of Design and Engineering Standards (CG-521), 2100 2nd St. SW., Stop 7126, Washington, DC 20593-7126 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>. All material is available from the sources indicated in paragraph (b) of this section.</p> <p>(b) The material approved for incorporation by reference in this part and the sections affected are:</p> <p>...</p> <p>American Society for Testing and Materials (ASTM),                      100 Barr Harbor Drive, West Conshohocken, PA 19428-2959.                      ASTM F 1321-92, Standard Guide for Conducting a Stability Test (Lightweight Survey and Inclining Experiment) to Determine the Light Ship Displacement and Centers of Gravity of a Vessel...28.535</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM F1323	1998	Standard Specification for Shipboard Incinerators	46 C.F.R. § 63.05-1 (2005)	2008	<p>46 C.F.R. §63.05-1, "Incorporation by reference" (2005):</p> <p>(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the Federal Register and the material made available to the public. All approved material is on file at the U.S. Coast Guard, Office of Design and Engineering Standards (G-MSE), 2100 Second Street SW., Washington, DC 20593-0001, and is available from the sources listed in paragraph (b) of this section 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>.</p> <p>(b) The material approved for incorporation by reference in this part and the sections affected are:</p> <p>...</p> <p>AMERICAN SOCIETY FOR TESTING AND MATERIALS (ASTM)</p> <p>100 BARR HARBOR DRIVE, WEST CONSHOHOCKEN, PA 19428-2959.</p> <p>ASTM F 1323-98, STANDARD SPECIFICATION FOR SHIPBOARD INCINERATORS...63.25-9</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM/II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>
ASTM F1471	1993	Standard Test Method for Air Cleaning Performance of a High-Efficiency Particulate Air-Filter System	40 C.F.R. § 86.1 (2008)	2014	<p>40 C.F.R. § 86.1, "Reference materials" (2008):</p> <p>(a) The documents in paragraph (b) of this section have been incorporated by reference. The incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at U.S. EPA, OAR, 401 M St., SW., Washington, DC 20460, 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: <a href="http://www.archives.gov/federalregister/codeofregulations/ibr/locations.html">http://www.archives.gov/federalregister/codeofregulations/ibr/locations.html</a>. (b) The following paragraphs and tables set forth the material that has been incorporated by reference in this part. (1) ASTM material. The following table sets forth material from the American Society for Testing and Materials that has been incorporated by reference. The first column lists the number and name of the material. The second column lists the section(s) of this part, other than this section, in which the matter is referenced. Copies of these materials may be obtained from American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959.</p> <p>...</p> <p>ASTM F1471-93, Standard Test Method for Air Cleaning Performance of a High-Efficiency Particulate Air-Filter System...86.1310-2007.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM/II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>



No. <sup>1</sup>	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM F1546 / F1546M	1996	Standard Specification for Fire Hose Nozzles	46 C.F.R. § 162.027-1 (2004)	2013	<p>46 C.F.R. § 162.027, "Incorporation by reference" (2004):</p> <p>(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 paragraph (b) of this section, the Coast Guard must publish a 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) and at the U.S. Coast Guard, Office of Design and Engineering Standards (G-MSE), 2100 Second Street SW, Washington, DC 20593-0001 and is available from the sources indicated in paragraph (b) of this section. For information on the availability of this material at NARA, call 202-741-6030, or go to: <a href="http://www.archives.gov/federalregister/codeofregulations/ibr/location.s.html">http://www.archives.gov/federalregister/codeofregulations/ibr/location.s.html</a>.</p> <p>(b) The material approved for incorporation by reference in this part and the sections affected are as follows:</p> <p>American Society for Testing and Materials (ASTM)                      100 Barr Harbor Drive, West Conshohocken, PA 19428-2959.  <b>ASTM F 1546 [or] F 1546 M-96</b>, Standard Specification for Firehose Nozzles-162.027-2; 162.027-3</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>
ASTM F1548	1994	Standard Specification for the Performance of Fittings for Use with Gasketed Mechanical Couplings Used in Piping Applications	46 C.F.R. § 56.012 (1997)		<p>46 C.F.R. § 56.01-2, "Incorporation by Reference" (1997):</p> <p>(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 <a href="http://www.archives.gov/federalregister/codeofregulations/ibr/location.s.html">http://www.archives.gov/federalregister/codeofregulations/ibr/location.s.html</a>. The material is also available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG-521), 2100 2nd St., SW., Stop 7126, Washington, DC 20593-7126, and is available from the sources listed below.</p> <p>...</p> <p>American Society for Testing and Materials (ASTM), ASTM International Headquarters, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959</p> <p>...</p> <p>ASTM F 1548-94 Standard specification for Performance of Fittings for Use with Gasketed Mechanical Couplings for Use in Piping Applications. 56.30-35.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No.¹	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference²	ASTM's Response³
ASTM F1951	1999	Standard Specification for Determination of Accessibility of Surface Systems Under and Around Playground Equipment	36 C.F.R. § 1191, App. B (2014)		<p>36 C.F.R. § 1191, App. B, "Referenced Standards" (2014): 105.1 General. The standards listed in 105.2 are incorporated by reference in this document and are part of the requirements to the prescribed extent of each such reference. The Director of the Federal Register has approved these standards for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the referenced standards may be inspected at the Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., Suite 1000, Washington, DC 20004; at the Department of Justice, Civil Rights Division, Disability Rights Section, 1425 New York Avenue NW., Washington, DC 20005; at the Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590; 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 <a href="http://www.archives.gov/federalregister/codofederalregulations/ibrlocations.html">http://www.archives.gov/federalregister/codofederalregulations/ibrlocations.html</a>.</p> <p>105.2 Referenced Standards. The specific edition of the standards listed below are referenced in this document. Where differences occur between this document and the referenced standards, this document applies.</p> <p>... 105.2.3 ASTM. Copies of the referenced standards may be obtained from the American Society for Testing and Materials, 100 Bar Harbor Drive, West Conshohocken, Pennsylvania 19428 (<a href="http://www.astm.org">http://www.astm.org</a>).</p> <p>... ASTM F1951-99 Standard Specification for H263 Determination of Accessibility of Surface Systems Under and Around Playground Equipment (see 1008.2.6.1).</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>Moreover, 36 C.F.R. § 1191, App. B (2014) does not refer to F1951-99. This underscores the fact that PRO has not analyzed the substantive regulations at issue.</p>

No.1	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM F462	1979 (1999)	Standard Consumer Safety Specification for Slip-Resistant Bathing Facilities	24 C.F.R. (Parts 200 to 499) (2005)	2009	<p>24 C.F.R. (Parts 200 to 499), "Minimum Property Standards for Care-Type Housing" (2005):</p> <p>The following publications are incorporated by reference in the HUD Minimum Property Standards (MPS) in 24 CFR part 200, subpart S. The MPS are available for public inspection and can be obtained</p> <p>for appropriate [sic] use at 490 L'Enfant Plaza East, Suite 3214, or at each HUD Regional, Area, and Service Office. Copies are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC. The individual standards referenced in the MPS are available at the address contained in the following table. They are also available for public inspection at the</p> <p>Manufactured Housing and Construction Standards Division, Suite 3214, 490 L'Enfant Plaza East, Washington, DC 20024.</p> <p>...</p> <p>American Society for Testing and Materials                      1100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, Telephone (610) 832-9585, FAX (610) 832-9555</p> <p>...</p> <p><b>ASTM F 462-79</b> Slip-Resistant Bathing Facilities; Part 200, Subpart S</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>Moreover, 24 C.F.R. (Parts 200 to 499) contains a non-substantive list of standards incorporated by reference. Each entry on this list references a substantive regulation—here, 24 C.F.R. Part 200, Subpart S. But 24 C.F.R. Part 200, Subpart S does not refer to F462-79 (1999). This underscores the fact that PRO has not analyzed the substantive regulations at issue.</p> <p>Finally, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>

No.1	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM F478	1992 (1999)	Standard Specification for In-Service Care of Insulating Line Hose and Covers	29 C.F.R. § 1910.137 (2012)	2014	29 C.F.R. § 1910.137, "Electrical protective equipment": NOTE: Standard electrical test methods considered as meeting this requirement are given in the following national consensus standards: ... <b>ASTM F 478-92</b> . Specification for In-Service Care of Insulating Line Hose and Covers.	Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i> , 896 F.3d at 450-51.  PRO has not analyzed the substantive regulation that references this ASTM Standard.  Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.
ASTM F631	1993	Standard Guide for Collecting Skimmer Performance Data in Controlled Environments	33 C.F.R. § 154.106 (2014)		33 C.F.R. § 154.106, "Incorporation by reference" (2014): (a) Certain material is incorporated by reference (IBR) 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 a 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 Coast Guard, Office of Design and Engineering Standards (CG-ENG), 2100 2nd Street SW., Stop 7126, Washington, DC 20593-7126, telephone 202-372-1418 and 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 <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a> . Also, it is available from the sources indicated in this section. ... (c) ASTM International (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959. ... (1) ASTM F631-93, Standard Guide for Collecting Skimmer Performance Data in Controlled Environments ("ASTM F631"), IBR approved for Appendix C, 6.3 to part 154.	Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i> , 896 F.3d at 450-51.  PRO has not analyzed the substantive regulation that references this ASTM Standard.

No.¹	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference²	ASTM's Response³
ASTM F631	1980 (1985)	Standard Method for Testing Full Scale Advancing Spill Removal Devices	33 C.F.R. § 154.106 (1999)	2009	<p>33 C.F.R. § 154.106, "Incorporation by reference" (1999):</p> <p>(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the Federal Register and make the material available to the public. All approved material is on file at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC and at the U.S. Coast Guard, Office of the Compliance (GMOC), Room 1116, 2100 Second Street SW., Washington, DC 205930001, and is available from the sources indicated in paragraph (b) of this section.</p> <p>(b) The material approved for incorporation by reference in this part and the sections affected are:</p> <p>...</p> <p>AMERICAN SOCIETY FOR TESTING AND MATERIALS (ASTM) 1916 RACE STREET, PHILADELPHIA, PA 19103.</p> <p>ASTM F 631-80 (REAPPROVED 1985), STANDARD METHOD FOR TESTING FULL SCALE ADVANCING SPILL REMOVAL DEVICES APPENDIX C.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>
ASTM F682	1982a (1988)	Standard Specification for Wrought Carbon Steel Sleeve-Type Pipe Couplings	46 C.F.R. § 56.01-2 (1997)	2000	<p>46 C.F.R. § 56.01-2, "Incorporation by Reference" (1997):</p> <p>(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 <a href="http://www.archives.gov/federalregister/codeofregulations/ibr/locations.html">http://www.archives.gov/federalregister/codeofregulations/ibr/locations.html</a>. The material is also available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG-521), 2100 2nd St., SW., Stop 7126, Washington, DC 20593-7126, and is available from the sources listed below.</p> <p>...</p> <p>American Society for Testing and Materials (ASTM), ASTM International Headquarters, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959</p> <p>... <b>ASTM F 682-82a</b> Wrought Carbon Steel Sleeve-Type Pipe Couplings. 56.60-1.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>

No.¹	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference²	ASTM's Response³
ASTM F715	1995	Standard Test Methods for Coated Fabrics Used for Oil Spill Control and Storage	33 C.F.R. § 154.106 (2014)		<p>33 C.F.R. § 154.106, "Incorporation by reference" (2014):                      (a) Certain material is incorporated by reference (IBR) 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 a 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 Coast Guard, Office of Design and Engineering Standards (CG-ENG), 2100 2nd Street SW., Stop 7126, Washington, DC 20593-7126, telephone 202-372-1418 and 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 <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>.                      Also, it is available from the sources indicated in this section.                      ...                      (c) ASTM International (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959.                      ...                      (2) ASTM F715-95, Standard Test Methods for Coated Fabrics Used for Oil Spill Control and Storage ("ASTM F715"), IBR approved for Appendix C, 2.3.1 to part 154.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.                       PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No.¹	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference²	ASTM's Response³
ASTM F715	1981 (1986)	Standard Methods of Testing Spill Control Barrier Membrane Materials	33 C.F.R. § 154.106 (1997-2008)	2009	<p>33 C.F.R. § 154.106, "Incorporation by reference" (1999):</p> <p>(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the Federal Register and make the material available to the public. All approved material is on file at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC and at the U.S. Coast Guard, Office of the Compliance (G-MOC), Room 1116, 2100 Second Street SW., Washington, DC 20593-0001, and is available from the sources indicated in paragraph (b) of this section.</p> <p>(b) The material approved for incorporation by reference in this part and the sections affected are:</p> <p>...</p> <p>AMERICAN SOCIETY FOR TESTING AND MATERIALS (ASTM) 1916 RACE STREET, PHILADELPHIA, PA 19103.</p> <p>...</p> <p>ASTM F 715-81 (REAPPROVED 1986), STANDARD METHODS OF TESTING SPILL CONTROL BARRIER MEMBRANE MATERIALS APPENDIX C.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>
ASTM F722	1982 (1988)	Standard Specification for Welded Joints for Shipboard Piping Systems	33 C.F.R. § 154.106 (2014)		<p>33 C.F.R. § 154.106, "Incorporation by reference" (2014):</p> <p>(a) Certain material is incorporated by reference (IBR) 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 a 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 Coast Guard, Office of Design and Engineering Standards (CG-ENG), 2100 2nd Street SW., Stop 7126, Washington, DC 20593-7126, telephone 202-372-1418 and 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 <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>. Also, it is available from the sources indicated in this section.</p> <p>...</p> <p>(c) ASTM International (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959.</p> <p>...</p> <p>(3) <b>ASTM F722-82 (Reapproved 2008)</b>, Standard Specification for Welded Joints for Shipboard Piping Systems ("ASTM F722"), approved November 1, 2008, IBR approved for Appendix A, 8.4, 8.6 to part 154.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>

No.¹	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference²	ASTM's Response³
ASTM F808	1983 (1988)e1	Standard Guide for Collecting Skimmer Performance Data in Uncontrolled Environments	33 C.F.R. § 154.106 (1999)	2009	<p>33 C.F.R. § 154.106, "Incorporation by reference" (1999):</p> <p>(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the Federal Register and make the material available to the public. All approved material is on file at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC and at the U.S. Coast Guard, Office of the Compliance (G-MOC), Room 1116, 2100 Second Street SW., Washington, DC 20593-0001, and is available from the sources indicated in paragraph (b) of this section.</p> <p>(b) The material approved for incorporation by reference in this part and the sections affected are:</p> <p>...</p> <p>AMERICAN SOCIETY FOR TESTING AND MATERIALS (ASTM) 1916 RACE STREET, PHILADELPHIA, PA 19103.</p> <p>...</p> <p><b>ASTM F 808-83 (1988)</b>, STANDARD GUIDE FOR COLLECTING SKIMMER PERFORMANCE DATA IN UNCONTROLLED ENVIRONMENTS APPENDIX C.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450–51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>



No.¹	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference²	ASTM's Response³
ASTM G151	1997	Standard Practice for Exposing Nonmetallic Materials in Accelerated Test Devices that Use Laboratory Light Sources	49 C.F.R. § 571.5 (2014)		<p>49 C.F.R. § 571.5, "Matter incorporated by reference" (2014):                      (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 National Highway Traffic Safety Administration (NHTSA) 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 NHTSA, 1200 New Jersey Avenue SE., Washington, DC 20590, and at the National Archives and Records Administration (NARA). For information on the availability of this material at NHTSA, or if you experience difficulty obtaining the standards referenced below, contact NHTSA Office of Technical Information Services, phone number (202) 366-2588.</p> <p>For information on the availability of this material at NARA, call (202) 741-6030, or go to: <a href="http://www.archives.gov/federal-register/cfr/ibr-locations.html">http://www.archives.gov/federal-register/cfr/ibr-locations.html</a>.</p> <p>...</p> <p>(d) ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959. Telephone: (610) 832-9500; Fax (610) 832-9555; Web site: <a href="http://www.astm.org">http://www.astm.org</a>.</p> <p>...</p> <p>(37) ASTM G151-97, "Standard Practice for Exposing Nonmetallic Materials in Accelerated Test Devices that Use Laboratory Light Sources," approved July 10, 1997, into § 571.106.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

No.1	Edition	Title	Reference	Year C.F.R. Amended	PRO's Truncated Text of Incorporation by Reference <sup>2</sup>	ASTM's Response <sup>3</sup>
ASTM G154	2000a	Standard Practice for Operating Fluorescent Light Apparatus for UV Exposure of Nonmetallic Materials	49 C.F.R. § 571.5 (2014)		<p>49 C.F.R. § 571.5, "Matter incorporated by reference" (2014):</p> <p>(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 National Highway Traffic Safety Administration (NHTSA) 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 NHTSA, 1200 New Jersey Avenue SE., Washington, DC 20590, and at the National Archives and Records Administration (NARA). For information on the availability of this material at NHTSA, or if you experience difficulty obtaining the standards referenced below, contact NHTSA Office of Technical Information Services, phone number (202) 366-2588.</p> <p>For information on the availability of this material at NARA, call (202) 741-6030, or go to: <a href="http://www.archives.gov/federal-register/cfr/ibr-locations.html">http://www.archives.gov/federal-register/cfr/ibr-locations.html</a>.</p> <p>...</p> <p>(d) ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959. Telephone: (610) 832-9500; Fax (610) 832-9555; Web site: <a href="http://www.astm.org">http://www.astm.org</a>.</p> <p>...</p> <p>(38) <b>ASTM G154-00</b>, "Standard Practice for Operating Fluorescent Light Apparatus for UV Exposure of Nonmetallic Materials," approved February 10, 2000, into § 571.106.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p> <p>Moreover, on its face, the incorporating language does not reference the edition of the ASTM Work that PRO reproduced and displayed.</p>
ASTM G21	1990	Standard Practice for Determining Resistance of Synthetic Polymeric Materials to Fungi	7 C.F.R. § 1755.910 (2014)		<p>7 C.F.R. § 1755.910, "RUS specification for outside plant housings and serving area interface systems" (2014):</p> <p>(7) The American Society for Testing and Materials Specifications (ASTM) .... ASTM G 21-90, Standard Practice for Determining Resistance of Synthetic Polymeric Materials to Fungi; and ASTM G 23-90, Standard Practice for Operating Light-Exposure Apparatus (Carbon-Arc Type) With and Without Water for Exposure of Nonmetallic Materials, referenced in this section are incorporated by reference by RUS. These incorporations by references were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 7 CFR part 51. Copies of the ASTM standards are available for inspection during normal business hours at RUS, room 2845-S, U.S. Department of Agriculture, Washington, DC 20250-1500, 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: <a href="http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html">http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html</a>. Copies are available from ASTM, 1916 Race Street, Philadelphia, Pennsylvania 19103-1187, telephone number (215) 299-5585.</p>	<p>Mere identification of an incorporating reference does not satisfy the D.C. Circuit's mandate to analyze—"standard by standard and use by use"—whether the material PRO copied is "essential to complying with any legal duty." <i>ASTM II</i>, 896 F.3d at 450-51.</p> <p>PRO has not analyzed the substantive regulation that references this ASTM Standard.</p>

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR TESTING AND  
MATERIALS d/b/a ASTM INTERNATIONAL;

NATIONAL FIRE PROTECTION  
ASSOCIATION, INC.; and

AMERICAN SOCIETY OF HEATING,  
REFRIGERATING, AND AIR CONDITIONING  
ENGINEERS,

Plaintiffs/Counter-defendants,

v.

PUBLIC.RESOURCE.ORG, INC.,

Defendant/Counterclaimant.

Case No. 1:13-cv-01215-TSC

**SUPPLEMENTAL REPLY DECLARATION OF MATTHEW BECKER IN SUPPORT  
OF PUBLIC RESOURCE'S SECOND MOTION FOR SUMMARY JUDGMENT**

I, Matthew Becker, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am an attorney admitted to practice in the District of Columbia and am an associate with the law firm of Fenwick & West LLP, counsel of record for Defendant-Counterclaimant Public.Resource.Org, Inc. ("Public Resource"). Except where otherwise indicated, I have personal knowledge of the facts herein and could and would testify competently hereto.

2. Attached as **Exhibit 98**<sup>1</sup> is a true and correct copy of the Office of the Federal Register, *Document Drafting Handbook*, Aug. 2018 ed. (Rev. 1.1, dated Aug. 9, 2019), obtained from <https://www.archives.gov/files/federal-register/write/handbook/ddh.pdf>. Further

---

<sup>1</sup> Exhibit numbering is continued from my prior declaration, Dkt. 204-5.

information on the Document Drafting Handbook and the IBR Handbook is available from the Office of the Federal Register at *OFR Handbooks Frequently Asked Questions*, <https://www.archives.gov/federal-register/write/handbook/faqs.html>.

3. Attached as **Exhibit 99** is a true and correct copy of the 1972 announcement in the Federal Register by the Office of the Federal Register of the incorporation by reference regulations, along with the text of that regulation: *Incorporation by Reference*, 37 Fed. Reg. 23602 (Nov. 4, 1972) (to be codified at 1 C.F.R. 51).

4. Attached as **Exhibit 100** is a true and correct copy of the Office of the Federal Register's announcement, "OFR Director Charley Barth Stepping Down for New Opportunity," accessed Jan. 16, 2020, at <https://www.federalregister.gov/reader-aids/office-of-the-federal-register-blog/2014/10/ofr-director-charley-barth-stepping-down>.

5. Attached as **Exhibit 101** is a true and correct copy of ASHRAE's "Read-Only Versions of ASHRAE Standards" webpage (accessed Jan. 16, 2020), at <https://www.ashrae.org/technical-resources/standards-and-guidelines/read-only-versions-of-ashrae-standards>. This page shows that the 1993 ASHRAE Handbook is not among the standards that it makes available for read-only access, even though that standard is incorporated by reference into law at 10 C.F.R. § 434.701 (2011).

6. Attached for the Court's convenience as **Exhibit 102** is a true and correct copy of an email from NFPA, previously submitted at Dkt. 124-5, in which NFPA advertises: "Be confident your electrical work complies with California law. . . . California has adopted the 2011 NEC. Order the NEC Handbook today and receive FREE tabs!"

7. Attached for the Court's convenience as **Exhibit 103** is a true and correct compilation of the statements and contributions from the Consumer Product Safety Commission

that were located at table 6 of “Comment on Safety Standard for Automatic Residential Garage Door Operators”, Public.Resource.Org, Nov. 16, 2015, at <https://law.resource.org/pub/us/cfr/regulations.gov.docket.15/cpsc.gov.20151116.html#t6> (cataloguing nineteen textual contributions to the National Electrical Code from Consumer Product Safety Commission staff), but which are presently unavailable due to maintenance on the Consumer Product Safety Commission website. Automatically archived versions of these documents are available on the Internet Archive at the following locations:

<https://web.archive.org/web/20170207161319/https://www.cpsc.gov/PageFiles/117366/comment422f.pdf>

<https://web.archive.org/web/20170223204422/https://www.cpsc.gov/PageFiles/117373/comment210-12.pdf>

<https://web.archive.org/web/20170222233233/https://www.cpsc.gov/PageFiles/117338/210-8a3.pdf>

<https://web.archive.org/web/20170125025404/https://www.cpsc.gov/PageFiles/117351/210-12c.pdf>

<https://web.archive.org/web/20170207071338/https://www.cpsc.gov/PageFiles/117355/230-xx.pdf>

<https://web.archive.org/web/20170212055701/https://www.cpsc.gov/PageFiles/108276/210.12n.pdf>

<https://web.archive.org/web/20170207065403/https://www.cpsc.gov/PageFiles/109754/210.8A.pdf>

<https://web.archive.org/web/20170211071503/https://www.cpsc.gov/PageFiles/108291/100.pdf>

<https://web.archive.org/web/20170224211212/https://www.cpsc.gov/PageFiles/108285/230.xx.pdf>

<https://web.archive.org/web/20170209202716/https://www.cpsc.gov/PageFiles/109760/210.8B.pdf>

<https://web.archive.org/web/20170210000456/https://www.cpsc.gov/PageFiles/108298/210.12r.pdf>

<https://web.archive.org/web/20170131113344/https://www.cpsc.gov/PageFiles/117282/afci.pdf>

<https://web.archive.org/web/20170212083913/https://www.cpsc.gov/PageFiles/117286/bedrooms.pdf>

<https://web.archive.org/web/20170223052803/https://www.cpsc.gov/PageFiles/117292/editorial.pdf>

<https://web.archive.org/web/20170201050551/https://www.cpsc.gov/PageFiles/117296/smokealarm.pdf>

<https://web.archive.org/web/20170212112237/https://www.cpsc.gov/PageFiles/117301/bathoists.pdf>

<https://web.archive.org/web/20170201050551/https://www.cpsc.gov/PageFiles/117296/smokealarm.pdf>

[https://web.archive.org/web/20170131074532/https://www.cpsc.gov/PageFiles/117275/NFPA70\\_550\\_13b.pdf](https://web.archive.org/web/20170131074532/https://www.cpsc.gov/PageFiles/117275/NFPA70_550_13b.pdf)

[https://web.archive.org/web/20170212163343/https://www.cpsc.gov/PageFiles/107512/NFPA70\\_550\\_25.pdf](https://web.archive.org/web/20170212163343/https://www.cpsc.gov/PageFiles/107512/NFPA70_550_25.pdf)

[https://web.archive.org/web/20170131074532/https://www.cpsc.gov/PageFiles/117275/NFPA70\\_550\\_13b.pdf](https://web.archive.org/web/20170131074532/https://www.cpsc.gov/PageFiles/117275/NFPA70_550_13b.pdf)

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 16th day of January, 2020 at San Francisco, California.

/s/ Matthew B. Becker

Matthew B. Becker

# EXHIBIT 98



# Document Drafting Handbook

August 2018 Edition

*(Revision 1.1, dated August 9, 2019)*

*Office of the Federal Register*

National Archives and Records Administration

## INTRODUCTION

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### What is the Document Drafting Handbook (DDH)?

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The DDH gives Federal agencies guidance and examples for drafting *Federal Register* documents. This guidance explains how to follow the submission, format, and editorial requirements established in [44 U.S.C. chapter 15](#) (the Federal Register Act) and [1 CFR chapter I](#).

In this edition, we have: completely revised the instructions for digital submissions; changed how we will process rules with information collections requirements that haven't been approved by OMB; and added an appendix to highlight some stylistic, formatting, and structural conventions that are no longer allowed and must be corrected in your regulations. We have also clarified existing language and formatting requirements.

In Revision 1, we've added a category for final rules issued under the Congressional Review Act, formalized how long an agency has to notify us of when we cause an error in the CFR, clarified the use of notes, footnotes, and appendices, and provided additional details regarding appropriate titles in a signature block. We've also noted other technical restrictions and have reorganized some of chapter 5.

Revision 1.1 restores labels to examples 1-10 and 1-11 that were inadvertently dropped from Revision 1 due to a technical issue in the publication process.

**Note:** In this handbook, “we,” “our,” and “OFR” all refer to the Office of the Federal Register, National Archives and Records Administration (NARA), and “you” and “your” both refer to Federal agencies that prepare documents for publication in the Federal Register. GPO refers to the Government Publishing Office.

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### How do I know what is required?

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We use “must” to indicate a requirement. We use “should” to indicate a strong recommendation. We use “may” to indicate an option.

---

### How do I know if I have the current version? Can I use an older version?

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You can find the most current version of the DDH on our [website](#). We include a brief summary of the changes we made. Our [FAQs page](#) tells you which version(s) of the DDH you can use.

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## Who do I contact for help?

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You can find writing resources, including plain language tools, including the DDH companion document [Making Regulations Readable](#), on our [For Federal Agencies](#) page.

If you have questions about the Federal Register Act or our regulations, including incorporation by reference, contact the Legal Affairs and Policy Division (202-741-6030; [fedreg.legal@nara.gov](mailto:fedreg.legal@nara.gov)).

If you can't find the answers online, for:  
*Liaison Officers*

Contact the OFR Scheduling Unit (202-741-6060; [fedreg.liaison@nara.gov](mailto:fedreg.liaison@nara.gov)) for:

- Questions about drafting or submitting documents or
- Scheduling a Liaison training workshop.

### *Other agency staff*

Contact your agency's *Federal Register* Liaison Officer for:

- Preliminary consultation on large projects, such as reorganizations, major revisions, additions, or joint or common rules,
- Technical assistance in drafting complex documents, or
- Requests for special formatting.

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## Accessibility

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You can always adjust the display of this document, including the color scheme (to use high contrast, your Windows theme, or create your own color scheme), using your PDF viewer.

To change the color scheme:

1. Choose Edit > Preferences (Windows) or Acrobat > Preferences (Mac OS).
2. Click Accessibility.
3. Select Replace Document Colors and then select the option you wish to use.

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## Chapter 1: WHAT ARE THE REQUIREMENTS FOR DRAFTING ANY DOCUMENT?

### 1.1 Can I combine a rule, proposed rule, or notice in the same document?

No, the OFR does not accept any document for publication that combines material that would appear in different categories of the *Federal Register*. In cases where two categories are involved, submit two separate documents that cross-reference each other (see **Example 1-1**).

You may request that the two documents be published in the same separate part of a *Federal Register* issue (see **Appendix A: Special Handling Request**).

#### Example 1-1: Cross reference statement

A [RULE, PROPOSED RULE, NOTICE] relating to [SUBJECT MATTER] is published elsewhere in this issue of the *Federal Register*.

### 1.2 How can my agency issue a document jointly with one or more other agencies?

Your Liaison Officer should consult with us in advance for assistance when preparing common or jointly issued documents. **Example 1-2** provides a sample of the headings used in a joint rule.

- Make sure an authorized official from each agency has signed a jointly issued or common rule document.
- Identify each agency in the heading and preamble of the document.
- Carry the agencies in numerical order by CFR title number in both the heading and regulatory text.



## Example 1-2: Adoption of jointly issued regulations

**TENNESSEE VALLEY AUTHORITY****18 CFR Part 1312****DEPARTMENT OF AGRICULTURE****Forest Service****36 CFR Part 296****Archaeological Resources Protection Act of 1979; Final Uniform Regulations****AGENCY:** Tennessee Valley Authority and Forest Service, USDA.**ACTION:** Final rule.**SUMMARY:** These final regulations establish uniform procedures for implementing provisions of the Archaeological Resources Protection Act. \* \* \***1.3 Billing codes**

GPO assigns agencies a Billing Address Code (BAC), a six-digit alphanumeric code which identifies your agency or bureau's financial contact and billing information. Each agency has a Printing Officer who works with GPO to identify and generate the correct BAC's for each document. Some agencies have multiple billing codes depending on what part of the agency is submitting the document, so it is important to check with your Printing Officer for the correct code.

- Your BAC must appear on each document submitted for publication in the *Federal Register*.
- Type the BAC at the top of the first page of the original(s) and the certified copies of each document.
- Following the BAC include the letter "P" for Microsoft Word submissions; an "M" for Manuscript Copy; or a "C" for Camera Copy.
- You may include multiple BACs on a jointly-issued document.

If you do not know your BAC, please consult with your Federal Register Liaison, Printing Officer, or financial unit. In addition, if you do not know who your Liaison is, contact the OFR at [fedreg.liaison@nara.gov](mailto:fedreg.liaison@nara.gov).

## 1.4 Document headings

Begin each document with headings that identify your agency and the subject matter of your document (which are shown below in bold). The headings that appear in italics may or may not be required, depending on your document type. Follow the specific instructions (**Chapter 2: How do I write a document for the Proposed Rules category?** **Chapter 3: How do I write a document for the Rules and Regulations category?** or **Chapter 4: How do I write a document for the Notices category?**) that are applicable to your document. Present the headings using the appropriate format, in the following order:

Table 1-1: List of document headings

<b>Department Name</b>	OR	<b>Agency Name</b>
<b>Subagency Name</b>		<i>CFR Citation</i>
<i>CFR Citation</i>		<i>Agency Docket Number</i>
<i>Agency Docket Number</i>		<i>Regulation Identifier Number (RIN)</i>
<i>Regulation Identifier Number (RIN)</i>		<b>Subject Heading</b>
<b>Subject Heading</b>		

### DEPARTMENT OR AGENCY NAME

The “Department” is the highest-level agency. This is either a cabinet-level agency (usually, but not always, a Department) or an agency that stands alone (see **Example 1-3, Example 1-4**). This heading shows who has issued and signed a document. To include an agency or office that has not signed the document, use the AGENCY line (see **sections 2.4, 3.4, 4.5**).

Example 1-3: Headings for a document from a cabinet-level agency

<b>DEPARTMENT OF COMMERCE</b>	Department Name
<i>15 CFR Part 946</i>	<i>CFR Citation</i>
<i>RIN 0648-AI90</i>	<i>RIN</i>
<b>National Weather Service</b>	Subject Heading

<b>FEDERAL RESERVE SYSTEM</b> <i>12 CFR Part 220</i> <i>[No. 85-959]</i> <i>RIN 0648-FR22</i> <b>Credit by Brokers and Dealers</b>	Agency Name CFR Citation Agency Docket Number RIN Subject Heading

**SUBAGENCY NAME**

The “Subagency” heading is only used if your agency is part of a larger agency – usually a department. Subagencies have specific legal authority to publish in the CFR and are usually assigned a distinct billing code. If you are in doubt as to whether or not your agency should use a “Subagency” heading, check with your liaison before contacting the OFR Scheduling unit (see **Example 1-5**, **Example 1-6**).

<b>DEPARTMENT OF COMMERCE</b> <i>15 CFR Part 946</i> <i>RIN 0648-AI90</i> <b>National Weather Service</b>	Department Name CFR Citation RIN Subject Heading

<b>DEPARTMENT OF ENERGY</b> <b>Office of the Secretary</b> <i>10 CFR Part 6</i> <i>RIN 0000-AA00</i> <b>Adjustment of Appendices to the Dairy Tariff-                  Rate Import Quota Licensing Regulation</b> <b>AGENCY: Office of the Secretary, DOE</b>	Department Name Subagency Name CFR Citation RIN Subject Heading Agency with Billing Code, Department

**Note:** The “Subagency” heading is different from the “AGENCY:” preamble caption. The “AGENCY:” line can include as specific an office as your agency prefers, regardless of agency status or document signature (see **Example 1-7**).

Example 1-7: Headings from document with other office in AGENCY caption	
<b>DEPARTMENT OF ENERGY</b>	Department Name
<b>10 CFR Chapter I</b>	CFR Citation
<i>[DOE-2015-00959]</i>	<i>Agency Docket Number</i>
<i>RIN 1904-AC38</i>	<i>RIN</i>
<b>Energy Conservation Program: Test Procedure for Automatic Commercial Ice Makers</b>	Subject Heading
<b>AGENCY: Office of Energy Efficiency, DOE</b>	Office w/o Billing Code, Department

Even if the document is issued by a subagency, the department name appears in the document headings (see **Example 1-3**).

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**SUBJECT HEADING**

The “subject heading” is a title for your document that briefly and accurately describes its subject matter. Do not use legal citations in this or other headings (see **sections 2.10, 3.10**). If your document amends several parts or if the part heading is too general, try to include specific information, while still being concise. We may edit for style, but otherwise we use your subject heading verbatim as the index entry in the *Federal Register* Table of Contents and indices. If your heading is too long, it will truncate automatically, which may change your intended meaning. Your subject heading should not include language that sets out its effect on the regulations, so avoid phrases like “Amendments to...” “Revisions to...” or “Changes to the Regulations Concerning...”

If you issue a follow-up document (an extension or supplemental document, for example), duplicate the headings of the earlier document and add a distinguishing phrase to the subject heading (see **Example 1-8**).

Example 1-8: Headings for a document extending a comment period	
<b>FEDERAL RESERVE SYSTEM</b>	Agency Name
<i>12 CFR Part 220</i>	CFR Citation
<i>[FRS-2015-00959]</i>	Agency Docket Number
<i>RIN 0648-FR22</i>	RIN
<b>Credit by Brokers and Dealers; Extension of Comment Period</b>	Subject Heading

If there are multiple agencies and CFR citations in the heading, see **Example 1-2**.

### 1.5 How do I refer to a publication that is not incorporated by reference in my document?

If you provide an informational reference to a publication in your document that is not incorporated by reference, include a statement of availability which:

- Identifies the title, edition/date/year, author, and publisher; and
- Contains the information where to find the reference. You may include a website, but if there is a relevant physical address and phone number, you include those as well.

If the reference is required to comply with the regulations, you must follow the incorporation by reference requirements in the [IBR Handbook](#).

### 1.6 Signature and certification

Your agency determines who may sign a document sent for publication in the *Federal Register*. The signer must be a Federal employee with the authority to take action for the agency.<sup>1</sup> The title in the signature block must be related to the authority to sign the document. Do not include honorary titles or titles associated with a different agency role.

If we have questions about the title in the signature block, we will contact you. You may be required to validate the title used in the signature block by sending a letter, on agency letterhead, detailing the authority to use the title. We may reject documents with an invalid title in the signature block.

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<sup>1</sup> 1 CFR 18.7.

For paper documents, the signature must be in ink; it cannot be from an image file or a photocopy. We recommend blue ink since a signature in black ink is often difficult to distinguish from a photocopy. Type the name and title of the person signing the document directly beneath the handwritten signature (see **Example 1-9, Example 1-10**). If you are sending in 1 original and 2 certified copies of your document, certify the signature on the copies' signature page (see **Example 1-14, Example 8-1**). You cannot send a photocopy of the certification.

If you are interested in our pilot program that allows you to certify electronic copies, contact our Scheduling Unit.

We will reject a document signed as one person for another. This means that we will not accept your document if you sign someone else's name and place your initials by the signature (see **Example 1-11**).

**Note:** *Certifying a copy of the original document is separate from sending in a certification letter with a disk. The certification letter certifies that the Word document on the disk is an exact duplicate of the signed original document and is not a substitute for certifying the paper copies. See **Chapter 6: Electronic files and online submissions** for more information on certifying an electronic file.*

For digitally-signed documents, the signature block must match the signer's full name as it appears in the digital signature with limited exceptions described below. However, your authorized web portal user<sup>2</sup> can be different from the person who signed the document (see **Example 1-13**).

If a first name, middle name, or maiden name appears in full in the digital signature, the signature block can contain that name or the first initial of the name. The signature block can add or drop a middle or maiden name, but cannot drop a first name. (See **Table 1-2**).

However the signature block cannot add a first name or first initial that is not in the digital signature. The signature block cannot use a nickname instead of the name on the digital signature (for example, we will not accept Kathy for Katherine or Bill for William). The signature block cannot use the initial of the first name and then add a middle initial or full middle name that is not on the card.

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<sup>2</sup> See **section 1.7. Chapter 6: Electronic files and online submissions**, and **Appendix B: PKI and Digital Signature - Introduction and FAQs**

To use a signature block that does not meet the requirements, the agency must send a formal deviation request letter that includes the exact form of the digital signature and the preferred, non-compliant, signature block name, as well as why the signature block cannot match the digital signature (see **Appendix A: Deviation Request letter**). If you have questions about a specific name, contact [fedreg.legal@nara.gov](mailto:fedreg.legal@nara.gov).

Example 1-9: Valid signature of authorized agency official (Cynthia James)	
<p><i>Cynthia James</i> Cynthia James, Director.</p>	

Example 1-10: Valid signature of agency official signing on behalf of another agency official (Thomas Shadwell for Cynthia James)		
<p><i>Thomas Shadwell</i> Thomas Shadwell, Deputy Director.</p>	or	<p><i>Thomas Shadwell</i> Thomas Shadwell, Acting Director.</p>

Example 1-11: Invalid “for” signature		
<p><i>Thomas Shadwell</i> For Cynthia James, Director.</p>	or	<p><i>Cynthia James</i> Cynthia James <i>ts</i> Director.</p>

Table 1-2: Valid digital signature/signature block	
Digital Signature	Signature Block
<b>Cynthia James</b>	C. James
	Cynthia Ann James
	Cynthia A. James
<b>Thomas Stewart Shadwell</b>	Thomas S. Shadwell
	T. S. Shadwell
	Thomas Shadwell
	T. Shadwell

For manuscript documents, do not place a signature block on a page by itself. Placing text on the signature page helps to ensure the integrity of the document.

You may place the signature block either at the end of the document or between the preamble and the rest of the document. In the case of a joint document which requires multiple signatures, do not separate the signatures. All agencies should sign in the same place. If all agencies are signing at the end of the regulatory text, contact the Scheduling Unit for the best way to prepare the signature pages (see **Example 1-12**).

**Example 1-12: Placement of the signature block**

Preamble Regulatory text Signature[s] Signature date	or	Preamble Signature[s] Regulatory text
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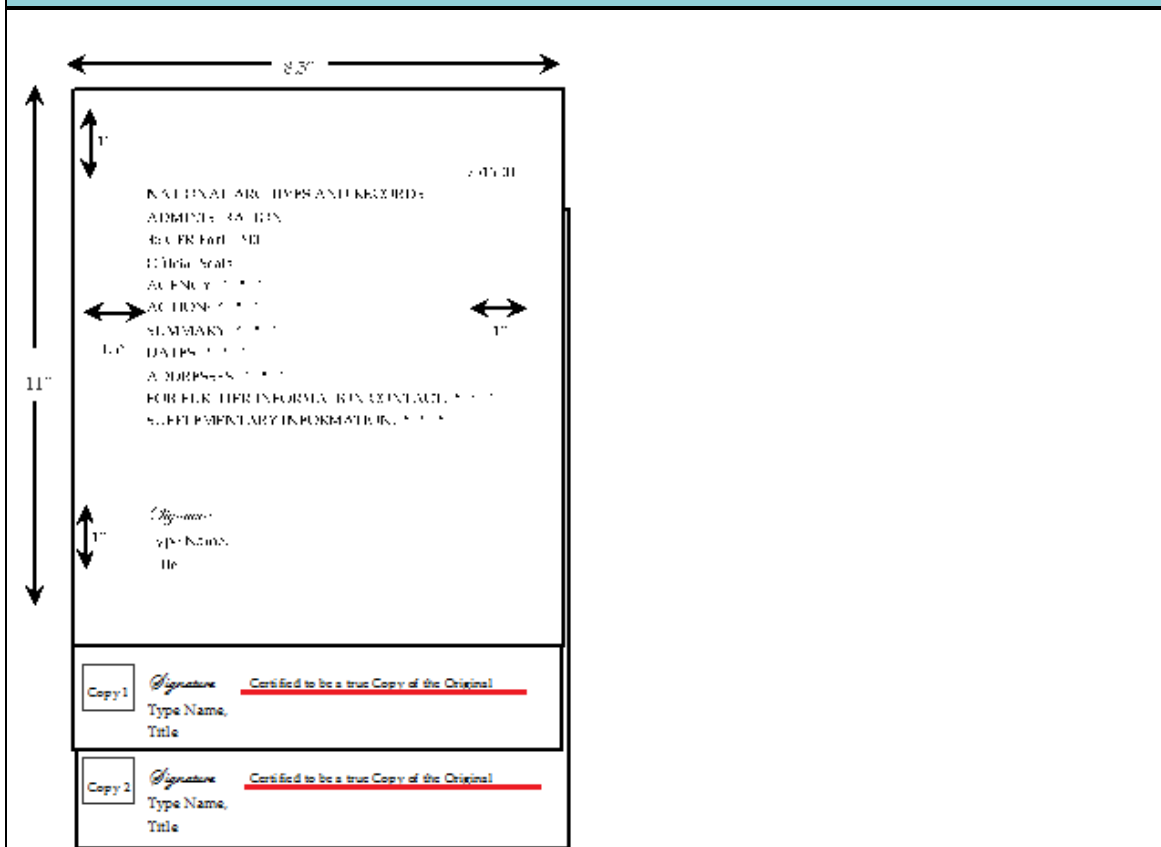
We recommend but do not require a signature date. If you use one, use the date of actual signature. We will not accept a postdated signature, and we will not change a signature date. If the date is more than 3 months old, we will add an editorial note indicating when we actually received the document. If the date is more than 12 months old, or if there is another problem with the date, we will immediately remove the document from the production process and make it available for pick-up.

**Example 1-13: Valid digital signature**

<b>Document</b> Cynthia James, Director.	<b>Digital Signature</b> Web Portal submission on: 04/03/2018 16:16:04; From: jane.doe@agency.gov; Signed By: Cynthia James
--	--



Example 1-14: Placement of certification of copies



## 1.7 Digital submission

The Federal Register Document Submission Portal (web portal) lets agencies securely submit documents and special handling letters online. It also allows agencies to receive immediate feedback on the status of their documents while saving resources such as paper, toner, CDs, and courier costs. Using the web portal also eliminates delayed delivery during inclement weather and helps ensure continuity of operations during emergency situations.

All agency documents must have a valid signature, including submissions through the web portal. We will only accept documents signed with a medium assurance level digital signature certificate, cross-certified by the Federal Bridge Certification Authority in PKCS#7 open standard. Most Federal Government-issued HSPD-12 Personal Identity Verification ID cards meet this level of certification. For the purpose of digital submission to the Federal Register, this process is abbreviated as Public Key Infrastructure, or PKI.

The name in the signature block in the document must meet the name-matching requirements for PKI signatures provided in **section 1.6** (see **Table 1-2** and **Example 1-13**). All the rules for drafting documents still apply to documents that are digitally signed and submitted through the web portal.

For more information on digital submission requirements and procedures (including how to get a digital signature), see **Chapter 6: Electronic files and online submissions**.

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## Chapter 2: HOW DO I WRITE A DOCUMENT FOR THE PROPOSED RULES CATEGORY?

### 2.1 Proposed Rule category documents

This category contains documents that propose changes to your agency's regulations in the Code of Federal Regulations (CFR) and request public comment on those proposed changes. Your document may propose regulatory text or describe the subjects and issues involved. We publish **any** document that serves as the first public notice of a rulemaking proceeding and invites public input in the proposed rules category.<sup>3</sup> Typical documents in this category include:

- Advance notices of proposed rulemaking
- General regulatory review (including review prescribed by executive orders)
- Proposed rules
- Petitions for rulemaking
- Documents that affect other documents previously published in the proposed rules category - these documents:
  - Extend or reopen the comment period
  - Announce a meeting or hearing directly related to a proposed rule
  - Publish or announce the availability of supplemental information
  - Withdraw or terminate a proposed rule
  - Correct a previously published proposed rule
- Negotiated rulemaking documents, which:
  - Establish committees
  - Announce committee meetings

### 2.2 Document requirements

In addition to the requirements of **Chapter 1: What are the requirements for drafting any document?**, documents published in the proposed rules category must include the following items<sup>4</sup>:

- Document Headings
- Preamble
- List of Subjects (for documents with proposed regulatory text)
- Words of Issuance (for documents with proposed regulatory text)

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<sup>3</sup> 1 CFR 5.9.

<sup>4</sup> 1 CFR parts 18, 21, and 22.

- A description of the proposed changes or the proposed regulatory text (for documents proposing to amend the CFR)

### 2.3 Document headings

In addition to the requirements of **Chapter 1: What are the requirements for drafting any document?**, the headings of a proposed rule document also identify the CFR title and part that your document proposes to amend or that your document is related to. Present the headings for a proposed rule document using the appropriate format, as follows:

Table 2-1: List of document headings		
Department Name	OR	Agency Name
Subagency Name		<b>CFR Citation</b>
<b>CFR Citation</b>		<b>Agency Docket Number</b>
<b>Agency Docket Number</b>		<b>Regulation Identifier Number (RIN)</b>
<b>Regulation Identifier Number (RIN)</b>		Subject Heading
Subject Heading		

#### CFR CITATION

The “CFR citation” contains the number of the CFR title and the number of each part the document proposes to amend or is directly related to. Even if the document affects only one paragraph within a part, include that part number. Or, you may include the full chapter number in place of specific parts.

#### AGENCY DOCKET NUMBER

The “agency docket number” is your agency’s internal file number, which may be assigned by FDMS.gov. If you have an agency docket number, you must include it as shown in **Example 1-4, Example 1-7, and Example 1-8**. If you have questions about docket numbers, speak with your agency. We do not know if you have one or if you need one.

#### RIN

The “RIN” is assigned by the Regulatory Information Service Center (also known as RISC) and identifies each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions. Your agency, in consultation with the Office of Management and

Budget (OMB), determines if you need a RIN. If you have a RIN, you must include it as shown in **Example 1-3, Example 1-4, Example 1-6, Example 1-7, and Example 1-8**. We do not know if you have a RIN or if you need one.

## 2.4 Preamble requirements

Each document published in the Proposed Rules category of the *Federal Register* must contain a preamble. The preamble follows the subject heading of the document. It explains the basis and purpose of the proposed regulatory text, but contains no regulatory text. It arranges basic information on the “who, what, where, when, and why” of a document for the reader’s convenience.

Do not include quotations of regulatory or statutory text in the preamble (see **section 2.6**).

The preamble captions are:

**AGENCY:**

**ACTION:**

**SUMMARY:**

**DATES:**

**ADDRESSES:**

**FOR FURTHER INFORMATION CONTACT:**

**SUPPLEMENTARY INFORMATION:**

These captions must appear in the order shown, and you must use each preamble caption. The following are examples and explanations of information which must be contained within captions.

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### AGENCY

AGENCY identifies the “who” of a document by specifying the issuing agency. This caption usually repeats the name of the department or non-departmental agency as carried in the document’s headings (see **Example 1-3, Example 1-4**), as well as the subagency name if applicable (see **Example 1-6**). However, unlike the headings section, you may choose to include in this caption the name of offices or agencies which are not listed in the document’s heading (see **Example 1-7**) and which have not signed the document. When these names appear together, put them in order of smallest to largest, using the department’s acronym or commonly-used name (see **Example 2-1**).

**Example 2-1: AGENCY caption**

<b>AGENCY:</b> Office of the Secretary, USDA.	Subagency, Department
<b>AGENCY:</b> Environmental Protection Agency.	Department
<b>AGENCY:</b> National Park Service, Interior.	Agency, Department
<b>AGENCY:</b> Bureau of Public Debt, Fiscal Service, Treasury.	Bureau, Subagency, Department

**ACTION**

ACTION identifies the type of document by stating what the document does. It does not summarize the substance of a document. Do not allow this caption to become too long.

**Example 2-2: Frequently used lines for ACTION caption**

<b>ACTION:</b>	Proposed rule.
<b>ACTION:</b>	Proposed rule; extension of comment period.
<b>ACTION:</b>	Supplemental notice of proposed rulemaking.
<b>ACTION:</b>	Proposed rule; correction <sup>5</sup> .
<b>ACTION:</b>	Proposed rule; public meeting (or hearing).
<b>ACTION:</b>	Proposed rule; withdrawal.
<b>ACTION:</b>	Notice of proposed rulemaking.
<b>ACTION:</b>	Advanced notice of proposed rulemaking.
<b>ACTION:</b>	Petition for rulemaking.
<b>ACTION:</b>	Petition for rulemaking; denial.
<b>ACTION:</b>	Petition for rulemaking; withdrawal.
<b>ACTION:</b>	Proposed policy statement.
<b>ACTION:</b>	Proposed rule; availability of supplemental information.
<b>ACTION:</b>	Regulatory review.
<b>ACTION:</b>	Regulatory review; [subject].

This is not an exclusive list of available ACTION lines. If you use a different line, do not include the word “Notice.” In the proposed rules category, you can only use “Notice” in the ACTION line with the phrase “Notice of proposed rulemaking.” If you are unsure of using a different ACTION line, check with the Scheduling Unit.

<sup>5</sup> For more information on correction documents, see **Chapter 5: How do I correct a document?**

**SUMMARY**

In SUMMARY, you explain the “what,” “why,” and “effect” of the document within the *Federal Register*/CFR publication system (see **Example 2-3**). Your SUMMARY should not be longer than a paragraph and must answer these three questions:

- What action is being taken?
- Why is this action necessary?
- What is the intended effect of this action?

Table 2-2: SUMMARY

Use the following guidelines in preparing a SUMMARY	
DO	DON'T
Be brief.	Use numbered or bulleted lists.
Use language a non-expert will understand.	Include qualifications, exceptions, or specific details.
Describe what the document does, not how it affects the CFR.	Use legal citations (for example, do not use 40 CFR part 52 or 5 U.S.C. 552) or footnotes
Refer to an act of Congress by the popular name of the act.	Quote
Be brief.	Include more detail than in SUPPLEMENTARY INFORMATION

You may not use SUMMARY to prove a point or argue a case.

Supporting information, details, discussion of the regulatory history, and precise legal citations are essential in an adequate preamble but do not belong in the SUMMARY. Extended discussion of the rule belongs in SUPPLEMENTARY INFORMATION.

Example 2-3: SUMMARY caption

**SUMMARY:** The Coast Guard proposes to amend the uninspected vessel rules by requiring emergency position indicating radio beacons (EPIRBs). The Emergency Position Indicating Radio Beacons on Uninspected Vessels Requirements Act amends the shipping laws of the United States by requiring uninspected commercial vessels to have the number and type of EPIRBs prescribed by rule. These rules ensure rapid and effective search and rescue during emergency situations.

**DATES**

DATES presents the “when” of a document. Include **all** dates that are essential to the document in DATES (see **Example 2-4**). All proposed rule documents must have at least one date.

Include the following dates, as applicable:

- Comment deadlines
- Extension or reopening of comment period
- Request for a meeting (or hearing) deadline
- Public meeting (or hearing) dates
- Other dates the public may need to know

**Note:** When extending or reopening a comment period, include the FR citation, including the publication date of the original document, in DATES to link the two documents.

**Example 2-4: DATES caption format with multiple dates**

**DATES: Comments:** Send comments by April 30, 20XX.

**Public testimony:** Send requests to present oral testimony by March 15, 20xx.

**Public Meetings:**

1. March 26, 20xx, 9:30 a.m. to 5 p.m., Washington, DC.
2. April 3, 20xx, 9:30 a.m. to 5 p.m., Pittsburgh, PA.
3. April 8, 20xx, 9:30 a.m. to 5 p.m., Hudson, WI.
4. April 15, 20xx, 9:30 a.m. to 5 p.m., Madison, WI.

Only include date information in DATES.

Group dates according to type of date (such as deadline for public comments dates, public meeting dates, and registration deadlines). Place any discussion related to the dates (for example, meeting location, docket access, meeting agenda, content of material available for inspection) in ADDRESSES or SUPPLEMENTARY INFORMATION, as applicable.

**Calculated dates vs. specific dates**

We only calculate and insert dates tied to *Federal Register* publication or filing on public inspection. In calculating the date, we count the day after publication as the first day, and then each succeeding day, including Saturdays, Sundays, and holidays. When the computed date falls on a weekend or a Federal holiday, we use the next Federal business day. You can use the “Table of Effective Dates and Time Periods” to see which date we will use. This table appears in the Reader Aids section of the first *Federal Register* issue each month and



is available at [www.federalregister.gov](http://www.federalregister.gov). If you need us to calculate and insert a date, present the date as shown in **Example 2-5**. If your agency is using a specific date, or dates, (frequently referred to as a date certain) for your proposed rule, use the format in **Example 2-6**.

**Example 2-5: DATES caption with an OFR-calculated date**

**DATES:** Send comments on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**Example 2-6: DATES caption for a document with agency-provided dates**

**DATES:** The agency must receive comments on or before October 20, 20xx.  
A public meeting will be held at 9 a.m., October 9, 20xx.  
Send requests to present oral testimony on or before October 2, 20xx.

**Example 2-7: DATES caption for withdrawing a proposed rule**

**DATES:** The Fish and Wildlife Service is withdrawing the proposed rule published October 2, 2012 (77 FR 60208) as of October 2, 2013.

**Example 2-8: DATES caption for extending the comment period**

**DATES:** The comment period for the proposed rule published June 27, 2016, at 81 FR 41651, is extended. Comments should be received on or before September 26, 2016.

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**ADDRESSES**

ADDRESSES contains the “where” of the document. All proposed rules must have at least one address.

Include the following types of address (including electronic), as applicable, needed for:

- Mailing public comments
- Sending public comments electronically
- Hand-delivering public comments

- Attending a public hearing (or meeting)
- Examining any material available for public inspection, including material to be incorporated by reference.

Only include address information in ADDRESSES.

Include the electronic address and only brief instructions for how to send comments via [www.Regulations.gov](http://www.Regulations.gov), an agency website, or email, and group them by type (see **Example 2-9, Example 2-10**). If you need to include detailed instructions, add them to SUPPLEMENTARY INFORMATION. Place any discussion related to the addresses (for example, how to register for a meeting, meeting agenda, or content of material available for inspection) in the SUPPLEMENTARY INFORMATION section (see **Example 2-13**).

**Example 2-9: ADDRESSES caption in a document with multiple addresses**

**ADDRESSES:** The hearing locations are:

1. Philadelphia – Ramada Inn (Meadows Ballroom, Section A & B), 76 Industrial Highway, Essington, PA 19029.
2. Chicago – O’Hare Ramada Inn (Penthouse Ballroom, 9th Floor), 6600 Mannheim Road, Des Plaines, IL 60018.
3. Atlanta – Ramada Inn Central (Georgian Ballroom), I-85 at Monroe Drive, Atlanta, GA 30324.
4. Denver – Main Post Office Building (2nd Floor Auditorium, Room 269), 1823 Stout Street, Denver, CO 80202.

OMB has issued a directive that requires agencies to use the “ADDRESSES” template displayed in **Example 2-10** when drafting regulatory actions that offer opportunity for public comment.

**Example 2-10: OMB-required ADDRESSES template for regulatory actions offering the opportunity for public comment**

**ADDRESSES:** You may send comments, identified by [docket number and/or RIN number], by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for sending comments.
- Agency Web Site: [Complete URL]. Follow the instructions for sending comments on the [Agency electronic docket site / website].
- E-mail: [E-mail Address]. Include [docket number and/or RIN number] in the subject line of the message.
- Fax: [Fax Number].
- Mail: [Mailing Address for paper, disk, or CD-ROM submissions].
- Hand Delivery / Courier: [Street Address].

*Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to [Complete URL], including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Public Participation” heading of the SUPPLEMENTARY INFORMATION section of this document.

*Docket:* For access to the docket to read background documents or comments received, go to [Complete URL(s) and/or Street Address(es)].

Remember to:

- Substitute appropriate information for the bracketed items
- List all applicable submission methods
- State full URLs:
  - <http://www.xxxxx.gov>
  - <http://documents.xxxx.gov>
  - <ftp://www.xxx.gov>

You may include brief instructions following bulleted items or in the optional Instructions paragraph. You may also use the optional Instructions and Docket paragraphs to highlight or cross-reference agency-specific instructions and to provide access to rulemaking dockets. Detailed or lengthy instructions (which could include for documents issued by more than one agency) may need to go into SUPPLEMENTARY INFORMATION.

**Example 2-11: Format with different addresses for comments and information collection.**

**ADDRESSES:** Address all comments concerning this interim rule to Nell C. Commentary, Commissioner, Rehabilitation Services Administration, Mary E. Switzer Building, Room 3325, 330 C Street SW, Washington DC 20202-2735.

Send a copy of any comments that concern information collection requirements to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington DC 20503; Attention: Daniel J. Information.

**Example 2-12: Format with one address for multiple purposes.**

**ADDRESSES:** Mail comments and requests to testify to Hearing Clerk, Room 000, Department of XXXXX, 000 Independence Avenue, SW, Washington, DC 20553-0002; the hearing will be held in Room 111, 000 Independence Avenue, SW, Washington DC 20553-0002.

Place detailed information about electronic access and filing in the SUPPLEMENTARY INFORMATION section of the preamble under a heading such as “Electronic Access and Filing Addresses” (see **Example 2-13**).

**Example 2-13: Format directing the public to SUPPLEMENTARY INFORMATION for details on how to submit electronic comments and data.**

**ADDRESSES:** Submit electronic comments and other data to [oppdocket@epamail.epa.gov](mailto:oppdocket@epamail.epa.gov). See SUPPLEMENTARY INFORMATION for file formats and other information about electronic filing.

[omitted preamble text]

**SUPPLEMENTARY INFORMATION:**

[omitted preamble text]

**Electronic Access and Filing**

You may submit comments and data by sending electronic mail (E-mail) to: [oppdocket@epamail.epa.gov](mailto:oppdocket@epamail.epa.gov).

Submit comments as an ASCII file avoiding the use of special characters and any form of encryption. The OPP also accepts comments and data on disks in Word file format. Identify all comments and data in electronic form by the docket number [PP 4F4327/R2253]. You may file electronic comments on this proposed rule online at many Federal Depository Libraries. File an electronic copy of objections and hearing requests with the Hearing Clerk at: [oppdocket@epamail.epa.gov](mailto:oppdocket@epamail.epa.gov).

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## FOR FURTHER INFORMATION CONTACT

In FOR FURTHER INFORMATION CONTACT, you must include the name, and telephone number of a **person** within your agency who can answer questions about the document. You should also include their email address. This email address may appear in both this section and the ADDRESSES section if your point-of-contact manages another aspect of the document, such as the location to send email comments. You may list two or more persons to contact concerning different aspects of a document (see **Example 2-14**). You may also include a group email address.

### Example 2-14: FOR FURTHER INFORMATION CONTACT caption

**FOR FURTHER INFORMATION CONTACT:** John Regwriter, 202-000-0000, John.Regwriter@agency.gov.

**FOR FURTHER INFORMATION CONTACT:**

*Technical information:* John Regwriter, 202-000-0000, John.Regwriter@agency.gov.

*Legal information:* Mary Regulatory, 202-000-0001, mregulatory@agency.gov.

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## SUPPLEMENTARY INFORMATION

Under SUPPLEMENTARY INFORMATION, include the regulatory history of this rulemaking, and a statement of the proposed rule's basis and purpose. Present this information in plain language that the reader can easily understand, with descriptive headings to highlight and organize topics. If a reference to the *Federal Register* or Code of Federal Regulations is necessary, use the format shown in **Example 2-67 and Example 2-68**.

You may use the SUPPLEMENTARY INFORMATION section to provide additional information that is required by law, agency policy, or Executive Order.

These questions may help you draft your SUPPLEMENTARY INFORMATION:

- What law or directive authorizes the rulemaking?
- What existing regulations address the problem?
- What problem does the rulemaking address?
  - What issues are connected with the problem?
  - What facts, surveys, or studies identify and define the problem?
  - How does this rulemaking attempt to solve the problem?
- Were other solutions considered?
  - Why was this solution chosen?
  - Is this solution cost-effective?
  - How will this solution affect the regulated parties?

- Does this rulemaking contain penalties for noncompliance?
  - Are penalty provisions essential?
  - Can the requirements be monitored?
  - Can the penalty provisions be enforced?
- Have you identified other documents in this rulemaking and included their *Federal Register* citations? See **Example 2-67**.
  - Did you publish an Advance Notice of Proposed Rulemaking?
  - Have you announced meetings or hearings?
- Have you discussed all necessary regulatory analysis and review requirements?
- What other statutes apply to this rulemaking?
- How was, or will, public participation be handled?
  - Are there special instructions for mailing public comments?
  - Are there formal or informal hearings?
  - Are there procedures for requesting a public meeting?
  - Are there any instructions for filing comments or making oral presentations?
  - Will transcripts of the hearing be made available?
- Have you used subject headings to break up a lengthy SUPPLEMENTARY INFORMATION section? For example:
  - Background
  - Statutory authority
  - Request for comments
  - Related documents
  - Topical headings
  - Drafting information
  - Public participation
  - Regulatory analysis

## 2.5 What is an OMB control number and where do I put it?

The Paperwork Reduction Act requires that all agencies submit their information collection requirements and related forms to the Office of Management and Budget (OMB) for review. If OMB approves the information collection requirements, it assigns them a control number. For OMB control numbers included as part of a rule document, you may either codify this OMB control number in the CFR or you may include it in the SUPPLEMENTARY INFORMATION section of the preamble.

To codify an OMB control number in the CFR<sup>6</sup>:

- Place the approval statement and number parenthetically at the end of the appropriate section (see **Example 2-15**);
- Display the number in a section devoted to OMB control numbers (see **Example 2-16**); or
- Display the number in a CFR part devoted to OMB control numbers (see **Example 2-17**).

**Example 2-15: OMB number at the end of the appropriate section**

**§ 264.51 Purpose and implementation of contingency plan.**

(a) You as the owner or operator must have a contingency plan for your facility. You must design your contingency plan to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

(b) You must execute the provisions of the plan immediately whenever there is a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment. You must send XXX an annual report of the number of occurrences of hazards to human health or to the environment in your facility. (Approved by the Office of Management and Budget under control number 2050-0011.)

**Example 2-16: Section devoted to OMB numbers**

**§ 1942.500 OMB control number.**

The information collection requirements in this part are approved by the Office of Management and Budget and assigned OMB control number 0575-0123.

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<sup>6</sup> 1 CFR 21.31, 22.7

## Example 2-17: Part devoted to OMB numbers

**PART XX-OMB CONTROL NUMBERS****Sec.****XX.1 What is an OMB control number?****XX.2 Table of approved OMB control numbers in this chapter.**

**Authority:** 44 U.S.C. 3501 et seq.

**XX.1 What is an OMB control number?**

[EXPLANATION OF OMB CONTROL NUMBERS]

**XX.2 Table of approved OMB control numbers in this chapter.**

This table lists the OMB control numbers assigned to the rules in this chapter.

<u>CFR cite</u>	<u>OMB control no.</u>
3541.5	2050-1

**2.6 When can I use direct quotes?**

The OFR does not allow lengthy or excessive quotation from Federal regulations or Federal law. This includes text from regulatory documents published in the *Federal Register*.

However, if your agency has a compelling legal reason to extensively quote this type of material, contact OFR's Legal Affairs and Policy Division ([fedreg.legal@nara.gov](mailto:fedreg.legal@nara.gov)) before you submit your document for publication.

**2.7 List of Subjects**

Each proposed rule document that contains regulatory text must contain a list of index terms (List of Subjects) for each CFR part number cited in the document's heading.<sup>7</sup> These terms provide a common vocabulary for indexing the rulemaking documents of all agencies and are the basis of the "CFR Index" prepared by the OFR. You can find the terms online at [Federal Register Thesaurus of Indexing Terms](#). You can also find a list of current terms for each CFR part.

For new CFR parts, you must select appropriate terms from the Thesaurus. You may then add other terms not contained in the Thesaurus for either existing or new CFR parts. When you select a term that is not in the Thesaurus, ask yourself, "Would I search for the subject matter using this term?"

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<sup>7</sup> 1 CFR 18.20.



The List of Subjects is the last item under SUPPLEMENTARY INFORMATION in the preamble. You must include a List of Subjects for each CFR part affected by the document. However, if several CFR parts use identical lists of terms, you may consolidate the lists. Put the List of Subjects terms in alphabetical order and separate them with commas. Capitalize only the first word of each term. End the list with a period (see **Example 2-18, Example 2-19**).

A List of Subjects is **not** required for a document that:

- Contains no regulatory text (excluding documents that only remove regulatory text)
- Only presents nomenclature changes
- Corrects a previous document

#### Example 2-18: List of Subjects for a single CFR part

##### **List of Subjects in 40 CFR Part 262**

Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

#### Example 2-19: List of Subjects for multiple CFR parts

##### **List of Subjects 15 CFR Part 370**

Administrative practice and procedure, Exports.

##### **15 CFR Parts 372 and 386**

Exports, Reporting and recordkeeping requirements.

## 2.8 Words of issuance

The “words of issuance” is an expression that connects the preamble to the regulatory text and the tie between the proposed rule and the CFR units you propose to change. The words of issuance provide:

- The tie between this proposed rule and the CFR units that it proposes to affect.
- The bridge between the preamble of this document and the proposed regulatory changes.

Words of issuance are **always** in the present tense, and use the word “propose” or “proposes” (see **Example 2-20, Example 2-21, Example 2-22**).

**Note: Amend means change. Add, Revise, and Remove are 3 ways to Amend.**

For the reasons stated in the preamble, the Federal Energy Regulatory Commission proposes to amend 18 CFR chapter I as set forth below:  
  
For the reasons discussed in the preamble, the Nuclear Regulatory Commission proposes to amend 10 CFR part 430 as follows:

For the reasons discussed in the preamble, the Federal Communications Commission proposes to revise 47 CFR part 430 to read as follows:

For the reasons stated in the preamble, and under the authority of 5 U.S.C. 501, the Environmental Protection Administration proposes to remove 40 CFR part 63.

**Note: Use Example 2-22 if the only action you are taking is to remove something (see also Example 2-36).**

For deviations from this general format see **section 2.14**.

## 2.9 Regulatory text

The “regulatory text” is the section of your document that sets out your agency’s proposed changes to the CFR. It can include:

- Headings
- Table of Contents
- Authority citation
- Numbering of regulations

- Amendatory language
- Asterisks
- Cross-references

**Note:** You cannot reference a Federal Register document in regulatory text.

## 2.10 Regulatory headings

You must provide a heading for each part, subpart, section, and appendix<sup>8</sup> that you propose to amend. You may add paragraph headings. A heading is a brief statement that accurately describes the content of that CFR unit (see **Example 2-23**). You may not use phrases or expressions that are not descriptive, including “Regulations under the Act,” “Regulations governing...,” “Rules applicable to...,” or similar phrases.<sup>9</sup>

The only way to change a heading is to amend the CFR.

Example 2-23: Regulatory headings	
<b>PART 970—CREATION AND MAINTANCE OF FEDERAL RECORDS</b>	Part Heading
<b>Subpart A—Identifying Federal Records</b>	Subpart Heading
<b>§ 1222.12 What types of documentary materials are Federal records?</b>	Section Heading
(a) <i>General.</i>	Paragraph Heading

### PART HEADINGS

A part heading is usually a phrase, rather than a statement or question. Consider using terms that you included in your List of Subjects (see **section 2.7**).

### SUBPART HEADINGS

Subparts separate ideas within a part, so the heading should be more specific than the part heading. These headings can be a specific topic, phrase, statement, or question.

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<sup>8</sup> Subparts and appendices are optional, but if you choose to use such a unit, you must include a heading.

<sup>9</sup> 1 CFR 21.19 and 22.7.

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**UNDESIGNATED CENTER HEADINGS**

You may use undesignated center headings to break up a large subpart and group together sections concerning a particular subject area. Although we permit undesignated center headings, we strongly discourage their use.

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**APPENDIX HEADINGS**

An appendix may appear at the subpart or part level. Designate each appendix with a capital letter, identify whether it belongs to a subpart or part, and give it a descriptive heading (see **Example 2-24**). If your agency has established a uniform designation system for CFR appendices to the specific part or subpart, follow that established system (see **Chapter 7: Figures, forms, tables, notes, and appendices**).

**Note:** *Even if you have only one appendix, you must still designate it as “Appendix A.” However, we will not require you to reserve “Appendix B” in this situation.*

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**Example 2-24: Appendix headings**

Appendix B to Subpart A of Part 915—Illustrations of Infant Highchair Designs

Appendix A to Part 2—Flammability Statistics for Floor-Cleaning Fluids

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**SECTION HEADINGS**

Descriptive section headings are signposts for the reader.<sup>10</sup> They help readers identify the particular regulatory text that applies to them. End each section heading with a period or question mark.

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**PARAGRAPH HEADINGS**

You may use headings at the paragraph level. If you use a heading for one paragraph, you must use a heading for all paragraphs at that level. End paragraph headings with a period and italicize them in the document.

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<sup>10</sup> 1 CFR 21.10 and 22.7.

## 2.11 Table of Contents

You must provide a table of contents<sup>11</sup> for actions that:

- Add a new part or subpart
- Revise an existing part or subpart

Include the following in your table of contents:

- Section headings
- Subpart headings
- Undesignated center headings
- Appendix headings to parts and subparts

**Note:** *This is not the same as table of contents in the preamble.*

Table of contents entries are identical to the section headings, subpart headings, and appendix headings in the regulatory text (see **Example 2-25**). Do not include units smaller than a section in your table of contents.

Do not provide a table of contents in a document that adds or amends a single section or miscellaneous sections. We change the table of contents when these amendments are incorporated into the CFR.

### Example 2-25: Table of Contents – part, subpart, and appendix

**PART 82 — PROTECTION OF STRATOSPHERIC OZONE**  
**Subpart B —SERVICING OF MOTOR VEHICLE AIR CONDITIONERS**  
 Sec.  
 82.30 Purpose and scope.  
 82.32 Definitions.  
 82.34 Prohibitions and required practices.  
 82.36 Approved refrigerant handling equipment.  
 82.38 Approved independent standards testing organizations.  
 82.40 Technician training and certification  
 82.42 Certification, recordkeeping and public notification requirements.  
 Appendix A to Subpart B —Standard for Recycle/Recover Equipment

<sup>11</sup> 1 CFR 21.18 and 22.7.

## 2.12 Authority citations

You must cite the authority that allows your agency to amend the CFR.<sup>12</sup> Give the authority citation in the shortest form. Placement of the authority citation depends on what unit of the CFR you are amending.

There are two types of authority:

- Statutory:
  - Public law
  - United States Code (U.S.C.)
- Non-statutory:
  - Presidential Executive order<sup>13</sup>
  - Presidential Administrative order
  - Presidential Memorandum
  - Agency delegation, policy, or directive
  - Office of Management and Budget circular
  - CFR regulations

Your agency is responsible for maintaining accurate and current authority citations.

Present the authority citation at one of two central places:

- Part level
- Subpart level

You may give citations of authority for particular subparts (see **Example 2-26**) and sections (see **Example 2-27**) within the central authority citation.

Example 2-26: Authority citation for a subpart
<p>Authority: 42 U.S.C. 2201; 45 U.S.C. 5841.            Subpart A also issued under 5 U.S.C. 552; 31 U.S.C. 9701.            Subpart B also issued under 5 U.S.C. 552a.            Subpart C also issued under 5 U.S.C. 552b.</p>

<sup>12</sup> 1 CFR 21.40, 22.5, and 22.7.

<sup>13</sup> The citation for E.O. 12372, which appears across CFR titles, may have an error. If your citation includes “(48 FR 15887)” in the “as amended” portion, and you don’t know the correct citation for your part, contact OFR for a possible solution.

**Example 2-27: Authority citation for a section**

Authority: 42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282, 5841, 5842, 5846.  
Section 30.7 also issued under 42 U.S.C. 5851.  
Section 30.34(b) also issued under 42 U.S.C. 2234.  
Section 30.61 also issued under 42 U.S.C. 2237.

**STATUTORY AUTHORITY**

Each citation of statutory authority must use a U.S.C. citation, if one exists.<sup>14</sup> To determine the U.S.C. citation, use one of the following:

- The current edition of the U.S.C. or its supplement
- The slip law for recently signed public laws

We generally recommend that you use only the U.S.C. citation (see **Example 2-28**). When a U.S.C. citation does not exist (for example, for appropriations laws), you must cite the section of the public law, if appropriate, the public law, and the U.S. Statutes at Large (see **Example 2-29**). Do not cite the popular name of a public law.

**Example 2-28: Authority citation using U.S.C.**

Authority: 44 U.S.C. 2101-2118; 50 U.S.C. 6909.

**Example 2-29: Authority citation using Public Law and U.S. Statutes at Large**

Authority: Sec. 8067, Pub. L. 98-473, 98 Stat. 1937.

If you cite two different laws, where one has a United States Code citation and the other does not, place the United States Code citation first (see **Example 2-30**).

**Example 2-30: Authority citation with U.S.C. primary**

Authority: 42 U.S.C. 2996; Pub. L. 104-208, 110 Stat. 3009; Pub. L. 104-134, 110 Stat. 1321.

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<sup>14</sup> 1 CFR 21.52 and 22.7.

**NON-STATUTORY AUTHORITY**

Cite non-statutory authority by document designation, *Federal Register* citation, and CFR citation<sup>15</sup> (see **Example 2-31**).

**Example 2-31: Authority citation with non-statutory sources**

Authority: E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105.

If you include both statutory and non-statutory citations in the same authority citation, place the statutory citation first<sup>16</sup> (see **Example 2-32**).

**Example 2-32: Authority citation with statutory and non-statutory sources**

Authority: 8 U.S.C. 1161(f); 29 U.S.C. 1801-1872; Secretary’s Order 6-84, 49 FR 32473.

**PLACEMENT OF THE AUTHORITY CITATION: ADDING OR REVISING**

**Part:** If a document adds or revises an entire part, place the authority citation directly after the table of contents and before the regulatory text<sup>17</sup> (see **Example 2-33**).

**Example 2-33: Authority citation when adding or revising a part**

**PART 54—ALLOTMENTS FOR CHILD AND SPOUSAL SUPPORT**

- Sec.
- 54.1 Purpose.
- 54.2 Applicability and scope.
- 54.3 Definitions.
- 54.4 Policy.
- 54.5 Responsibilities.
- 54.6 Procedures.

Authority: 15 U.S.C. 1673; 37 U.S.C. 101; 42 U.S.C. 665.

<sup>15</sup> 1 CFR 21.53 and 22.7.

<sup>16</sup> 1 CFR 21.45 and 22.7.

<sup>17</sup> 1 CFR 21.43(a)(1) and 22.7.



**Subpart.** If a document adds or revises an entire subpart using the same authority citation as the CFR part, set out the authority citation for the part as the first numbered item in the list of amendments for the part (see **Example 2-55**).

Sometimes adding or revising an entire subpart uses a different authority citation than the authority citation for the whole part. If this is the case, set out the authority citation for the subpart directly after the heading to the subpart and before the regulatory text of the subpart (see **Example 2-34**).

Example 2-34: Authority citation when adding or revising a subpart; different citation than part

**Subpart B—Supportive Services for Minority, Disadvantaged, and Women Business Enterprises**

- Sec.
- 230.201 Purpose.
- 230.202 Definitions.
- 230.203 Policy

Authority: 23 U.S.C. 101, 140(c), Subpart B Authority 23 U.S.C. 304, 315; 49 CFR 1.48(b).

**§ 230.201 Purpose.**

This subpart prescribes the policies, procedures, and guidance to develop, conduct, and administer supportive services assistance programs for minority, disadvantaged, and women business enterprises.

\* \* \* \* \*

**Section:** If a document amends only certain sections within a CFR part, set out the authority citation for the part as the first numbered item in the list of amendments for the part<sup>18</sup> (see **Example 2-35**).

<sup>18</sup> 1 CFR 21.43(a)(2) and 22.7.

Example 2-35: Authority citation when amending only certain sections

**PART 4—SERVICES TO THE PUBLIC**

1. The authority citation for part 4 is **revised** to read as follows:  
Authority: 44 U.S.C. 1508.

**PART 4—SERVICES TO THE PUBLIC**

1. The authority citation for part 4 **continues** to read as follows:  
Authority: 44 U.S.C. 1502.

**PLACEMENT OF THE AUTHORITY CITATION: REMOVING**

**Parts.** If you remove a part, you must give your agency’s authority for the action. Place the authority in the “words of issuance” (see **Example 2-22, Example 2-36**).

Example 2-36: Authority citation when removing a part (becomes part of Words of Issuance)

Accordingly, under the authority 10 U.S.C. 8013, XX CFR chapter VII is proposed to be amended by removing part 837.

Under 42 U.S.C. 541 and as discussed in the preamble, XX CFR chapter II is proposed to be amended as follows:

**2.13 Numbering**

The regulatory text of your document must conform to the structure of the CFR.

**CFR UNITS**

The basic structure of the CFR consists of a hierarchy of designated CFR units, not based on a decimal numbering system<sup>19</sup> (see **Table 2-3**).

<sup>19</sup> 1 CFR 21.11 and 22.7.

Table 2-3: CFR units and numbering		
Unit	Designation	Description
Title	12	Broad area subject to Federal regulation
Chapter	III	Rules of a single issuing agency
Part	303	Unified body of rules concerning a single function or specific subject
Section	303.1	Short presentation of one regulatory function. The section is the basic unit of the CFR. The content of a section is a short, simple presentation of a single regulatory function.

As shown in **Table 2-3**, each section number includes the number of the part followed by a period and a sequential number.

Hyphenated numbers (for example, 117-2.1 or 117-3.15) or numbers with alpha characters (for example, part 115a, 115a.1, or 115.1a) are not permitted in designating units within the CFR system.

In some cases, you may use “T” after a section number to indicate that the section is temporary (for example § 234.1T, § 232.4T). You must have our approval to use this numbering convention before you send us your document for publication. Approval may depend on the length of time you will need the temporary section.

**The Director of the OFR must approve any deviation from standard CFR structure.** Send or email a signed request letter to the Director for approval in writing before you begin drafting. **We must receive your request at least five working days before your agency intends to submit your document for publication** and you must include a copy of the document showing the deviation. The Director will inform you if your request is approved or denied<sup>20</sup> (see **Appendix A: Deviation Request letter**).

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#### PARAGRAPH STRUCTURE OF A SECTION

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<sup>20</sup> 1 CFR 21.14 and 22.7.

If you have more than one paragraph, designate each one as shown in **Table 2-4**. Indent each designated paragraph within a section (see **Example 2-37**).

You may use up to six levels of designation in a section.<sup>21</sup> **We strongly recommend that you do not use more than 3 paragraph levels.** Using more than 3 paragraph levels makes your rule hard to read and use. Use more sections as a drafting technique to avoid using excessive paragraph levels.

Sections that consist of a single paragraph or the introductory text of a section do not require a designation. You must designate all other text within a section.

Table 2-4: List of paragraph levels

level 1	(a), (b), (c), etc.
level 2	(1), (2), (3), etc.
level 3	(i), (ii), (iii), etc.
level 4	(A), (B), (C), etc.
level 5	(1), (2), (3), etc. [italicized]
level 6	(i), (ii), (iii), etc. [italicized]

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<sup>21</sup> 1 CFR 21.11(h) and 22.7.

Example 2-37: Section with paragraph levels	
<b>§ 233.17 Noncompliance and program reporting by the Director.</b>	
<p>The Director shall prepare quarterly and annual reports as detailed in this section and shall submit them to the Regional Administrator.</p>	<b>Level 1 intro text</b>
<p>(a) Quarterly reports for State 404 programs. The Director shall submit noncompliance reports for section 404 discharges under § 233.24(f)(1)(i)(A) through (E) containing the following information:</p>	<b>Level 1 paragraph (a) intro text</b>
<p>(1) Name, location, and permit number of each noncomplying permittee;</p>	
<p>(2) A brief description and date of each instance of noncompliance, which should include the following:</p>	<b>Level 2 paragraph (a)(2) intro text</b>
<p>(i) Any unauthorized discharges of dredged or fill material subject to the State’s jurisdiction or any noncompliance with permit conditions; and</p>	<b>Level 3 paragraph (a)(2)(i)</b>
* * * * *	

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**OTHER DESIGNATION**

**Definitions.** In sections or paragraphs containing only definitions, we recommend that you do not use paragraph designations if you list the terms in alphabetical order. Begin the definition paragraph with the term that you are defining. If a definition contains subordinate paragraphs, number these paragraphs beginning with the second level, in a dedicated definitions section (see **Table 2-4**), or the next appropriate level based on the definitions paragraph within a section, and italicize the term (see **Example 2-38**). Do not include substantive regulatory provisions in a definition. If a definitions section contains only one definition, it should not have introductory text or (a)-level codification (see **Example 2-39**).

Example 2-38: Definitions section

§ 89.2 Definitions.

\* \* \* \* \*

*Marine engine* means a nonroad engine that is installed or intended to be installed on a marine vessel. This includes a portable auxiliary marine engine only if its fueling, cooling, or exhaust system is an integral part of the vessel. There are two kinds of marine engines:

- (1) Propulsion marine engine means a marine engine that moves a vessel through the water or directs the vessel's movement.
- (2) Auxiliary marine engine means a marine engine not used for propulsion.

\* \* \* \* \*

*Nonroad engine* means:

- (1) Except as discussed in paragraph (2) of this definition, a nonroad engine is any internal combustion engine:
  - (i) In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or
  - (ii) In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or
  - (iii) That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.
- (2) An internal combustion engine is not a nonroad engine if:
  - (i) the engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under section 202 of the Act; or

\* \* \* \* \*

Example 2-39: Definitions section – single definition

§ 89.2 Definitions.

*Marine engine* means a nonroad engine that is installed or intended to be installed on a marine vessel. This includes a portable auxiliary marine engine only if its fueling, cooling, or exhaust system is an integral part of the vessel. There are two kinds of marine engines:

- (1) Propulsion marine engine means a marine engine that moves a vessel through the water or directs the vessel's movement.
- (2) Auxiliary marine engine means a marine engine not used for propulsion.

For more information on notes, appendices, tables, or figures, see **Chapter 7: Figures, forms, tables, notes, and appendices**.

**Notes:** Notes are not regulatory and must appear after the unit they explain. Label them using CFR designations to show whether they apply to the whole section or to the preceding paragraph. Number them consecutively within the section (see **Example 2-40**). Notes should not be more than one or two paragraphs and should never have multiple paragraph levels. Complex notes that cannot be restructured into a simple paragraph should be codified, included in an appendix, or removed from the CFR.

**Tables:** Tables that contain codified paragraphs must maintain a consistent structure throughout the table. Only one level of codification can appear in a column and that paragraph level cannot appear in any other column (see **Example 7-5**). Position them within the section in the location of the codified text that they contain.

Tables that do not contain codified paragraphs must appear after the unit they illustrate, explain, or expand. Designated tables are numbered consecutively throughout the section (so that you only have one “Table 1” in a section) and then labeled using CFR designations to show where they are located within the section and to which paragraph(s) of the section they apply to (see **Example 2-41, section 7.4**).

Keep in mind that more complex tables are more difficult to amend and may require being photographed instead of typeset.

**Figures:** Figures must appear after the unit they explain or illustrate. Label them using CFR designations to show whether they apply to the whole section or to the preceding paragraph. Number them consecutively within the section (see **Example 2-42**).

**Non-codified, structured text:** You may amend individual elements (paragraphs or sentences) of a non-standard section **only if** each element has a unique designation that falls logically within the structure of the section. While you do not have to use standard CFR paragraph designations, you do need to designate elements consistently across the structured text. We strongly encourage you to review the structure periodically to see if newer publication techniques would be a better solution for including the content in the CFR.

**Appendices:** Appendices may only appear at the part or subpart level. Designate each appendix and identify whether it belongs to a part or subpart (for example, Appendix A to part 51) and give it a descriptive heading (see **Example 7-8**).

**Note:** Even if you have only one note, appendix, table, or figure, you must still designate it as “Note 1”, “Appendix A”, etc.

**Example 2-40: Labeling for Notes**

Note 1 to § 30.1.

Note 2 to paragraph (f).

Note 3 to paragraph (h)(2).

**Example 2-41: Labelling for Tables**

Table 1 to § 30.1.

Table 2 to paragraph (f).

Table 3 to paragraph (h)(2).

**Example 2-42: Labelling for Figures**

Figure 1 to § 30.1.

Figure 2 to paragraph (f).

Figure 3 to paragraph (h)(2).

**2.14 Amendatory Language**

**LANGUAGE**

A proposed rule document usually proposes changes to the CFR. The regulatory text of a document must fit into the current text of the CFR, so you must precisely identify and describe the changes proposed for the CFR.<sup>22</sup> While the words of issuance describe the

<sup>22</sup> 1 CFR 21.20 and 22.7.



general effect of the document, the amendatory language uses standard terms to give specific instructions on how to change the CFR. Each of these terms have very specific meanings within our publication system and cannot be interchanged even if they are interchangeable at your agency.

Amendatory instructions only detail your proposed changes. You cannot discuss why you are proposing these changes in the amendatory language. Any discussion belongs in SUPPLEMENTARY INFORMATION (see [section 2.4](#)).

Make sure you are proposing changes to the current version of your regulations. Before you begin drafting amendatory language (and if you do not send your document soon after it is drafted), consult the [eCFR](#) or the latest version of the CFR, the LSA, and the latest *Federal Register*<sup>23</sup> for any month not covered by your LSA.

Base your amendatory language on the current text of your regulations. You must:

- Identify the specific CFR unit being changed
- Place amendments in CFR numbering order
- Use one of the standard terms to describe the change
- Address all regulatory text set out in your document

For extensive changes, revise the text in full rather than prepare fragmentary amendments. The reader will then have the complete text of the amended unit.

**Note:** Only use the word “propose” or “proposed” in the Words of Issuance, not in the amendatory instructions.

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## AMEND

Use **Amend** with one of the amendatory terms in [Table 2-5](#) to change content in the CFR. But remember that **Amend** is an introductory term and cannot stand alone (see [Example 2-43](#), [Example 2-44](#)). Think of **Amend** as a general category for all amendatory actions and the other terms as the instructions that detail the changes you are making.

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<sup>23</sup> *Federal Register* documents (1936-present), the CFR (1997-present), and LSA (1986-present) are on [GovInfo.gov](#).

**Note:** Do not confuse **Amend** with **Revise**. **Amend** is not an amendatory instruction. It simply means “change” and must be used in conjunction with amendatory terms to describe the change. **Revise** means to replace an entire unit.

**Example 2-43: Incorrect instruction with Amend (w/o Add, Revise, or Remove)**

Amend part 105 to read as follows:

Amend § 80.100(e)(1)(iii) to read as follows:

In § 15.4, amend paragraph (b) and the introductory text of paragraph (f)(2) to read as follows:

**Example 2-44: Correct instruction with Amend**

Amend § 791.27 by revising paragraph (b)(3) and by adding paragraph (d)(4) to read as follows:

SPECIFIC AMENDATORY TERMS

Table 2-5: Table of Amendatory Terms	
<b>Add</b>	Inserts new content into the CFR. <b>Example 2-45</b>
<b>Revise</b>	Replaces an existing CFR unit in its entirety. The smallest unit is a sentence. <b>Example 2-47, Example 2-55, Example 2-56, Example 2-57</b>
<b>Remove</b>	Removes an existing CFR unit. <b>Example 2-48</b>
<b>Redesignate</b>	Transfers a CFR unit to a new designation. You CANNOT redesignate a CFR unit to a designation already in use. <b>Example 2-49</b>
<b>Reserve</b>	Fills gaps in CFR numbering. <b>Example 2-50, Example 2-51, Example 2-51</b>
<b>Republish</b>	Sets out an unchanged CFR unit for the convenience of the reader, often to provide the context for an amendment. If you make a change to the republished text, it will not appear in the CFR. <b>Example 2-53</b>
<b>Withdraw</b>	Cancels a previously published proposed rule, signaling that the agency is no longer proposing those changes. <b>Example 2-7</b>
<b>Nomenclature Change</b>	Changes a term or phrase throughout a CFR unit. It is commonly used to change an office designation, a telephone number, or the title of an agency official. If the term occurs only in a handful of sections, do not amend the part; amend those specific sections. <b>Example 2-52</b>
<b>Correct</b>	Corrects errors in a previously published proposed rule document. Do not use this term to propose a correction to CFR text (see <b>Chapter 5: How do I correct a document?</b> for more information). <b>Example 2-54</b>

ADD

Use **Add** to insert new content into the CFR (see **Example 2-45**).

**Example 2-45: Add**

Add part 1812 to read as follows:

Add § 5.26 under the undesignated center heading “How To Apply For a Permit” to read as follows:

Add § 20.89 to subpart H to read as follows:

In § 18.13, add paragraph (e) to read as follows:

Add paragraph (f)(5) to § 210.14 to read as follows:

Add § 4.8(a)(3)(iii) to read as follows:

In § 17.23(b), add the word “not” after the word “do” in the first sentence.

**REVISE**

Use **Revise** to replace a complete CFR unit. You cannot revise anything smaller than a sentence (see **Example 2-47**).

**Note:** Do not confuse **Amend** with **Revise**. **Amend** is not an amendatory instruction and must be used in conjunction with amendatory terms to describe a change. **Revise** can stand alone and will replace an entire unit of content.

Because **Revise** will replace the entire unit, make sure to specify the smallest unit that you need to change. If you need to revise a 3<sup>rd</sup> level paragraph, give an instruction to that 3<sup>rd</sup> level. If you give an instruction to revise a higher level in that paragraph, you may replace text that you did not intend.

**Example 2-46: Paragraph (a) with 3 levels**

(a) *Quarterly reports for State 404 programs.* The Director shall submit noncompliance reports for section 404 discharges under § 233.24(f)(1)(i)(A) through (E) containing the following information:

- (1) Name, location, and permit number of each noncomplying permittee;
- (2) A brief description and date of each instance of noncompliance, which should include the following:
  - (i) Any unauthorized discharges of dredged or fill material subject to the State’s jurisdiction or any noncompliance with permit conditions; and
  - (ii) [One more condition added here].

**Example 2-47: Effect of Revising different units**

Revise paragraph (a): replaces all of the text in **Example 2-46**

Revise the introductory text of paragraph (a): replaces only the introductory text before (a)(1)

Revise paragraph (a)(2): replaces the introductory text of (a)(2) as well as (a)(2)(i) and (a)(2)(ii)

**REMOVE**

Use **Remove** to take existing content out of the CFR (see **Example 2-48**).

**Example 2-48: Remove**

**§ 300.12 [Removed]**

Remove § 300.12.

**§ 495.73 [Amended]**

Amend § 495.73 by removing paragraphs (a)(5) and (e).

**REDESIGNATE**

Use **Redesignate** to move a CFR unit to a new designation. You **cannot** redesignate a CFR unit to an existing unit. We strongly recommend that you use a redesignation table. Redesignate to the final location of the unit of text; do not redesignate the same text multiple times. This may mean that you must address amendments to higher sections first instead of amending the sections in numerical order (see **Example 2-49**).

**E1 PART 80 [REDESIGNATED AS PART 90 AND AMENDED]**

2. Redesignate part 80 as part 90 and amend the references as indicated in the table below:

**E2 § § 1475.12 through 1475.20 [Redesignated]**

2. Redesignate § § 1475.12 through 1475.20 as follows:

Old section	New section
1475.12	1475.13
1475.13	1475.14
1475.14	1475.15
1475.15	1475.17
1475.16	1475.18
1475.17	1475.19
1475.18	1475.20
1475.19	1475.21
1475.20	1475.22

(note that this leaves § 1475.16 empty)

**E3 § 100.5 Appeal procedures.**

2. In § 100.5, redesignate paragraphs (a) through (c) as paragraphs (d) through (f) and add new paragraphs (a) through (c) to read as follows:

**E4 PART 20 [REDESIGNATED AS PART 30]**

2. Redesignate part 20 as part 30.

**E5 § § 226.3 through 226.5 [Removed]**

2. Remove § § 226.3 through 226.5

**§ § 226.6 through 226.8 [Redesignated as § § 226.3 through 226.5]**

3. Redesignate § § 226.6 through 226.8 as § § 226.3 through 226.5, respectively.

**E6 § 45.3 [Amended]**

2. In § 45.3:

- a. Redesignate paragraphs (a)(1) and (2) as paragraphs (a)(1)(i) and (ii); and
- b. Redesignate paragraphs (a) through (c) as paragraphs (a)(1) through (3) .

**Note:** If a redesignation is overly complex, as shown in *Example 2-49, number E6*, we strongly encourage you to make a revision instead.

RESERVE

Use **Reserve** to fill in gaps in CFR numbering. This shows that the gap is deliberate and assures readers that content is not missing. You can create a gap when adding text, to leave

room for future amendments or when removing text without replacing it. To avoid confusion in your amendatory language, you should always reserve subparts and paragraphs (see **Example 2-50**, **Example 2-51**).

**Example 2-50: Reserve when removing**

**Subpart Q—[Removed and Reserved]**

Remove and reserve subpart Q, consisting of §§ 103.10 through 103.25.

**Example 2-51: Reserve when adding**

Add and reserve subpart E and add subpart F, consisting of §§ 25.100 through 25.130, to read as follows:

**NOMENCLATURE CHANGE**

A nomenclature change directs a change to a term or phrase throughout a CFR unit. It is commonly used to change an office designation, a telephone number, an address, or the title of an agency official. If the term occurs only in a handful of sections, do not amend the part; amend those specific sections (see **Example 2-52**).

**Example 2-52: Nomenclature change**

**§ 720.7 [Amended]**

In 12 CFR 720.7(c)(2) remove the words “Deputy Administrator” and add, in their place, the words “Vice-Chairman of the National Credit Union Administration Board”.

**§§ 720.7, 720.20, 720.22, 720.24, 720.26, and 720.27 [Amended]**

In addition to the amendments set forth above, in 12 CFR part 720, remove the words “Assistant Administrator for Administration” and add, in their place, the words “Director of the Office of Administration” in the following places:

- a. Section 720.7(a)(1), (c)(2), and (c)(3);
- b. Section 720.20(b) introductory text;
- c. Section 720.22(a);
- d. Section 720.24(a) and (b)(3);
- e. Section 720.26(a); and
- f. Section 720.27(a) and (c).

**PART 315—[AMENDED]**

In part 315, revise all references to “Domestic Commerce” to read “Domestic Business Development”.

**§§ 780.40, 780.41, and 780.42 [Amended]**

In the table below, for each section indicated in the left column, remove the title indicated in the middle column from wherever it appears in the section, and add the title indicated in the right column:

Section	Remove	Add
780.40	Assistant Secretary for Housing Production and Mortgage Credit	Assistant Secretary for Housing
780.41	Assistant Secretary for Housing Production and Mortgage Credit (HPMC) – Federal Housing Commissioner	Assistant Secretary for Housing – Federal Housing Commissioner
780.42	Deputy Assistant Secretary for Housing Production and Mortgage Credit – Deputy Federal Housing Commissioner	Deputy Assistant Secretary for Housing – Deputy Federal Housing Commissioner



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**REPUBLISH**

Use **Republish** to set out unchanged text for the convenience of the reader, often to provide context for your regulatory changes. In **Example 2-53**, our editors will only codify the amendments to paragraphs (a)(1) and (3) and will not make any changes to the introductory text of paragraph (a).

**Example 2-53: Republish**

In § 2.1, introductory text of paragraph (a) is republished and paragraphs (a)(1) and (3) are revised to read as follows:

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**CORRECT**

Use **Correct** to fix a clerical or typographical error in a recently published document. Although you can propose to fix errors in the CFR in a proposed rule, you cannot use the amendatory instruction **Correct**. See **Chapter 5: How do I correct a document?** for more information.

**Example 2-54: Correct****Preamble text**

On page 00000, in the second column, on line 5, correct the reference “§ 39.10(a)(1)” to read “§ 44.10 ”.

**Regulatory text****§ 20.15 [Corrected]**

On page 00000, in the third column, in § 20.15(c)(1), correct “Director” to read “Acting Director”.

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**STRUCTURE**

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**ADDITION OR REVISION OF A PART OR SUBPART**

**Parts:** If you **add** or **revise** a part, use these elements in the order shown (see **Example 2-55**):

- Amendatory language
- Part heading
- Table of contents
- Authority citation
- Regulatory text

**Subparts (same authority as part):** If a part has a single authority citation at the end of the table of contents and you want to **add** or **revise** a subpart in that part, use these elements in the order shown:

- Part heading
- Authority citation for the part
- Amendatory language
- Subpart heading
- Table of contents
- Regulatory text

**Subparts (different authority than part):** If each subpart in a part has its own authority citation and you want to **add** or **revise** a subpart in that part, use these elements in the order shown:

- Part heading
- Amendatory language
- Subpart heading and table of contents
- Subpart heading
- Authority citation for the subpart
- Regulatory text

Example 2-55: Revision of a part	
<p>2. Revise part 3 to read as follows:</p> <p><b>PART 3—SERVICES TO THE PUBLIC</b></p> <p><b>Sec.</b></p> <p>3.1 Information services.</p> <p>3.2 Public inspection of documents.</p> <p>3.3 Reproduction and certification of copies of acts and documents.</p> <p>Authority: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709, 3 CFR, 1954-1958 Comp., p.189.</p> <p><b>§ 3.1 Information services.</b></p> <p>Except in cases where the time required would be excessive, information concerning the publications described in § 2.5 of this chapter and the original acts and documents filed with the Office of the Federal Register is provided by the staff of that Office. However, the staff may not summarize or interpret substantive text of any act or document.</p> <p><b>§ 3.2 Public inspection of documents.</b></p> <p>(a) During the OFR’s office hours, documents filed with the OFR pursuant to law are available for public inspection at 800 North Capitol Street, NW, Suite 700, Washington, DC, as well as on the Internet. There are no formal inspection procedures or requirements.</p> <p>(b) By direction of the Director of the Office of the Federal Register, the OFR staff must file for public inspection documents received and processed not later than the working day preceding the publication day for that document.</p> <p>(c) By direction of the Director of the Office of the Federal Register, the OFR staff must place on the original and certified copies of each document a notation of the day and hour when it was filed and made available for public inspection.</p> <p>(d) Customers may view, photocopy, or make excerpts of documents on public inspection.</p>	<b>Amendatory Language</b>
	<b>Part Heading</b>
	<b>Table of Contents</b>
	<b>Authority Citation</b>
	<b>Regulatory Text</b>

**AMENDMENT TO A SECTION**

If you **amend** a section in any way, use these elements in the order shown (see **Example 2-56**):

- Part heading
- Authority citation
- Amendatory language
- Section heading
- Regulatory text

**Example 2-56: Revision of a section**

<p><b>PART 133—TOLLS FOR USE OF CANAL</b></p> <p>1. The authority citation for part 133 is revised to read as follows: Authority: 22 U.S.C. 3791; E.O. 12215, 45 FR 36043, 3 CFR, 1980 Comp., p. 257.</p> <p>2. Section 133.34 is revised to read as follows:</p> <p><b>§ 133.34 What are the tolls for vessels in ballast?</b></p> <p>In order for a vessel to secure the reduced rate of toll for vessels in ballast, it may not carry any passengers or cargo nor any fuel for its own consumption in a quantity which exceeds:</p> <p>(a) 125 percent of the volume of its engine room as measured and as shown on its Panama Canal tonnage certificate; or</p> <p>(b) The spaces on the vessel which are available for the carriage of fuel.</p>	<b>Part Heading</b>
	<b>Authority Citation</b>
	<b>Amendatory Language</b>
	<b>Section Heading</b>
	<b>Regulatory Text</b>

If you **add** a section to a part which contains subparts, identify the subpart which will contain the new section if the subpart is not obvious to the reader.

**REVISION TO INTRODUCTORY TEXT**

If you **revise** the introductory text of a section or a paragraph, and not the whole section or paragraph, specify the introductory text (see **Example 2-57**).

**Example 2-57: Instruction for revising introductory text**

In § 1020.3, revise the introductory text of paragraph (a) and paragraphs (a)(1) and (4) to read as follows:

**§ 1020.3 What are the qualifications and duties of the Small Business Ombudsman?**

(a) The Chairman will appoint a senior, full-time Commission employee as Small Business Ombudsman. The Ombudsman must:

(1) Know the Commission's statutes and regulations;

\* \* \* \* \*

(4) Perform the Ombudsman duties in addition to, and consistently with, other Commission responsibilities.

\* \* \* \* \*

*Note: You may use the phrase “paragraph ( ) introductory text” in lieu of “introductory text of paragraph ( )”.*

**MULTIPLE AMENDMENTS**

Describe all changes to one section in a single instruction, and display changed text for the section immediately following the instruction (see **Example 2-57, Example 2-60**). Group all amendments to the same CFR unit together in one instruction (see **Example 2-58**). For many changes to one section, use a list format (see **Example 2-59**). For changes to several sections, use separate numbered instructions for each section, and display the changed text for each section after the instruction (see **Example 2-60**).

**Example 2-58: Group amendments**

Amend § 150.5 by revising paragraphs (a), (d), (e), and (n) to read as follows:

Remove and reserve §§ 33.1, 33.5, and 33.10.

Example 2-59: Multiple amendments, single section – list

**§ 941.103 [Amended]**

3. Amend § 941.103 as follows:

- a. Remove the definitions of “Allocation area”, “Application”, “Central city allocation area”, “Community”;
- b. Remove the parenthetical phrase “(in the form prescribed by HUD)” from the definition “Construction Contract” and “Contract of sale”;
- c. Remove the definitions of “Field Office”, “Housing Assistance Plan”, “Household type”, and “Housing type”; and
- d. Remove from the definition of “Total development cost (TDC)” the term “The Field Office” and add in its place the term “HUD”

**Note:** List instructions in alpha-numeric order. Do not group and list by action.

Example 2-60: Multiple amendments, multiple sections

**PART 1258—FEES**

1. The authority citation for part 1258 continues to read as follows:

Authority: 44 U.S.C. 2116(c).

2. Amend § 1258.2 by revising paragraphs (a) and (c)(3) to read as follows:

**§ 1258.2 Applicability.**

(a) Except as stated in this section, fees for the reproduction of NARA administrative records, archival records, donated historical materials, and records filed with the Office of the Federal Register are in 1258.12.

\* \* \* \* \*

(c) \* \* \*

(3) Motion picture, sound, and video recording materials are among the holdings of the National Archives and Records Administration. Obtain prices for reproduction of these materials from the Motion Picture and Sound and Video Branch, National Archives and Records Administration, Washington, DC 20408.

\* \* \* \* \*

3. Amend § 1258.4 by revising paragraph (b) to read as follows:

**§ 1258.4 Exclusions.**

\* \* \* \* \*

(b) When NARA wishes to disseminate information about its activities to the general public through press, radio, television, and newsreel representatives;

\* \* \* \* \*

4. Amend § 1258.10 by revising paragraph (a) to read as follows:

**§ 1258.10 Mail orders.**

(a) The agency charges a minimum fee of \$6.00 per order for reproductions it mails to the customer.

\* \* \* \* \*

**Alternative instructions for Example 2-60 #3 and #4:**

3. Revise § 1258.4(b) to read as follows:

4. Revise § 1258.10(a) to read as follows:

**2.15 Asterisks**

If you **add** or **revise** only certain units of a section, the amendatory language must state exactly which units are added or revised. Only those units are printed. Use asterisks to represent text which is not changed.

Table 2-6: Number of Asterisks	
# of Asterisks	When to use
5 asterisks * * * * *	To show that a whole paragraph, including its subordinate paragraphs is unchanged.
3 asterisks * * *	To show that the higher level paragraphs remain unchanged when you change text at a subordinate level.
7 asterisks * * * * * * *	To show that a whole row of a table is unchanged (see <a href="#">section 7.4, Example 7-7</a> )

**USE OF 5 ASTERISKS**

Use 5 asterisks to show that a whole paragraph, including its subordinate paragraphs, is unchanged.

In [Example 2-61](#), the 5 asterisks before revised paragraph (d) show that paragraphs (a), (b), and (c) remain unchanged. The 5 asterisks that follow revised paragraph (d) show that the remaining text in the section is also unchanged. However, if paragraph (d) is the last paragraph in the section, asterisks following it are unnecessary.

**Example 2-61: Using 5 asterisks**

Amend § 166.15 by revising paragraph (d) to read as follows:

**§ 166.15 State status.**  
\* \* \* \* \*

(d) The following States issue licenses under cooperative agreements with the Animal and Plant Health Inspection Service, but do not have primary enforcement responsibility under the Act: Kentucky, Maryland, Puerto Rico, Texas, and Washington.  
\* \* \* \* \*

**USE OF 3 ASTERISKS**

Use 3 asterisks when you change text at a subordinate level. This shows that the higher level paragraphs remain unchanged.

In [Example 2-62](#), the 5 asterisks before paragraph (b) show that paragraph (a) remains unchanged. The 3 asterisks following “(b)” show that (b)(1) through (4) remain unchanged, and the 3 asterisks following “(5)” show that the introductory text of (b)(5) is unchanged.



The 5 asterisks that follow revised paragraph (b)(5)(i) show that the remaining text in the section is unchanged.

Example 2-62: Using 3 asterisks

Revise § 202.3(b)(5)(i) to read as follows:

**§ 202.3 Registration of copyright.**

\* \* \* \* \*

(b) \* \* \*

(5) \* \* \*

(i) The Library of Congress receives two complimentary copies promptly after publication of each issue of the serial.

\* \* \* \* \*

The smallest unit you may revise is a sentence. If you revise only a sentence of a paragraph, use 3 asterisks to show that the preceding or remaining sentences (or both) in the paragraph are unchanged (see **Example 2-63**).

Example 2-63: Using asterisks to revise a sentence

Amend § 416.916 by revising the first sentence to read as follows:

**§ 416.916 What will happen if I fail to send medical and other evidence?**

You (and, if you are a child, your parent, guardian, relative, or other person acting on your behalf) must cooperate in furnishing us with, or in helping us to obtain or identify, available medical or other evidence about your impairment(s). \* \* \*

Example 2-64: Using asterisks	
<p><b>PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS</b></p> <p>1. The authority citation for part 216 continues to read as follows: Authority: 16 U.S.C. 1361-1407.</p> <p>2. Amend § 216.24 by:</p> <p>a. Revising paragraph (b)(1)(v);</p> <p>b. Adding paragraph (b)(1)(vi); and</p> <p>c. Revising the first sentence of paragraph (b)(3), paragraph (c)(2), and introductory text of paragraph (c)(4)(i). The revisions and addition read as follows:</p> <p><b>§ 216.24 Taking and related acts incidental to commercial fishing operations.</b></p> <p>* * * * *</p> <p style="padding-left: 40px;">(b) * * *</p> <p style="padding-left: 40px;">(1) * * *</p> <p style="padding-left: 40px;">(v) <i>Category 5</i>: Other gear. Commercial fishing operations utilizing trolling, gillnets, hook and line gear, and any gear not classified under paragraphs (b)(1)(i) and (ii) of this section.</p> <p style="padding-left: 40px;">(vi) <i>Category 6</i>: Commercial passenger fishing vessel operation. Commercial fishing operations from a commercial passenger fishing vessel for the purpose of active sport fishing as defined in § 216.3.</p> <p>* * * * *</p> <p style="padding-left: 40px;">(3) Send the original and two copies of the application for general permit to the Assistant Administrator. * * *</p> <p>* * * * *</p>	<p><b>Part Heading</b></p> <hr/> <p><b>Authority Citation</b></p> <hr/> <p><b>Amendatory Language</b></p> <hr/> <p><b>Section Heading</b></p> <hr/> <p><b>Indicates Paragraph (a) Unchanged</b></p> <hr/> <p><b>Indicates Paragraph (b) Introductory Text Unchanged</b></p> <hr/> <p><b>Indicates Paragraphs (b)(1) Introductory Text And (b)(1)(i) through (iv) Unchanged</b></p> <hr/> <p><b>Revises Paragraph (b)(1)(v)</b></p> <hr/> <p><b>Adds Paragraph (b)(1)(vi)</b></p> <hr/> <p><b>Indicates Paragraph (b)(2) Unchanged</b></p> <hr/> <p><b>Revises First Sentence of Paragraph (b)(3) Indicates Remainder of Paragraph (b)(3) Unchanged</b></p> <hr/> <p><b>Indicates Paragraphs (b)(4) through (7) Unchanged</b></p>

<p>(c) * * *</p>	<p><b>Indicates Paragraph (c) Introductory Text and Paragraph (c)(1) Unchanged.</b></p>
<p>(2) <i>Operator's certificate of inclusion.</i> You must hold a valid operator's certificate of inclusion if you are the person in charge of and actually controlling fishing operations (after this referred to as the operator) on a vessel engaged in commercial fishing operations for which a Category 2 or Category 6 general permit is required under this subpart. You may not transfer this certificate. You have a valid certificate only for a vessel having a valid vessel certificate of inclusion for the same category. In order to receive a certificate of inclusion, the operator must satisfactorily complete required training. You must renew your operator's certificate of inclusion annually.</p>	<p><b>Revises Paragraph (c)(2).</b></p>
<p>* * * * *</p>	<p><b>Indicates Paragraph (c)(3) Unchanged</b></p>
<p>(4) * * *</p>	<p><b>Indicates Paragraph (c)(4) Introductory Text Unchanged</b></p>
<p>(i) Category 1, 3, 4, 5, and 6 applications:</p>	<p><b>Revises Paragraph (c)(4)(i) Introductory Text</b></p>
<p>* * * * *</p>	<p><b>Indicates Remainder of Section Unchanged</b></p>

## 2.16 Cross-references

We permit you to cross-reference your own or another agency's rules in limited situations. You may only reference rules that are currently in effect.

If you must modify the referenced rules, you cannot use a cross-reference. You must publish the modified rules in full.

You may cross-reference the rules of another agency only if the reference is<sup>24</sup>:

- required by court order, statute, Executive order, or reorganization plan;
- to rules promulgated by an agency with the exclusive legal authority to regulate in a subject matter area, but the referencing agency needs to apply those rules in its own programs;
- informational or improves clarity rather than being regulatory;
- to test methods or consensus standards produced by a Federal agency, and not eligible for incorporation by reference under 1 CFR part 51, that have replaced or

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<sup>24</sup> 1 CFR 21.21 and 22.7.

preempted private or voluntary test methods or consensus standards in a subject matter area; or

- to the departmental level from one of its subagencies.

When cross-referencing, you must properly identify the CFR unit being cited. Do not use a nonspecific reference, such as “herein,” “above,” or “below.”<sup>25</sup> When cross-referencing spans of sections or paragraphs, use “through” rather than a hyphen and avoid repeating paragraph levels when possible.

Table 2-7: Cross-reference across Titles	
In title 6, when referencing title 1, chapter I, <i>write ...</i>	... 1 CFR chapter I
In title 6, when referencing title 1, chapter I, part 2, <i>write ...</i>	... 1 CFR part 2
In title 6, when referencing title 1, chapter I, part 2, § 2.7, <i>write ...</i>	... 1 CFR 2.7
In title 6, when referencing title 1, chapter I, part 2, § 2.7, paragraph (a)(2), <i>write ...</i>	... 1 CFR 2.7(a)(2)

Table 2-8: Cross-reference within a Title	
In chapter I, when referencing chapter II <i>write ...</i>	... chapter II of this title
In part 100 (chapter I), when referencing part 300 (chapter III) <i>write ...</i>	... part 300 of this title
In § 250.10 (chapter I), when referencing § 300.19 (chapter III) <i>write ...</i>	... § 300.19 of this title
In part 20, when referencing part 30 <i>write ...</i>	... part 30 of this chapter
In § 20.10, when referencing subpart A of part 30 <i>write ...</i>	... part 30, subpart A of this chapter
In § 20.10, when referencing § 30.19 <i>write ...</i>	... § 30.19 of this chapter

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<sup>25</sup> 1 CFR 21.21(a).

Table 2-9: Cross-reference within a Part	
In § 20.5, when referencing subpart A of part 20 <i>write ...</i>	... subpart A of this part
In § 20.5, when referencing § 20.15 <i>write ...</i>	... § 20.15
In § 20.5, when referencing § 20.15, paragraph (a), <i>write ...</i>	... § 20.15(a)
In § 20.5, when referencing Appendix A to part 20 <i>write ...</i>	... Appendix A of this part

Table 2-10: Cross-reference within Section	
In paragraph (a), when referencing paragraph (b) <i>write ...</i>	... paragraph (b) of this section
In paragraph (a), when referencing paragraph (b)(1) <i>write ...</i>	... paragraph (b)(1) of this section
In paragraph (a)(1), when referencing paragraph (a)(2) <i>write ...</i>	... paragraph (a)(2) of this section
In paragraph (a)(1)(i), when referencing paragraph (a)(1)(ii) <i>write ...</i>	... paragraph (a)(1)(ii) of this section
In paragraph (a), when referencing paragraph (a) <i>write ...</i>	... this paragraph (a)

## Example 2-65: Cross-references in regulatory text

**§ 233.17 Noncompliance and program reporting by the Director.**

The Director must prepare quarterly and annual reports as detailed in **paragraphs (a) and (b) of this section** and must send them to the Regional Administrator.

(a) *Quarterly reports for State 404 programs.* The Director must send noncompliance reports for section 404 discharges specified under **§ 233.24(f)(1)(i) through (iv)** containing the following information:

(1) Name, location, and permit number of each noncomplying permittee; and  
(2) A brief description and date of each instance of noncompliance, which must include the following:

(i) Any unauthorized discharges of dredged or fill material subject to the State's jurisdiction or any noncompliance with permit conditions; and

(ii) A description of investigations conducted and of any enforcement actions taken or contemplated.

(b) *Annual report for State 404 programs.* The State Director must send an annual report assessing the cumulative impacts of the State's permit program on the integrity of State regulated waters. This report must include:

(1) The number and nature of individual permits issued by the State during the year;

(2) The number of acres for each of the categories of waters in **paragraph (b)(1) of this section** which were filled or which received any discharge of dredge material during the year;

(3) The number and nature of permits issued under emergency conditions, as provided in **§ 234.38 of this chapter**; and

(4) The approximate number of persons in the State discharging dredged or fill material under general permits and an estimate of the cumulative impacts of these activities.

**Note.** We used bold in this example as a reader aid, to help you identify the cross-references. **Do not do this in your document.**

## 2.17 What should my proposed rule document look like?

### Documents

Paper documents must be:

- In triplicate
- Legible
- Single-sided (if you submit an original and 2 certified copies, the copies may be double-sided)
- Double-spaced
- Accompanied by a disc with the Word file (unless you are submitting a manuscript document)

Electronic documents must be:

- Double-spaced

### Abbreviations

Use the following abbreviations in the *Federal Register*:

- FR is *Federal Register*. (Do not use Fed. Reg. or F.R.) See example
- CFR is Code of Federal Regulations. (Do not use C.F.R.) See example
- U.S.C. is United States Code. See examples
- Pub. L. is Public Law. (Do not use P.L.) See examples
- Stat. is U.S. Statutes at Large. See examples
- a.m. or p.m. is time designation. See example
- E.O. is Executive order. See example
- Proc. is Proclamation
- sec. is section of a Public Law or the United States Code

### Capitals

Type the following in all capital letters:

- The name of the agency or cabinet-level department (but not the name of the subagency) in the heading of a document
- FEDERAL REGISTER in the parenthetical for dates that we are to compute
- Preamble captions

**Example 2-66: Preamble captions**

**AGENCY:**  
**ACTION:**  
**SUMMARY:**  
**DATES:**  
**ADDRESSES:**  
**FOR FURTHER INFORMATION CONTACT:**  
**SUPPLEMENTARY INFORMATION:**

### Headings

Document headings are:

- Centered or
- Flush with the left margin

Section headings:

- Are flush with the left margin
- Are on a line separate from the text of the section
- Use the § symbol

### Italics

Use italics (we no longer require underlining) for:

- Definitions
- Paragraph headings
- Scientific terms
- Ordering statements
- Court cases
- *Federal Register*, when referring to the name of the publication (except type in all capital letters in the parenthetical for dates that we are to compute)

Do not use italics for:

- Emphasis
- Names of books
- Foreign phrases

### Margins

- One inch at the top, bottom, and right side
- One and one-half inches on the left side

### Page numbers (required for manuscript documents only)

Number the pages consecutively in one of the following places:

- Centered top
- Centered bottom



- Upper right-hand corner

### Quotation marks

Use quotation marks for names of books, journals, articles, and similar items.

### Quoted material

Quoted material that is appropriate for the preamble (see [section 2.6](#)) should be:

- Single-spaced
- Centered-block style
- Without quotation marks

### References

If your document relates to a previously published *Federal Register* document, you must cite the earlier document. A reference in a preamble to a previously published *Federal Register* document must identify the volume number, page number, and date of the issue in which the document appeared (see [Example 2-67](#)). Do not use legal citations or footnotes in SUMMARY.

#### Example 2-67: References to a previously published *Federal Register* document

8x FR 12345, July 23, 20xx  
8x FR 12345 (July 23, 20xx)

A reference in a preamble to material contained in the CFR should identify the CFR title and part or section number (see [Example 2-68](#)).

#### Example 2-68: References to material contained in the CFR

36 CFR part 1200  
36 CFR 1200.1

### Signature

The signature on your document must match the name in the signature block. For digitally-signed documents, the signature block must meet the name-matching requirements for the digital signature specified in [section 1.6](#).

If you are sending in 1 original and 2 certified copies of your document, certify the signature on the copies.

**Single-spacing**

Single-space the following material:

- Quoted material
- Footnotes
- Tables of contents
- Examples
- Tables
- Notes to Tables
- Authority citations
- Notes
- Formulas

**§ Symbol**

Use the § symbol only for CFR citations. A § is for a single section and § § is for multiple sections. However, do not use a § symbol to begin a sentence; instead, spell out the word “Section”. Do not use the § symbol or the word “section” in a full citation, for example 36 CFR 1200.1. Do not use the § in any regulatory table of contents. (See **Table 2-11.**)

**Note:** While § § is for multiple sections, use only one § symbol when citing multiple paragraphs within a single section twist. Also use only a single section twist when citing sections with “or” instead of “and”.

Table 2-11: § symbol	
Use	Don’t use
Revise § 1200.1 to read as follows: OR Section 1200.1 is revised to read as follows:	Part 1200 § 1 is revised to read as follows:

**Style**

Use the [GPO Style Manual](#) as a guide for punctuation, capitalization, spelling, compounding, and other style matters not addressed in this Handbook. The GPO Style Manual is available free online.

## 2.18 Example of a proposed rule document

### Example 2-69: Proposed rule document

7515-01

**NATIONAL ARCHIVES AND RECORDS ADMINISTRATION**

**36 CFR Part 1253**

**RIN 3095-AA64**

**Suitland Research Room Closure**

**AGENCY:** National Archives and Records Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The National Archives and Records Administration (NARA) proposes to close the Suitland Research Room at the Washington National Records Center and establish an appointment system for using archival records remaining in the Washington National Records Center. We plan to establish new public research room hours at the Washington National Records Center. The use of the research room has declined since moving the archival records of the Washington National Records Center to archival facilities in Washington, DC, and College Park, MD.

**DATES:** Comments will be accepted until [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Sharon Records, 301-000-0000, Sharon.Records@nara.gov.

**SUPPLEMENTARY INFORMATION:** Beginning May 6, 20xx, researchers would need to make advance arrangements for the use of any archival Federal records remaining in the Washington National Records Center. The last transfer of archival records from Suitland is planned to begin August 30, 20xx.

Agencies or researchers needing access to agency records stored at the Washington National Records Center would need to call 301-000-0000 or 301-000-0001 for appointments.

After May 3, 20xx, shuttle service for researchers from the National Archives and Records Administration Building in Washington, DC to the Washington National Records Center would be discontinued.

It is not cost-effective to operate the research room on its current schedule, 8 a.m. to 4:30 p.m., Monday through Friday, for the expected use of the room. There would be little or no impact on the public because archival records would continue to be made available to researchers.

This proposed rule is not a significant rule for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, NARA certifies that these regulatory amendments will not have a significant impact on small business entities.

**List of Subjects in 36 CFR Part 1253**

Archives and records.

For the reasons set forth in the preamble, the National Archives and Records Administration proposes to amend part 1253 of title 36 of the Code of Federal Regulations as follows:

**PART 1253—LOCATION OF RECORDS AND HOURS OF USE**

1. The authority citation for part 1253 continues to read:  
Authority: 44 U.S.C. 2104(a).

2. Revise § 1253.4 to read as follows:

**§ 1253.4 Washington National Records Center.**

Washington National Records Center, 4205 Suitland Road, Suitland, MD. Mailing address: Washington National Records Center, 4205 Suitland Road, Washington, DC 20409-0002. Hours: 8:30 a.m. to 4 p.m., Monday through Friday. From May 6, 20xx, through August 30, 20xx, make appointments to use archival records at the center appointments to use archival records at the center by calling the Suitland Reference Branch at 301-000-0000.

Dated: March 27, 20xx.

*Signature*

Type name,  
Title.

## 2.19 Checklist for proposed rule documents

Use the following checklist to review your proposed rule document before you send it to us:

- ✓ **Billing code.** See **section 1.3.**
  - Is the billing code at the top of the first page in the right-hand corner?
- ✓ **Headings.** See **sections 1.4, 2.3.**
  - Are the correct headings used?
- ✓ **Preamble.** See **section 2.4.**
  - Are all required elements of the preamble included?
  - Does the SUMMARY answer all three questions?
- ✓ **List of Subjects.** See **section 2.7.**
  - Are subject terms listed for each CFR part affected?
  - Are they placed at the end of the preamble?
- ✓ **Words of issuance.** See **section 2.8.**
  - Have you provided a link between the preamble and the regulatory text?
  - Have you used “proposed” or “proposes” in the words of issuance?
- ✓ **Authority citation.** See **section 2.12.**
  - Is the authority citation correctly placed in the document?
- ✓ **Amendatory language.** See **section 2.14.**
  - Does it specify the exact CFR unit being changed?
  - Does it use the correct terms?
- ✓ **Table of contents.** See **section 2.11.**
  - Is the table of contents included for each subpart or part being set out in full?
  - Do entries agree with the regulatory text?
- ✓ **Paragraphs.** See **section 2.13.**
  - Are all paragraphs of regulatory text indented and lettered or numbered correctly?
- ✓ **Asterisks.** See **section 2.15.**
  - Is the correct style used?
  - Do references meet our criteria?
- ✓ **Tables and illustrations.** See **Chapter 7.**
  - Are they placed exactly where they are to be printed?
  - Are they completely legible?
  - Are charts and maps of photographic quality?
- ✓ **OMB Control Number.** See **section 2.5.**
  - If included with the regulatory text, is it placed properly and in the correct style?
- ✓ **Signature and title.** See **sections 1.6, 1.7.**

- Is the original signature (handwritten in ink, preferably blue) included on the document? (One person may not sign for another or initial a signature.)
- Is the signer's name and title typed beneath the signature?
- If a signature date is given, is it correct and not post-dated?
- ✓ **Digital signature.** See **sections 1.6, 1.7 and Chapter 6.**
  - Have you properly set up your digital signature for our web portal?
  - Does the signature name in the document match the digital signature applied to the document?
- ✓ **Quality.** See **section 2.17.**
  - For All Documents*
    - Are original(s) and certified copies legible?
    - Is the document double-spaced?
    - Are the page numbers placed correctly (for manuscript documents)?
    - Are all pages numbered consecutively?
    - Are all pages included?
    - Are the copies properly signed or certified?
  - For Documents Physically Submitted*
    - Are there matching copies and certification? See **section 8.2.**
    - Are the original and two copies (or 3 originals) identical?
    - Are ink changes printed, dated, and initialed on all three copies with the changes reflected in the companion Word document? See **Chapter 5.**
- ✓ **Disks.** See **Chapter 6.** If you have included a disk or CD with your document:
  - Is your file in Microsoft Word? We do not accept \*.pdf format.
  - Is every document on a separate disk or CD?
  - Is the file on the disk identical to the signed original document?
  - Did you include the certification/verification letter stating that the file and document are identical?
  - Is your document the only file on the disk or CD?
  - Does the disk have a label that identifies your agency, the document's subject, and the file name?
  - Is the disk virus-free?
  - Are the file and disk or CD free of password protection or other security measures?
  - Is the file scrubbed clean of hidden meta-data?

## Chapter 3: HOW DO I WRITE A DOCUMENT FOR THE RULES AND REGULATIONS CATEGORY?

### 3.1 Rules and Regulations category documents

This category contains documents having general applicability and legal effect. The terms "rules" and "regulations" have the same meaning within the Federal Register publication system. Typical documents in this category include:

- Documents that amend the CFR by adding new text or by revising or removing existing text
- Temporary rule documents which are effective immediately for a short or definable period of time
- Interim rule documents that are effective immediately and may request comments
- Direct final rule documents that request comments before the rule becomes effective
- Documents that affect other documents previously published in the rules category - these documents:
  - Correct a previously published rule
  - Change the effective date
  - Change the comment deadline of an interim rule or direct final rule
  - Suspend a previously published rule
  - Withdraw a rule not yet in effect
- Petition for reconsideration
- Documents that have no regulatory text and do not amend the CFR but affect your agency - these documents include:
  - General policy statements
  - Interpretations of agency rules
  - Clarifications of agency rules
  - Waivers of agency rules that are generally applicable

### 3.2 Document Requirements

In addition to the requirements of **Chapter 1: What are the requirements for drafting any document?**, documents published in the rules and regulations category must include the following items:<sup>26</sup>

- Document Headings

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<sup>26</sup> 1 CFR parts 18 and 21.

- Preamble
- List of Subjects (for documents with regulatory text)
- Words of Issuance (for documents with regulatory text)
- Regulatory text (for documents amending the CFR)

### 3.3 Document Headings

In addition to the requirements of **Chapter 1: What are the requirements for drafting any document?**, the headings of a rule document also identify the CFR title and part that your document amends or that your document is related to. Present the headings for a rule document using the appropriate format, as follows:

Table 3-1: List of document headings		
Department Name	OR	Agency Name
Subagency Name		<b>CFR Citation</b>
<b>CFR Citation</b>		<b>Agency Docket Number</b>
<b>Agency Docket Number</b>		<b>Regulation Identifier Number (RIN)</b>
<b>Regulation Identifier Number (RIN)</b>		Subject Heading
Subject Heading		

#### CFR CITATION

The “CFR citation” contains the number of the CFR title and the number of each part the document amends or is directly related to. Even if the document affects only one paragraph within a part, include that part number. Or, you may include the full chapter number in place of specific parts.

#### AGENCY DOCKET NUMBER

The “agency docket number” is your agency’s internal file number, which may be assigned by FDMS.gov. If you have an agency docket number, you must include it as shown in **Example 1-4, Example 1-7, and Example 1-8**. If you have questions about docket numbers, speak with your agency. We do not know if you have one or if you need one.



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**RIN**

The “RIN” is assigned by the Regulatory Information Service Center (also known as RISC) and identifies each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions. Your agency, in consultation with the Office of Management and Budget (OMB), determines if you need a RIN. If you have a RIN, you must include it as shown in **Example 1-3, Example 1-4, Example 1-6, Example 1-7, and Example 1-8**. We do not know if you have a RIN or if you need one.

### 3.4 Preamble requirements

Each document published in the Rules and Regulations category of the *Federal Register* must contain a preamble. The preamble follows the subject heading of the document. It explains the basis and purpose of the regulatory text, but contains no regulatory text. It arranges basic information on the “who, what, where, when, and why” of a document for the reader’s convenience.

Do not include quotations of regulatory or statutory text in the preamble (see **section 3.6**).

The preamble captions are:

**AGENCY:**

**ACTION:**

**SUMMARY:**

**DATES:**

**ADDRESSES:**

**FOR FURTHER INFORMATION CONTACT:**

**SUPPLEMENTARY INFORMATION:**

These captions must appear in the order shown, and, with the exception of ADDRESSES, you must use each preamble caption. You must use ADDRESSES only if you have an address relevant to the document. The following are examples and explanations of information which must be contained within captions.

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## AGENCY

AGENCY identifies the “who” of a document by specifying the issuing agency. This caption usually repeats the name of the department or non-departmental agency as carried in the document’s headings (see **Example 1-3, Example 1-4**), as well as the subagency name if applicable (see **Example 1-6**). However, unlike the headings section, you may choose to include in this caption the name of offices or agencies which are not listed in the document’s heading (see **Example 1-7**) and which have not signed the document. When these names appear together, put them in order of smallest to largest (see **Example 3-1**).

### Example 3-1: AGENCY caption

<b>AGENCY:</b> Office of the Secretary, USDA.	Subagency, Department
<b>AGENCY:</b> Environmental Protection Agency.	Department
<b>AGENCY:</b> National Park Service, Interior.	Agency, Department
<b>AGENCY:</b> Bureau of Public Debt, Fiscal Service, Treasury.	Bureau, Subagency, Department

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## ACTION

ACTION identifies the type of document by stating what the document does. It does not summarize the substance of a document. Do not allow this caption to become too long.

**Example 3-2: Frequently used lines for ACTION caption**

<b>ACTION:</b>	Final rule.
<b>ACTION:</b>	Final rule; delay of effective date.
<b>ACTION:</b>	Final rule; suspension of effectiveness.
<b>ACTION:</b>	Final rule; confirmation of effective date.
<b>ACTION:</b>	Final rule; correction <sup>27</sup> .
<b>ACTION:</b>	Interim final rule; request for comments.
<b>ACTION:</b>	Final rule; withdrawal.
<b>ACTION:</b>	Interpretive rule.
<b>ACTION:</b>	Direct final rule.
<b>ACTION:</b>	Final rule; petition for reconsideration.
<b>ACTION:</b>	Final rule; denial of reconsideration.
<b>ACTION:</b>	Petition for rulemaking; withdrawal.
<b>ACTION:</b>	Policy.
<b>ACTION:</b>	Temporary rule.

This is not an exclusive list of available ACTION lines. If you use a different line, do not include the word “Notice.” If you are unsure of using a different ACTION line, check with the Scheduling Unit.

**SUMMARY**

In SUMMARY, you explain the “what,” “why,” and “effect” of the document within the *Federal Register*/CFR publication system (see **Example 3-3**). Your SUMMARY should not be longer than a paragraph and must answer these three questions:

- What action is being taken?
- Why is this action necessary?
- What is the intended effect of this action?

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<sup>27</sup> For more information on correction documents, see **Chapter 5: How do I correct a document?**.

Table 3-2: SUMMARY	
Use the following guidelines in preparing a SUMMARY	
DO	DON'T
Be brief.	Use numbered or bulleted lists.
Use language a non-expert will understand.	Include qualifications, exceptions, or specific details.
Describe what the document does, not how it affects the CFR.	Use legal citations (for example, do not use 40 CFR part 52 or 5 U.S.C. 552) or footnotes.
Refer to an act of Congress by the popular name of the act.	Quote
Be brief.	Include more detail than in SUPPLEMENTARY INFORMATION

You may not use the SUMMARY to prove a point or argue a case.

Supporting information, details, discussion of the regulatory history, and precise legal citations are essential in an adequate preamble but do not belong in the SUMMARY. Extended discussion of the rule belongs in SUPPLEMENTARY INFORMATION.

Example 3-3: SUMMARY caption
<p><b>SUMMARY:</b> The Coast Guard is amending the uninspected vessel rules by requiring emergency position indicating radio beacons (EPIRBs). The Emergency Position Indicating Radio Beacons on Uninspected Vessels Requirements Act amends the shipping laws of the United States by requiring uninspected commercial vessels to have the number and type of EPIRBs prescribed by rule. These rules ensure rapid and effective search and rescue during emergency situations.</p> <p><b>SUMMARY:</b> This document amends the Customs rules by adding Pakistan to the list of nations whose vessels may transport empty cargo vans, empty lift vans, and empty shipping tanks between points embraced within the coastwise laws of the United States. The Department of State supplied Customs with evidence that Pakistan places no restrictions on the carriage of empty cargo vans, empty lift vans, and empty shipping tanks by vessels of the United States between ports in Pakistan. This amendment recognizes the United States granting reciprocal privileges for vessels registered in Pakistan.</p>

**DATES**

DATES presents the “when” of a document. Include **all** dates that are essential to the document in DATES (see **Example 3-4**). All documents in the rules category must have at least one date.

Include the following dates, as applicable:

- Effective dates.
- Incorporation by reference approval date (see [IBR Handbook](#)).
- Comment deadlines for an interim rule or direct final rule.
- Extension of comment deadlines on an interim rule or direct final rule.
- Expiration dates.
- Compliance dates.
- Confirmation of effective date.
- Other dates the public may need to know, such as a suspension or a stay.

**Note:** When extending or reopening a comment period or when delaying an effective date, include the FR citation, including the publication date of the original document in DATES to link the two documents.

**Example 3-4: DATES caption format with multiple dates**

**DATES:** *Effective date: July 10, 20xx.*

*Compliance Workshops:*

1. March 26, 20xx, 9:30 a.m. to 5 p.m., Washington, DC.
2. April 3, 20xx, 9:30 a.m. to 5 p.m., Pittsburgh, PA.
3. April 8, 20xx, 9:30 a.m. to 5 p.m., Hudson, WI.
4. April 15, 20xx, 9:30 a.m. to 5 p.m., Madison, WI.

Only include date information in DATES. While all rule category documents need a date, only documents that specifically impact the CFR can have an effective date.

Group dates according to type of date (such as effective dates and compliance). Place any discussion related to the dates (for example, meeting location, docket access, meeting agenda, content of material available for inspection) in ADDRESSES or SUPPLEMENTARY INFORMATION, as applicable.

**Effective date**

The effective date of a *Federal Register* document is the date that we:

- Amend the CFR by following your amendatory instructions (final rule; stay)

- Discard or postpone amendatory instructions set to become effective in the future (withdrawal; delay)

Therefore, effective dates cannot be retroactive and only rule category documents that amend the CFR have effective dates.

**Note:** If you need to make an action described in a document effective, contact us to work out appropriate language.

### **Calculated dates vs. specific dates**

We only compute and insert dates tied to *Federal Register* publication or filing on public inspection. In computing the date, we count the day after publication as the first day, and then each succeeding day, including Saturdays, Sundays, and holidays. When the computed date falls on a weekend or a Federal holiday, we use the next Federal business day. You can use the “Table of Effective Dates and Time Periods” to see which date we will use. This table appears in the Reader Aids section of the first *Federal Register* issue each month and is available at [www.federalregister.gov](http://www.federalregister.gov). If you need us to compute and insert a date, present the date as shown in **Example 3-5**. If your agency is using a specific date, or dates, (frequently referred to as a date certain) for your rule, use the format in **Example 3-6**.

#### Example 3-5: DATES caption with an OFR-calculated effective date

**DATES:** This rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

#### Example 3-6: DATES caption for a document with agency-provided date and multiple effective dates

**DATES:** This rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], except for the amendment to § 21.30(e) which is effective on January 1, 20xx.

If a specific effective date is dependent upon Congressional action or a dispositive Federal Court decision, your agency must promptly publish a *Federal Register* document announcing the establishment of or change to the effective date (see **Example 3-7**).

Example 3-7: DATES caption for a major rule subject to Congressional review

**DATES:** This rule has been classified as a major rule subject to Congressional review. The effective date is [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. However, at the conclusion of the congressional review, if the effective date has been changed, the [INSERT AGENCY] will publish a document in the *Federal Register* to establish the actual effective date or to terminate the rule.

Example 3-8: DATES caption withdrawing a final rule

**DATES:** Effective on November 14, 2008, EPA withdraws the direct final rule published at 73 FR 53140, on September 15, 2008.

***Compliance dates and applicability dates***

Some rules include a compliance or applicability date in addition to an effective date. The compliance or applicability date is the date that the affected classes must comply with the rule. Place the compliance or applicability date after the effective date (see **Example 3-9**).

**Example 3-9: DATES captions that include applicability or compliance dates.**

**DATES:** This regulation is effective [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. However, compliance for juice other than apple juice or apple cider is not required until [INSERT DATE 120 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**DATES:** *Effective date:* This rule is effective on July 30, 20xx.

*Applicability Date:* Subpart A of part 124 applies to all applications for 8(a) business development program pending as of July 30, 20xx.

**DATES:** *Effective date:* This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

*Compliance Date:* Any labels that require revision as a result of these revocations shall comply no later than January 1, 20xx.

**DATES:**

*Effective date:* [INSERT 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

*Comment date:* Comments due on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

*Compliance date:* Mandatory compliance [INSERT DATE 120 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**Table 3-3: Differences between effective dates and compliance or applicability dates**

Effective Date	Compliance/Applicability Date
Addresses the CFR placement.	Addresses the person who must comply.
Is the date the rule affects the current CFR.	Is the date the person must comply.
Is required by OFR.	Is not required by OFR.
Must not be retroactive.	May appear in DATES and CFR text.

*Information collection requirements*

If a rule contains information collection requirements which have not been approved by OMB, you may delay the effectiveness of the provisions with those requirements use the wording in **Example 3-10**. You may also make the provisions effective and address



compliance as a separate issue. Discuss OMB approval, compliance, and other related issues in SUPPLEMENTARY INFORMATION.<sup>28</sup>

Example 3-10: DATES caption for a rule with information collection requirements that have not been approved by OMB

**DATES:** Effective June 1, 20xx, except for § 232.48(g) which is delayed. We will publish a document in the *Federal Register* announcing the effective date.

### *Delays and Stays*

**Note:** 1) In this discussion of *Delays and Stays*, the term **Delay** is the equivalent of “Postpone.”  
2) Anything that applies to a Compliance date can also apply to an Applicability date.

**Delay of effective dates.** You may only **Delay** effective dates that have not yet taken place. If you did not include the effective date as part of the CFR text, you need only announce the **Delay** in the DATES section (see **Example 3-11**).

Example 3-11: Rule with a **delay** of effective date

**DATES:** The effective date of the rule amending 47 CFR part 600 published at 76 FR 12345, May 15, 20xx, is delayed until May 15, 20xx.

If the **Delay** is indefinite, you must state that you will furnish the date in a future *Federal Register* document (see **Example 3-12**).

Example 3-12: Rule with an indefinitely **delayed** effective date

**DATES:** The effective date of § 201.64, added at 76 FR 12345, July 23, 20xx, is delayed indefinitely. The Administration will publish a document in the *Federal Register* announcing the new effective date.

If you included the effective date as part of CFR text, you must also amend the CFR text (see **Example 3-13**).

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<sup>28</sup> We will no longer include an Effective Date note with OMB approval information to provisions in the CFR.

**Example 3-13: Rule with a **delayed** effective date as part of the CFR text**

Section 600.1(c) is amended by removing the date “July 1, 20xx” and adding in its place “September 1, 20xx”.

**Stay of CFR text.** If the effective date has already taken place, you cannot **Delay** it; you must **Stay** the CFR text instead (see **Example 3-14**).

**Example 3-14: Rule with a **stay** of CFR provisions**

**DATES:** *Effective* [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], 21 CFR 101.65(d)(2)(ii)(C) and (d)(4)(ii)(B) are stayed until January 1, 20xx.

If, when **Staying** an amendment or revision to CFR text, you wish to restore the previous text, you must add the previous text back to the CFR, using a CFR paragraph or section number different from the **Stayed** text.

If you do not include an expiration date when you enact a **Stay**, you must publish another document to lift the **Stay** (see **Example 3-15**),

**Example 3-15: Rule lifting **stay** of CFR provisions**

**DATES:** *Effective* [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], the stay of 21 CFR 101.65(d)(2)(ii)(C) and (d)(4)(ii)(B) is lifted.

**Delay of compliance dates.** If you originally stated the compliance date in the DATES section but not in the CFR text, you may state that the date is **Delayed** or Postponed (see **Example 3-16**).

**Example 3-16: Rule with a **delay** of compliance date**

**DATES:** The compliance date for the rule amending 21 CFR Part 600 published at 64 8x FR 12345 on May 15, 20xx is delayed until May 15, 20xx.

If the date is indefinite, you must state that you will furnish the date in a future *Federal Register* document (as in **Example 3-12**).

**Stay of compliance dates.** If the compliance date is in the CFR text and the effective date of the CFR amendment has passed, you may **Stay** the CFR text unit. You can only do that by amending the CFR (see **Example 3-17**).

**Example 3-17: Rule with a *delay* or *stay* of compliance date as part of the CFR text**

Section 20.5 is amended in paragraph (e) by removing the date “March 1, 20xx” and adding in its place “March 15, 20xx”.

**Example 3-18: Rule with *stay* and effective date for new material**

**DATES:** Effective August 15, 2016, 40 CFR 52.145(k)(6) and Appendix A to 40 CFR 52.145 are stayed until November 14, 2016. The addition of 40 CFR 52.145(n) in this rule is also effective from August 15, 2016 until November 14, 2016.

**Example 3-19: Rule with *stay* and effective date for temporary section**

**DATES:** Effective August 15, 2016, 49 CFR 171.145 is stayed until November 14, 2016. The addition of 49 CFR 171.145T in this rule is also effective from August 15, 2016 until November 14, 2016.

Table 3-4: When to Stay and when to Delay	
DELAY	STAY
Use Delay when an effective or compliance date has not yet passed:	Use Stay when an effective or compliance date has passed:
<i>Effective Date.</i> State the Delay in the DATES section. If you have also stated the effective date in CFR text, amend the CFR.	<i>Effective Date.</i> You must Stay the CFR unit or amend the CFR. You may not Stay an effective date after that date has passed.
<i>Compliance Date.</i> State the Delay in the DATES section. If you have also stated the compliance date in CFR text, amend the CFR.	<i>Compliance Date.</i> You may Stay a compliance date even after it has passed (a compliance date affects the user, not the CFR). State the Stay of compliance in the DATES section.

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## ADDRESSES

ADDRESSES contains the “where” of the document. If you have an address relevant to the document, you must include ADDRESSES.

Include the following types of address (including electronic), as applicable, needed for:

- Mailing public comments
- Sending public comments electronically
- Hand-delivering public comments
- Attending a public hearing (or meeting)
- Examining any material available for public inspection, including material to be incorporated by reference.

Only include address information in ADDRESSES.

Include the electronic address and only brief instructions for how to send comments via [www.Regulations.gov](http://www.Regulations.gov), an agency website, or email, and group them by type (see [Example 3-21](#)). If you need to include detailed instructions, add them to SUPPLEMENTARY INFORMATION. Place any discussion related to the addresses (for example, how to register for a meeting, meeting agenda, or content of material available for inspection) in the SUPPLEMENTARY INFORMATION section (see [Example 3-23](#)).

OMB has issued a directive that requires agencies to use the “ADDRESSES” template displayed in [Example 3-20](#) when drafting regulatory actions that offer opportunity for public comment.

Example 3-20: OMB-required ADDRESSES template for regulatory actions offering the opportunity for public comment

**ADDRESSES:** You may send comments, identified by [docket number and/or RIN number], by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for sending comments.
- Agency Web Site: [Complete URL]. Follow the instructions for sending comments on the [Agency electronic docket site / website].
- E-mail: [E-mail Address]. Include [docket number and/or RIN number] in the subject line of the message.
- Fax: [Fax Number].
- Mail: [Mailing Address for paper, disk, or CD-ROM submissions].
- Hand Delivery / Courier: [Street Address].

*Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to [Complete URL], including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Public Participation” heading of the SUPPLEMENTARY INFORMATION section of this document.

*Docket:* For access to the docket to read background documents or comments received, go to [Complete URL(s) and/or Street Address(es)].

Remember to:

- Substitute appropriate information for the bracketed items
- List all applicable submission methods
- State full URLs:
  - <http://www.xxxxx.gov>
  - <http://documents.xxxx.gov>
  - <ftp://www.xxx.gov>

You may include brief instructions following bulleted items or in the optional Instructions paragraph.

You may also use the optional Instructions and Docket paragraphs to highlight or cross-reference agency-specific instructions and to provide access to rulemaking dockets. Detailed or lengthy instructions (which could include for documents issued by more than one agency) may need to go into SUPPLEMENTARY INFORMATION.

**Example 3-21: Format with different addresses for comments and information collection.**

**ADDRESSES:** Address all comments concerning this interim rule to Nell C. Commentary, Commissioner, Rehabilitation Services Administration, Mary E. Switzer Building, Room 3325, 330 C Street SW, Washington DC 20202-2735.

Send a copy of any comments that concern information collection requirements to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington DC 20503; Attention: Daniel J. Information.

**Example 3-22: Format with one address for multiple purposes.**

**ADDRESSES:** Mail comments and requests to testify to Hearing Clerk, Room 000, Department of XXXXX, 000 Independence Avenue, SW, Washington DC 20553-0002; the hearing will be held in Room 111, 000 Independence Avenue, SW, Washington DC 20553-0002.

Place detailed information about electronic access and filing in the SUPPLEMENTARY INFORMATION section of the preamble under a heading such as “Electronic Access and Filing Addresses” (see **Example 3-23**).

**Example 3-23: Format directing the public to SUPPLEMENTARY INFORMATION for details on how to submit electronic comments and data.**

**ADDRESSES:** Submit electronic comments and other data to [oppdocket@epamail.epa.gov](mailto:oppdocket@epamail.epa.gov). See SUPPLEMENTARY INFORMATION for file formats and other information about electronic filing.

[omitted preamble text]

**SUPPLEMENTARY INFORMATION:**

[omitted preamble text]

Electronic Access and Filing

You may submit comments and data by sending electronic mail (E-mail) to: [oppdocket@epamail.epa.gov](mailto:oppdocket@epamail.epa.gov).

Submit comments as an ASCII file avoiding the use of special characters and any form of encryption. The OPP also accepts comments and data on disks in Word file format. Identify all comments and data in electronic form by the docket number [PP 4F4327/R2253]. You may file electronic comments on this proposed rule online at many Federal Depository Libraries. File an electronic copy of objections and hearing requests with the Hearing Clerk at: [oppdocket@epamail.epa.gov](mailto:oppdocket@epamail.epa.gov).

### FOR FURTHER INFORMATION CONTACT

In FOR FURTHER INFORMATION CONTACT, you must include the name and telephone number of a **person** within your agency who can answer questions about the document. You should also include their email address. This email address may appear in both this section and the ADDRESSES section if your point of contact manages another aspect of the document, such as the location to send email comments. You may list two or more persons to contact concerning different aspects of a document (see **Example 3-24**). You may also include a group email address.

**Example 3-24: FOR FURTHER INFORMATION CONTACT caption with contact information**

**FOR FURTHER INFORMATION CONTACT:** John Regwriter, 202-000-0000, [John.Regwriter@agency.gov](mailto:John.Regwriter@agency.gov).

**FOR FURTHER INFORMATION CONTACT:**

*Technical information:* John Regwriter, 202-000-0000, [John.Regwriter@agency.gov](mailto:John.Regwriter@agency.gov).

*Legal information:* Mary Regulatory, 202-000-0001, [mregulatory@agency.gov](mailto:mregulatory@agency.gov).

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## SUPPLEMENTARY INFORMATION

Under SUPPLEMENTARY INFORMATION, include the regulatory history of this rulemaking, and a statement of the proposed rule's basis and purpose. Present this information in plain language that the reader can easily understand, with descriptive headings to highlight and organize topics. If a reference to the *Federal Register* or Code of Federal Regulations is necessary, use the format shown in **Example 3-77, Example 3-78**.

You may use the SUPPLEMENTARY INFORMATION section to provide additional information that is required by law, agency policy, or Executive Order. Some of the following questions only apply to an interim rule requesting comments or to a rule for which your agency is doing a post-publication review of the rule's effectiveness.

These questions may help you draft your SUPPLEMENTARY INFORMATION:

- What law or directive authorizes the rulemaking?
- What existing regulations address the problem?
- What problem does the rulemaking address?
  - What issues are connected with the problem?
  - What facts, surveys, or studies identify and define the problem?
  - How does this rulemaking attempt to solve the problem?
- Were other solutions considered?
  - Why was this solution chosen?
  - Is this solution cost-effective?
  - How will this solution affect the regulated parties?
- Does this rulemaking contain penalties for noncompliance?
  - Are penalty provisions essential?
  - Can the requirements be monitored?
  - Can the penalty provisions be enforced?
- Have you identified other documents in this rulemaking and included their *Federal Register* citations? See **Example 3-77**.
  - Did you publish an Advance Notice of Proposed Rulemaking?
  - Did you publish a Proposed Rule?
  - Have you announced meetings or hearings?
- Have you discussed all necessary regulatory analysis and review requirements?
- What other statutes apply to this rulemaking?
- How was, or will, public participation be handled?
  - Are there special instructions for mailing public comments?
  - Are there formal or informal hearings?
  - Are there procedures for requesting a public meeting?
  - Are there any instructions for filing comments or making oral presentations?
  - Will transcripts of the hearing be made available?



- Have you used subject headings to break up a lengthy SUPPLEMENTARY INFORMATION section? For example:
  - Background
  - Statutory authority
  - Request for comments
  - Related documents
  - Topical headings
  - Drafting information
  - Public participation
  - Regulatory analysis

### 3.5 What is an OMB control number and where do I put it?

The Paperwork Reduction Act requires that all agencies submit their information collection requirements and related forms to the Office of Management and Budget (OMB) for review. If OMB approves the information collection requirements, it assigns them a control number. For OMB control numbers included as part of a rule document, you may either codify this OMB control number in the CFR or you may include it in the SUPPLEMENTARY INFORMATION section of the preamble.

To codify an OMB control number in the CFR<sup>29</sup>:

- Place the approval statement and number parenthetically at the end of the appropriate section (see **Example 3-25**);
- Display the number in a section devoted to OMB control numbers (see **Example 3-26**); or
- Display the number in a CFR part devoted to OMB control numbers (see **Example 3-27**).

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<sup>29</sup> 1 CFR 21.31

Example 3-25: OMB number at the end of the appropriate section

**§ 264.51 Purpose and implementation of contingency plan.**

(a) You as the owner or operator must have a contingency plan for your facility. You must design your contingency plan to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

(b) You must execute the provisions of the plan immediately whenever there is a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment. You must send XXX an annual report of the number of occurrences of hazards to human health or to the environment in your facility. (Approved by the Office of Management and Budget under control number 2050-0011.)

Example 3-26: Section devoted to OMB numbers

**§ 1942.500 OMB control number.**

The information collection requirements in this part are approved by the Office of Management and Budget and assigned OMB control number 0575-0123.

Example 3-27: Part devoted to OMB numbers

**PART XX-OMB CONTROL NUMBERS**

**Sec.**

**XX.1 What is an OMB control number?**

**XX.2 Table of approved OMB control numbers in this chapter.**

**Authority:** 44 U.S.C. 3501 et seq.

**XX.1 What is an OMB control number?**

[EXPLANATION OF OMB CONTROL NUMBERS]

**XX.2 Table of approved OMB control numbers in this chapter.**

This table lists the OMB control numbers assigned to the rules in this chapter.

<u>CFR cite</u>	<u>OMB control no.</u>
3541.5	2050-1

### 3.6 When can I use direct quotes?

The OFR does not allow lengthy or excessive quotation from Federal regulations or Federal law. This includes text from regulatory documents published in the *Federal Register*. However, if your agency has a compelling legal reason to extensively quote this type of material, contact OFR's Legal Affairs and Policy Division ([fedreg.legal@nara.gov](mailto:fedreg.legal@nara.gov)).

### 3.7 List of Subjects

Each rule document that contains regulatory text must contain a list of index terms (List of Subjects) for each CFR part number cited in the document's heading.<sup>30</sup> These terms provide a common vocabulary for indexing the rulemaking documents of all agencies and are the basis of the "CFR Index" prepared by the OFR. You can find the terms online at [Federal Register Thesaurus of Indexing Terms](#). You can also find a list of current terms for each CFR part.

For new CFR parts, you must select appropriate terms from the Thesaurus. You may then add other terms not contained in the Thesaurus for either existing or new CFR parts. When you select a term that is not in the Thesaurus, ask yourself, "Would I search for the subject matter using this term?"

The List of Subjects is the last item under SUPPLEMENTARY INFORMATION in the preamble. You must include a List of Subjects for each CFR part affected by the document. However, if several CFR parts use identical lists of terms, you may consolidate the lists. Put the List of Subjects terms in alphabetical order and separate them with commas. Capitalize only the first word of each term. End the list with a period (see **Example 3-28**, **Example 3-29**).

A List of Subjects is not required for a document that:

- Contains no regulatory text (excluding documents that only remove regulatory text)
- Only presents nomenclature changes
- Corrects a previous document

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<sup>30</sup> 1 CFR 18.20.

**Example 3-28: List of Subjects for a single CFR part**

**List of Subjects in 40 CFR Part 262**

Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

**Example 3-29: List of Subjects for multiple CFR parts**

**List of Subjects  
15 CFR Part 370**

Administrative practice and procedure, Exports.

**15 CFR Parts 372 and 386**

Exports, Reporting and recordkeeping requirements.

### 3.8 Words of issuance

The “words of issuance” is an expression that connects the preamble to the regulatory text and the tie between the rule and the CFR units you are changing. The words of issuance provide:

- The tie between this rule and the CFR units that it affects.
- The bridge between the preamble of this document and the regulatory changes.

Words of issuance are **always** in the present tense (See **Example 3-30, Example 3-31, Example 3-32**).

**Note:** *Amend just means change. Add, Revise, and Remove are 3 ways to Amend.*

**Example 3-30: Words of issuance - amending**

For the reasons stated in the preamble, the Federal Energy Regulatory Commission amends 18 CFR chapter I as set forth below:

For the reasons discussed in the preamble, the Nuclear Regulatory Commission amends 10 CFR part 430 as follows:

For the reasons discussed in the preamble, the Federal Communications Commission revises 47 CFR part 430 to read as follows:

For the reasons stated in the preamble, and under the authority of 5 U.S.C. 501, the Environmental Protection Administration removes 40 CFR part 63.

*Note: Use Example 3-32 if the only action you are taking is to remove something (see also Example 3-46).*

For deviations from this general format see section 3.14.

### 3.9 Regulatory text

The “regulatory text” is the section of your document that sets out your agency’s changes to the CFR. It can include:

- Headings
- Table of Contents
- Authority citation
- Numbering of regulations
- Amendatory language
- Asterisks
- Cross-references

*Note: You cannot reference a Federal Register document in regulatory text.*

### 3.10 Regulatory headings

You must provide a heading for each part, subpart, section, and appendix<sup>31</sup> that you are amending. You may add paragraph headings. A heading is a brief statement that accurately describes the content of that CFR unit (see Example 3-33). You may not use phrases or

<sup>31</sup> Subparts and appendices are optional, but if you choose to use such a unit, you must include a heading.

expressions that are not descriptive, including “Regulations under the Act,” “Regulations governing...,” “Rules applicable to...,” or similar phrases.<sup>32</sup>

The only way to change a heading is to amend the CFR.

**Example 3-33: Regulatory Headings**

<b>PART 970—CREATION AND MAINTANCE OF FEDERAL RECORDS</b>	Part Heading
<b>Subpart A—Identifying Federal Records</b>	Subpart Heading
<b>§ 1222.12 What types of documentary materials are Federal records?</b>	Section Heading
(a) <i>General.</i>	Paragraph Heading

**PART HEADINGS**

A part heading is usually a phrase, rather than a statement or question. Consider using terms that you included in your List of Subjects (see **section 3.7**).

**SUBPART HEADINGS**

Subparts separate ideas within a part, so the heading should be more specific than the part heading. These headings can be a specific topic, phrase, statement, or question.

**UNDESIGNATED CENTER HEADINGS**

You may use undesignated center headings to break up a large subpart and group together sections concerning a particular subject area. Although we permit undesignated center headings, we strongly discourage their use.

**APPENDIX HEADINGS**

An appendix may appear at the subpart or part level. Designate each appendix with a capital letter, identify whether it belongs to a subpart or part, and give it a descriptive

<sup>32</sup> 1 CFR 21.19.

heading (see **Example 3-34**). If your agency has established a uniform designation system for CFR appendices the specific part or subpart, follow that established system (see **Chapter 7: Figures, forms, tables, notes, and appendices**).

**Note:** *Even if you have only one appendix, you must still designate it as “Appendix A.” However, we will not require you to reserve “Appendix B” in this situation.*

#### Example 3-34: Appendix headings

Appendix B to Subpart A of Part 915—Illustrations of Infant Highchair Designs

Appendix A to Part 2—Flammability Statistics for Floor-Cleaning Fluids

### SECTION HEADINGS

Descriptive section headings are signposts for the reader.<sup>33</sup> They help readers identify the particular regulatory text that applies to them. End each section heading with a period or question mark.

### PARAGRAPH HEADINGS

You may use headings at the paragraph level. If you use a heading for one paragraph, you must use a heading for all paragraphs at that level. End paragraph headings with a period and italicize them in the document.

## 3.11 Table of Contents

You must provide a table of contents<sup>34</sup> for actions that:

- Add a new part or subpart
- Revise an existing part or subpart

Include the following in your table of contents:

- Section headings
- Subpart headings
- Undesignated center headings
- Appendix headings to parts and subparts

<sup>33</sup> 1 CFR 21.10.

<sup>34</sup> 1 CFR 21.18.

Table of contents entries are identical to the section headings, subpart headings, and appendix headings in the regulatory text (see **Example 3-35**). Do not include units smaller than a section in your table of contents.

Do not provide a table of contents in a document that adds or amends a single section or miscellaneous sections. We change the table of contents when these amendments are incorporated into the CFR.

**Note:** *This is not the same as table of contents in the preamble.*

#### Example 3-35: Table of Contents – part, subpart, and appendix

**PART 82 — PROTECTION OF STRATOSPHERIC OZONE**  
**Subpart B — SERVICING OF MOTOR VEHICLE AIR CONDITIONERS**

Sec.

82.30 Purpose and scope.

82.32 Definitions.

82.34 Prohibitions and required practices.

82.36 Approved refrigerant handling equipment.

82.38 Approved independent standards testing organizations.

82.40 Technician training and certification

82.42 Certification, recordkeeping and public notification requirements.

Appendix A to Subpart B — Standard for Recycle/Recover Equipment

### 3.12 Authority citations

You must cite the authority that allows your agency to amend the CFR.<sup>35</sup> Give the authority citation in the shortest form. Placement of the authority citation depends on what unit of the CFR you are amending.

There are two types of authority:

- Statutory:
  - Public law
  - United States Code (U.S.C.)
- Non-statutory:

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<sup>35</sup> 1 CFR 21.40.



- Presidential Executive order<sup>36</sup>
- Presidential Administrative order
- Presidential Memorandum
- Agency delegation, policy, or directive
- Office of Management and Budget circular
- CFR regulations

Your agency is responsible for maintaining accurate and current authority citations.

Present the authority citation at one of two central places:

- Part level; or
- Subpart level.

You may give citations of authority for particular subparts (see **Example 3-36**) and sections (see **Example 3-37**) within the central authority citation.

**Example 3-36: Authority citation for a subpart**

Authority: 42 U.S.C. 2201; 45 U.S.C. 5841.  
 Subpart A also issued under 5 U.S.C. 552; 31 U.S.C. 9701.  
 Subpart B also issued under 5 U.S.C. 552a.  
 Subpart C also issued under 5 U.S.C. 552b.

**Example 3-37: Authority citation for a section**

Authority: 42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282, 5841, 5842, 5846.  
 Section 30.7 also issued under 42 U.S.C. 5851.  
 Section 30.34(b) also issued under 42 U.S.C. 2234.  
 Section 30.61 also issued under 42 U.S.C. 2237.

**STATUTORY AUTHORITY**

Each citation of statutory authority must use a U.S.C. citation, if one exists.<sup>37</sup> To determine the U.S.C. citation, use one of the following:

\_\_\_\_\_

<sup>36</sup> The citation for E.O. 12372, which appears across CFR titles, may have an error. If your citation includes “(48 FR 15887)” in the “as amended” portion, and you don’t know the correct citation for your part, contact OFR for a possible solution.

<sup>37</sup> 1 CFR 21.52.

- The current edition of the U.S.C. or its supplement
- The slip law for recently signed public laws

We generally recommend that you use only the U.S.C. citation (see **Example 3-38**). When a U.S.C. citation does not exist (for example, for appropriations laws), you must cite the section of the public law, if appropriate, the public law, and the U.S. Statutes at Large (see **Example 3-39**). Do not cite the popular name of a public law.

**Example 3-38: Authority citation using U.S.C.**

Authority: 44 U.S.C. 2101-2118; 50 U.S.C. 6909.

**Example 3-39: Authority citation using Public Law and U.S. Statutes at Large**

Authority: Sec. 8067, Pub. L. 98-473, 98 Stat. 1937.

If you cite two different laws, where one has a United States Code citation and the other does not, place the United States Code citation first (see **Example 3-40**).

**Example 3-40: Authority citation with U.S.C. primary**

Authority: 42 U.S.C. 2996; Pub. L. 104-208, 110 Stat. 3009; Pub. L. 104-134, 110 Stat. 1321.

**NON-STATUTORY AUTHORITY**

Cite non-statutory authority by document designation, *Federal Register* citation, and CFR citation<sup>38</sup> (see **Example 3-41**).

**Example 3-41: Authority citation with non-statutory sources**

Authority: E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105.

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<sup>38</sup> 1 CFR 21.53.

If you include both statutory and non-statutory citations in the same authority citation, place the statutory citation first<sup>39</sup> (see **Example 3-42**).

**Example 3-42: Authority citation with statutory and non-statutory sources**

Authority: 8 U.S.C. 1161(f); 29 U.S.C. 1801-1872; Secretary's Order 6-84, 49 FR 32473.

**PLACEMENT OF THE AUTHORITY CITATION: ADDING OR REVISING**

**Part:** If a document adds or revises an entire part, place the authority citation directly after the table of contents and before the regulatory text<sup>40</sup> (see **Example 3-43**).

**Example 3-43: Authority citation when adding or revising a part**

**PART 54—ALLOTMENTS FOR CHILD AND SPOUSAL SUPPORT**

Sec.

54.1 Purpose.

54.2 Applicability and scope.

54.3 Definitions.

54.4 Policy.

54.5 Responsibilities.

54.6 Procedures.

Authority: 15 U.S.C. 1673; 37 U.S.C. 101; 42 U.S.C. 665.

**Subpart.** If a document adds or revises an entire subpart using the same authority citation as the CFR part, set out the authority citation for the part as the first numbered item in the list of amendments for the part (see **Example 3-65**).

Sometimes adding or revising an entire subpart uses a different authority citation than the authority citation for the whole part. If this is the case, set out the authority citation for the subpart directly after the heading to the subpart and before the regulatory text of the subpart (see **Example 3-44**).

<sup>39</sup> 1 CFR 21.45.

<sup>40</sup> 1 CFR 21.43(a)(1).

Example 3-44: Authority citation when adding or revising a subpart; different citation than part

**Subpart B—Supportive Services for Minority, Disadvantaged, and Women Business Enterprises**

- Sec.
- 230.201 Purpose.
- 230.202 Definitions.
- 230.203 Policy

Authority: 23 U.S.C. 101, 140(c), Subpart B Authority 23 U.S.C. 304, 315; 49 CFR 1.48(b).

**§ 230.201 Purpose.**

This subpart prescribes the policies, procedures, and guidance to develop, conduct, and administer supportive services assistance programs for minority, disadvantaged, and women business enterprises.

\* \* \* \* \*

**Section:** If a document amends only certain sections within a CFR part, set out the authority citation for the part as the first numbered item in the list of amendments for the part<sup>41</sup> (see **Example 3-45**).

Example 3-45: Authority citation when amending only certain sections

**PART 4—SERVICES TO THE PUBLIC**

- 1. The authority citation for part 4 is **revised** to read as follows:  
Authority: 44 U.S.C. 1508.

**PART 4—SERVICES TO THE PUBLIC**

- 1. The authority citation for part 4 **continues** to read as follows:  
Authority: 44 U.S.C. 1502.

<sup>41</sup> 1 CFR 21.43(a)(2).

**PLACEMENT OF THE AUTHORITY CITATION: REMOVING**

*Parts.* If you remove a part, you must give your agency’s authority for the action. Place the authority in the “words of issuance” (see **Example 3-32, Example 3-46**).

Example 3-46: Authority citation when removing a part (becomes part of Words of Issuance)
Accordingly, under the authority 10 U.S.C. 8013, amend XX CFR chapter VII by removing part 837.
Under 42 U.S.C. 541 and as discussed in the preamble, amend XX CFR chapter II as follows:

**3.13 Numbering**

The regulatory text of your document must conform to the structure of the CFR.

**CFR UNITS**

The basic structure of the CFR consists of a hierarchy of designated CFR units, not based on a decimal numbering system<sup>42</sup> (see **Table 3-5**).

Table 3-5: CFR units and numbering		
Unit	Designation	Description
Title	12	Broad area subject to Federal regulation
Chapter	III	Rules of a single issuing agency
Part	303	Unified body of rules concerning a single function or specific subject
Section	303.1	Short presentation of one regulatory function. The section is the basic unit of the CFR. The content of a section is a short, simple presentation of a single regulatory function.

As shown in **Table 3-5**, each section number includes the number of the part followed by a period and a sequential number.

<sup>42</sup> 1 CFR 21.11.

Hyphenated numbers (for example, 117-2.1 or 117-3.15) or numbers with alpha characters (for example, part 115a, 115a.1, or 115.1a) are not permitted in designating units within the CFR system.

In some cases, you may use “T” after a section number to indicate that the section is temporary (for example § 234.1T, § 232,4T). You must have our approval to use this numbering convention before you send us your document for publication. Approval may depend on the length of time you will need the temporary section.

**The Director of the OFR must approve any deviation from standard CFR structure.** Send or email a signed request letter to the Director for approval in writing before you begin drafting. **We must receive your request at least five working days before your agency intends to submit your document for publication** and you must include a copy of the document showing the deviation. The Director will inform you if your request is approved or denied<sup>43</sup> (see **Appendix A: Deviation Request letter**).

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#### PARAGRAPH STRUCTURE OF A SECTION

If you have more than one paragraph, designate each one as shown in **Table 3-6**. Indent each designated paragraph within a section (see **Example 3-47**).

You may use up to six levels of designation in a section.<sup>44</sup> **We strongly recommend that you do not use more than 3 paragraph levels.** Using more than 3 paragraph levels makes your rule hard to read and use. Use more sections as a drafting technique to avoid using excessive paragraph levels.

Sections that consist of a single paragraph or the introductory text of a section do not require a designation. You must designate all other text within a section. (See **Chapter 7: Figures, forms, tables, notes, and appendices** if you have specific language that regulated parties are required to use to comply with the regulations.)

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<sup>43</sup> 1 CFR 21.14.

<sup>44</sup> 1 CFR 21.11(h).

Table 3-6: List of paragraph levels	
level 1	(a), (b), (c), etc.
level 2	(1), (2), (3), etc.
level 3	(i), (ii), (iii), etc.
level 4	(A), (B), (C), etc.
level 5	<i>(1), (2), (3), etc.</i> [italicized]
level 6	<i>(i), (ii), (iii), etc.</i> [italicized]

Example 3-47: Section with paragraph levels	
<p><b>§ 233.17 Noncompliance and program reporting by the Director.</b></p>	
<p>The Director shall prepare quarterly and annual reports as detailed in this section and shall submit them to the Regional Administrator.</p>	<p><b>Level 1 intro text</b></p>
<p>(a) <i>Quarterly reports for State 404 programs.</i> The Director shall submit noncompliance reports for section 404 discharges under § 233.24(f)(1)(i)(A) through (E) containing the following information:</p>	<p><b>Level 1 paragraph (a) intro text</b></p>
<p>(1) Name, location, and permit number of each noncomplying permittee;</p>	
<p>(2) A brief description and date of each instance of noncompliance, which should include the following:</p>	<p><b>Level 2 paragraph (a)(2) intro text</b></p>
<p>(i) Any unauthorized discharges of dredged or fill material subject to the State’s jurisdiction or any noncompliance with permit conditions; and</p>	<p><b>Level 3 paragraph (a)(2)(i)</b></p>
<p>* * * * *</p>	

**OTHER DESIGNATION**

**Definitions.** In sections or paragraphs containing only definitions, we recommend that you do not use paragraph designations if you list the terms in alphabetical order. Begin the definition paragraph with the term that you are defining. If a definition contains subordinate paragraphs, number these paragraphs beginning with the second level, in a dedicated definitions section (see **Table 3-6**), or the next appropriate level based on the definitions paragraph within a section, and italicize the term (see **Example 3-48**). Do not

include substantive regulatory provisions in a definition. If a definitions section contains only one definition, it should not have introductory text or (a)-level codification (see **Example 3-49**).

Example 3-48: Definitions section

**§ 89.2 Definitions.**

\* \* \* \* \*

*Marine engine* means a nonroad engine that is installed or intended to be installed on a marine vessel. This includes a portable auxiliary marine engine only if its fueling, cooling, or exhaust system is an integral part of the vessel. There are two kinds of marine engines:

- (1) Propulsion marine engine means a marine engine that moves a vessel through the water or directs the vessel's movement.
- (2) Auxiliary marine engine means a marine engine not used for propulsion.

\* \* \* \* \*

*Nonroad engine* means:

- (1) Except as discussed in paragraph (2) of this definition, a nonroad engine is any internal combustion engine:
  - (i) In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or
  - (ii) In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or
  - (iii) That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.
- (2) An internal combustion engine is not a nonroad engine if:
  - (i) the engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under section 202 of the Act; or

\* \* \* \* \*



**§ 89.2 Definitions.**

*Marine engine* means a nonroad engine that is installed or intended to be installed on a marine vessel. This includes a portable auxiliary marine engine only if its fueling, cooling, or exhaust system is an integral part of the vessel. There are two kinds of marine engines:

(1) Propulsion marine engine means a marine engine that moves a vessel through the water or directs the vessel's movement.

(2) Auxiliary marine engine means a marine engine not used for propulsion.

*For more information on notes, appendices, tables, or figures, see **Chapter 7: Figures, forms, tables, notes, and appendices.***

**Notes.** Notes are not regulatory and must appear after the unit they explain. Label them using CFR designations to show whether they apply to the whole section or to the preceding paragraph. Number them consecutively within the section (see **Example 3-50**). Notes should not be more than one or two paragraphs and should never have multiple paragraph levels. Complex notes that cannot be restructured into a simple paragraph should be codified, included in an appendix, or removed from the CFR.

**Tables:** Tables that contain codified paragraphs must maintain a consistent structure throughout the table. Only one level of codification can appear in a column and that paragraph level cannot appear in any other column (see **Example 7-5**). Position them within the section in the location of the codified text that they contain.

Tables that do not contain codified paragraphs must appear after the unit they illustrate, explain, or expand. Designated tables are numbered consecutively throughout the section (so that you only have one "Table 1" in a section) and then labeled using CFR designations to show where they are located within the section and to which paragraph(s) of the section they apply to (see **Example 3-51, section 7.4**).

Keep in mind that more complex tables are more difficult to amend and may require being photographed instead of typeset.

**Figures:** Figures must appear after the unit they explain or illustrate. Label them using CFR designation to show whether they apply to the whole section or to the preceding paragraph (see **Example 3-52**).

**Non-codified, structured text:** You may amend individual elements (paragraphs or sentences) of a non-standard section **only if** each element has a unique designation that falls logically within the structure of the section. While you do not have to use standard CFR paragraph designations, you do need to designate elements consistently across the structured text. We strongly encourage you to review the structure periodically to see if newer publication techniques would be a better solution for including the content in the CFR.

**Appendices:** Appendices may only appear at the part or subpart level. Designate each appendix and identify whether it belongs to a part or subpart (for example, Appendix A to part 51) and give it a descriptive heading (see **Example 7-8**).

**Note:** Even if you have only one note, appendix, table, or figure, you must still designate it as “Note 1”, “Appendix A”, etc.

**Example 3-50: Labeling for Notes**

Note 1 to § 30.1.

Note 2 to paragraph (f).

Note 3 to paragraph (h)(2).

**Example 3-51: Labelling for Tables**

Table 1 to § 30.1.

Table 2 to paragraph (f).

Table 3 to paragraph (h)(2).

**Example 3-52: Labelling for Figures**

Figure 1 to § 30.1.

Figure 2 to paragraph (f).

Figure 3 to paragraph (h)(2).

### 3.14 Amendatory Language

#### LANGUAGE

A rule document usually changes the CFR. The regulatory text of a document must fit into the current text of the CFR, so you must precisely identify and describe the changes to the CFR.<sup>45</sup> While the words of issuance describe the general effect of the document, the amendatory language uses standard terms to give specific instructions on how to change the CFR. Each of these terms have very specific meanings within our publication system and cannot be interchanged even if they are interchangeable at your agency.

Amendatory instructions only detail your changes. You cannot discuss why you are proposing these changes in the amendatory language. Any discussion belongs in SUPPLEMENTARY INFORMATION.

Make sure you are changing the current version of your regulations. Before you begin drafting amendatory language (and again if you do not send your document soon after it is drafted), consult the [eCFR](#) or the latest version of the CFR, the LSA, and the latest *Federal Register*<sup>46</sup> for any month not covered by your LSA.

Base your amendatory language on the current text of your regulations. You must:

- Identify the specific CFR unit being changed
- Place amendments in CFR numbering order
- Use one of the standard terms to describe the change
- Address all regulatory text set out in your document

For extensive changes, revise the text in full rather than prepare fragmentary amendments. This will reduce the likelihood of mistakes and the reader will then have the complete text of the amended unit.

#### AMEND

Use **Amend** with one of the amendatory terms in **Table 3-7** to change content in the CFR. But remember that **Amend** is an introductory term and cannot stand alone (see **Example**

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<sup>45</sup> 1 CFR 21.20.

<sup>46</sup> *Federal Register* documents (1936-present), the CFR (1997-present), and LSA (1986-present) are on [GovInfo.gov](#).

**3-53, Example 3-54**). Think of **Amend** as a general category for all amendatory actions and the other terms as the instructions that detail the changes you are making.

**Note:** Do not confuse **Amend** with **Revise**. **Amend** is not an amendatory instruction. It simply means “change” and must be used in conjunction with amendatory terms to describe the change. **Revise** means to replace an entire unit.

**Example 3-53: Incorrect instruction with **Amend** (w/o **Add**, **Revise**, or **Remove**)**

Amend part 105 to read as follows:

Amend § 80.100(e)(1)(iii) to read as follows:

In § 15.4, amend paragraph (b) and the introductory text of paragraph (f)(2) to read as follows:

**Example 3-54: Correct instruction with **Amend****

Amend § 791.27 by revising paragraph (b)(3) and by adding paragraph (d)(4) to read as follows:

SPECIFIC AMENDATORY TERMS

Table 3-7: Table of Amendatory Terms	
<b>Add</b>	Inserts new content into the CFR. <b>Example 3-55</b>
<b>Revise</b>	Replaces an existing CFR unit in its entirety. The smallest unit is a sentence. <b>Example 3-57, Example 3-65, Example 3-66, Example 3-67</b>
<b>Remove</b>	Removes an existing CFR unit. <b>Example 3-58</b>
<b>Redesignate</b>	Transfers a CFR unit to a new designation. You CANNOT redesignate a CFR unit to a designation already in use. <b>Example 3-58</b>
<b>Reserve</b>	Fills gaps in CFR numbering. <b>Example 3-60, Example 3-61</b>
<b>Republish</b>	Sets out an unchanged CFR unit for the convenience of the reader, often to provide the context for an amendment. If you make a change to the republished text, it will not appear in the CFR. <b>Example 3-63</b>
<b>Withdraw</b>	Cancels a previously published rule, signaling that those amendments will not go into effect. <b>Example 3-8</b>
<b>Stay</b>	Temporarily or indefinitely suspends a CFR unit but leaves the text in place. The CFR unit is not legally effective and is not enforceable. Stayed text is frozen and cannot be amended. <b>Example 3-14, Example 3-18</b>
<b>Nomenclature Change</b>	Changes a term or phrase throughout a CFR unit. It is commonly used to change an office designation, a telephone number, or the title of an agency official. If the term occurs only in a handful of sections, do not amend the part; amend those specific sections. <b>Example 3-62</b>
<b>Correct</b>	Corrects errors in a previously published rule document (see <b>Chapter 5: How do I correct a document?</b> for more information). <b>Example 3-64</b>

ADD

Use **Add** to insert new content into the CFR (see **Example 3-55**).

**Example 3-55: Add**

Add part 1812 to read as follows:

Add § 5.26 under the undesignated center heading “How To Apply For a Permit” to read as follows:

Add § 20.89 to subpart H to read as follows:

In § 18.13, add paragraph (e) to read as follows:

Add paragraph (f)(5) to § 210.14 to read as follows:

Add § 4.8(a)(3)(iii) to read as follows:

In § 17.23(b), add the word “not” after the word “do” in the first sentence.

**REVISE**

Use **Revise** to replace a complete CFR unit. You cannot revise anything smaller than a sentence (see **Example 3-57**).

**Note:** Do not confuse **Amend** with **Revise**. **Amend** is not an amendatory instruction and must be used in conjunction with amendatory terms to describe a change. **Revise** can stand alone and will replace an entire unit of content.

Because **Revise** will replace the entire unit, make sure to specify the smallest unit that you need to change. If you need to revise a 3<sup>rd</sup> level paragraph, give an instruction to that 3<sup>rd</sup> level. If you give an instruction to a higher level in that paragraph, you may replace text that you did not intend.

**Example 3-56: Paragraph from Example 3-47**

(a) *Quarterly reports for State 404 programs.* The Director shall submit noncompliance reports for section 404 discharges under § 233.24(f)(1)(i)(A) through (E) containing the following information:

- (1) Name, location, and permit number of each noncomplying permittee;
- (2) A brief description and date of each instance of noncompliance, which should include the following:
  - (i) Any unauthorized discharges of dredged or fill material subject to the State’s jurisdiction or any noncompliance with permit conditions; and
  - (ii) One more condition added here

**Example 3-57: Effect of **Revising** different units**

Revise paragraph (a): replaces all of the text in **Example 3-56**

Revise introductory text of paragraph (a): replaces only the introductory text before (a)(1)

Revise paragraph (a)(2): replaces the introductory text of (a)(2) as well as (a)(2)(i) and (a)(2)(ii)

**REMOVE**

Use **Remove** to take existing content out of the CFR (see **Example 3-58**).

**Example 3-58: Remove**

**§ 300.12 [Removed]**  
Remove § 300.12.

**§ 495.73 [Amended]**  
Amend § 495.73 by removing paragraphs (a)(5) and (e).

**REDESIGNATE**

Use **Redesignate** to move a CFR unit to a new designation. You **cannot** redesignate a CFR unit to an existing unit. We strongly recommend that you use a redesignation table. Redesignate to the final location of the unit of text; do not redesignate the same text multiple times. This may mean that you must address amendments to higher sections first instead of amending the sections in numerical order (see **Example 3-59**).

**E1 PART 80 [REDESIGNATED AS PART 90 AND AMENDED]**

2. Redesignate part 80 as part 90 and amend the references as indicated in the table below:

**E2 § § 1475.12 through 1475.20 [Redesignated]**

2. Redesignate § § 1475.12 through 1475.20 as follows:

Old section	New section
1475.12	1475.13
1475.13	1475.14
1475.14	1475.15
1475.15	1475.17
1475.16	1475.18
1475.17	1475.19
1475.18	1475.20
1475.19	1475.21
1475.20	1475.22

(note that this leaves § 1475.16 empty)

**E3 § 100.5 Appeal procedures.**

2. In § 100.5, redesignate paragraphs (a) through (c) as paragraphs (d) through (f) and add new paragraphs (a) through (c) to read as follows:

**E4 PART 20 [REDESIGNATED AS PART 30]**

2. Redesignate part 20 as part 30.

**E5 § § 226.3 through 226.5 [Removed]**

2. Remove § § 226.3 through 226.5

**§ § 226.6 through 226.8 [Redesignated as § § 226.3 through 226.5]**

3. Redesignate § § 226.6 through 226.8 as § § 226.3 through 226.5, respectively.

**E6 § 45.3 [Amended]**

2. In § 45.3:

- a. Redesignate paragraphs (a)(1) and (2) as paragraphs (a)(1)(i) and (ii); and
- b. Redesignate paragraphs (a) through (c) as paragraphs (a)(1) through (3).

**Note:** If a redesignation is overly complex, as shown in Example 3-59 **number E6**, we strongly encourage you to make a revision instead.



**RESERVE**

Use **Reserve** to fill in gaps in CFR numbering. This shows that the gap is deliberate and assures readers that content is not missing. You can create a gap when adding text to leave room for future amendments or when removing text without replacing it. To avoid confusion in your amendatory language, you should always reserve subparts and paragraphs (see **Example 3-60**, **Example 3-61**).

**Example 3-60: Reserve when removing****Subpart Q—[Removed and Reserved]**

Remove and reserve subpart Q, consisting of §§ 103.10 through 103.25.

**Example 3-61: Reserve when adding**

Add and reserve subpart E and add subpart F, consisting of §§ 25.100 through 25.130, to read as follows:

**STAY**

Use **Stay** (synonymous with Suspend) to place a hold on a CFR unit temporarily or indefinitely. We do not remove or otherwise amend the content that is stayed, but we do add an Editorial Note and we freeze the text. During the stay, the CFR unit is not legally effective and is not enforceable. You cannot amend the content at all (even to remove it) until you lift the stay. However, it is possible to lift a stay and amend the text in a single instruction. Consult with us when using the term **Stay**.

**To impose a Stay:** the amendatory language (and the DATES caption) must cite the CFR unit affected. The amendatory instruction will state that the CFR unit is stayed until a specified date or is stayed indefinitely. The smallest CFR unit you may stay is a paragraph.

**To lift a Stay:** your agency must publish a document that explicitly states that the stay is lifted as of a date certain. The instruction to lift the stay appears in the amendatory language (and in the DATES caption).

**To change Stayed content:** your agency must first lift the stay. Then you can revise or remove the text as desired. If necessary, your agency may immediately re-impose a stay on

the newly revised text by stating the action in the amendatory language (and in the DATES caption).

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#### NOMENCLATURE CHANGE

A nomenclature change directs a change to a term or phrase throughout a CFR unit. It is commonly used to change an office designation, a telephone number, an address, or the title of an agency official. If the term occurs only in a handful of sections, do not amend the part; amend those specific sections (see **Example 3-62**).

**Example 3-62: Nomenclature change**

**§ 720.7 [Amended]**  
 In 12 CFR 720.7(c)(2) remove the words “Deputy Administrator” and add, in their place, the words “Vice-Chairman of the National Credit Union Administration Board”.

**§ § 720.7, 720.20, 720.22, 720.24, 720.26, and 720.27 [Amended]**  
 In addition to the amendments set forth above, in 12 CFR part 720, remove the words “Assistant Administrator for Administration” and add, in their place, the words “Director of the Office of Administration” in the following places:

- a. Section 720.7(a)(1), (c)(2), and (c)(3);
- b. Section 720.20(b) introductory text;
- c. Section 720.22(a);
- d. Section 720.24(a) and (b)(3);
- e. Section 720.26(a); and
- f. Section 720.27(a) and (c).

**PART 315—[AMENDED]**  
 In part 315, revise all references to “Domestic Commerce” to read “Domestic Business Development”.

**§ § 780.40, 780.41, and 780.42 [Amended]**  
 In the table below, for each section indicated in the left column, remove the title indicated in the middle column from wherever it appears in the section, and add the title indicated in the right column:

Section	Remove	Add
780.40	Assistant Secretary for Housing Production and Mortgage Credit	Assistant Secretary for Housing
780.41	Assistant Secretary for Housing Production and Mortgage Credit (HPMC) – Federal Housing Commissioner	Assistant Secretary for Housing – Federal Housing Commissioner
780.42	Deputy Assistant Secretary for Housing Production and Mortgage Credit – Deputy Federal Housing Commissioner	Deputy Assistant Secretary for Housing – Deputy Federal Housing Commissioner

**REPUBLISH**

Use **Republish** to set out unchanged text for the convenience of the reader, often to provide context for your regulatory changes. In **Example 3-63**, our editors will only codify the amendments to paragraphs (a)(1) and (3) and will not make any changes to the introductory text of paragraph (a).

**Example 3-63: Republish**

In § 2.1, the introductory text of paragraph (a) is republished and paragraphs (a)(1) and (3) are revised to read as follows:

**CORRECT**

Use **Correct** to fix a clerical or typographical error in a recently published document. See **Chapter 5: How do I correct a document?** for more information.

**Example 3-64: Correct**

**Preamble text**

On page 00000, in the second column, on line 5, correct the reference “§ 39.10(a)(1)” to read “§ 44.10”.

**Regulatory text**

**§ 20.15 [Corrected]**

On page 00000, in the third column, in 20.15(c)(1), correct “Director” to read “Acting Director”.

**STRUCTURE**

**ADDITION OR REVISION OF A PART OR SUBPART**

**Parts:** If you **add** or **revise** a part, use these elements in the order shown (see **Example 3-65**).

- Amendatory language
- Part heading
- Table of contents
- Authority citation
- Regulatory text

**Subparts (same authority as part):** If a part has a single authority citation at the end of the table of contents and you want to **add** or **revise** a subpart in that part, use these elements in the order shown:

- Part heading
- Authority citation for the part
- Amendatory language
- Subpart heading

- Table of contents
- Regulatory text

***Subparts (different authority than part):*** If each subpart in a part has its own authority citation and you want to **add** or **revise** a subpart in that part, use these elements in the order shown:

- Part heading
- Amendatory language
- Subpart heading and table of contents
- Subpart heading
- Authority citation for the subpart
- Regulatory text

Example 3-65: Revision of a part	
<p>2. Revise part 3 to read as follows:</p> <p><b>PART 3—SERVICES TO THE PUBLIC</b></p> <p><b>Sec.</b></p> <p>3.1 Information services.</p> <p>3.2 Public inspection of documents.</p> <p>3.3 Reproduction and certification of copies of acts and documents.</p> <p>Authority: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709, 3 CFR, 1954-1958 Comp., p.189.</p> <p><b>§ 3.1 Information services.</b></p> <p>Except in cases where the time required would be excessive, information concerning the publications described in § 2.5 of this chapter and the original acts and documents filed with the Office of the Federal Register is provided by the staff of that Office. However, the staff may not summarize or interpret substantive text of any act or document.</p> <p><b>§ 3.2 Public inspection of documents.</b></p> <p>(a) During the OFR’s office hours, documents filed with the OFR pursuant to law are available for public inspection at 800 North Capitol Street, NW, Suite 700, Washington, DC, as well as on the Internet. There are no formal inspection procedures or requirements.</p> <p>(b) By direction of the Director of the Office of the Federal Register, the OFR staff must file for public inspection documents received and processed not later than the working day preceding the publication day for that document.</p> <p>(c) By direction of the Director of the Office of the Federal Register, the OFR staff must place on the original and certified copies of each document a notation of the day and hour when it was filed and made available for public inspection.</p>	<b>Amendatory Language</b>
	<b>Part Heading</b>
	<b>Table of Contents</b>
	<b>Authority Citation</b>
	<b>Regulatory Text</b>

AMENDMENT TO A SECTION

If you **amend** a section in any way, use these elements in the order shown (see **Example 3-66**):

- Part heading
- Authority citation
- Amendatory language
- Section heading
- Regulatory text

**Example 3-66: Revision of a section**

<p><b>PART 133—TOLLS FOR USE OF CANAL</b></p> <p>1. The authority citation for part 133 is revised to read as follows: Authority: 22 U.S.C. 3791; E.O. 12215, 45 FR 36043, 3 CFR, 1980 Comp., p. 257.</p> <p>2. Section 133.34 is revised to read as follows:</p> <p><b>§ 133.34 What are the tolls for vessels in ballast?</b></p> <p>In order for a vessel to secure the reduced rate of toll for vessels in ballast, it may not carry any passengers or cargo nor any fuel for its own consumption in a quantity which exceeds:</p> <p style="padding-left: 20px;">(a) 125 percent of the volume of its engine room as measured and as shown on its Panama Canal tonnage certificate; or</p> <p style="padding-left: 20px;">(b) The spaces on the vessel which are available for the carriage of fuel.</p>	<b>Part Heading</b>
	<b>Authority Citation</b>
	<b>Amendatory Language</b>
	<b>Section Heading</b>
	<b>Regulatory Text</b>

If you **add** a section to a part which contains subparts, identify the subpart which will contain the new section.

REVISION TO INTRODUCTORY TEXT

If you **revise** the introductory text of a section or a paragraph, and not the whole section or paragraph, specify the introductory text (see **Example 3-67**).

**Example 3-67: Instruction for revising introductory text**

In § 1020.3, revise introductory text of paragraph (a) and paragraphs (a)(1) and (4) to read as follows:

**§ 1020.3 What are the qualifications and duties of the Small Business Ombudsman?**

(a) The Chairman will appoint a senior, full-time Commission employee as Small Business Ombudsman. The Ombudsman must:

(1) Know the Commission's statutes and regulations;

\* \* \* \* \*

(4) Perform the Ombudsman duties in addition to, and consistently with, other Commission responsibilities.

\* \* \* \* \*

*Note: You may use the phrase "paragraph ( ) introductory text" in lieu of "introductory text of paragraph ( )".*

**MULTIPLE AMENDMENTS**

Describe all changes to one section in a single instruction, and display changed text for the section immediately following the instruction (see **Example 3-67, Example 3-70**). Group all amendments to the same CFR unit together in one instruction (see **Example 3-68**). If there are many changes to one section, use a list format (see **Example 3-69**). When there are changes to several sections, use separate numbered instructions for each section, and display the changed text for each section after the instruction (see **Example 3-70**).

**Example 3-68: Group amendments**

Amend § 150.5 by revising paragraphs (a), (d), (e), and (n) to read as follows:

Remove and reserve §§ 33.1, 33.5, and 33.10.



**Example 3-69: Multiple amendments, single section – list**

**§ 941.103 [Amended]**

3. Amend § 941.103 as follows:

- a. Remove the definitions of “Allocation area”, “Application”, “Central city allocation area”, “Community”;
- b. Remove the parenthetical phrase “(in the form prescribed by HUD)” from the definition “Construction Contract” and “Contract of sale”;
- c. Remove the definitions of “Field Office”, “Housing Assistance Plan”, “Household type”, and “Housing type”; and
- d. Remove from the definition of “Total development cost (TDC)” the term “The Field Office” and add in its place the term “HUD”

**Note:** List instructions in alpha-numeric order. Do not group and list by action.

Example 3-70: Multiple amendments, multiple sections

**PART 1258—FEES**

1. The authority citation for part 1258 continues to read as follows:

Authority: 44 U.S.C. 2116(c).

2. Amend § 1258.2 by revising paragraphs (a) and (c)(3) to read as follows:

**§ 1258.2 Applicability.**

(a) Except as stated in this section, fees for the reproduction of NARA administrative records, archival records, donated historical materials, and records filed with the Office of the Federal Register are in 1258.12.

\* \* \* \* \*

(c) \* \* \*

(3) Motion picture, sound, and video recording materials are among the holdings of the National Archives and Records Administration. Obtain prices for reproduction of these materials from the Motion Picture and Sound and Video Branch, National Archives and Records Administration, Washington, DC 20408.

\* \* \* \* \*

3. Amend § 1258.4 by revising paragraph (b) to read as follows:

**§ 1258.4 Exclusions.**

\* \* \* \* \*

(b) When NARA wishes to disseminate information about its activities to the general public through press, radio, television, and newsreel representatives;

\* \* \* \* \*

4. Amend § 1258.10 by revising paragraph (a) to read as follows:

**§ 1258.10 Mail orders.**

(a) The agency charges a minimum fee of \$6.00 per order for reproductions it mails to the customer.

\* \* \* \* \*

**Alternative instructions for Example 3-70 #3 and #4:**

3. Revise § 1258.4(b) to read as follows:

4. Revise § 1258.10(a) to read as follows:

**3.15 Asterisks**

If you **add** or **revise** only certain units of a section, the amendatory language must state exactly which units are added or revised. Only those units are printed. Use asterisks to represent text which is not changed.

Table 3-8: Number of Asterisks	
# of Asterisks	When to use
5 asterisks * * * * *	To show that a whole paragraph, including its subordinate paragraphs is unchanged.
3 asterisks * * *	To show that the higher level paragraphs remain unchanged when you change text at a subordinate level.
7 asterisks * * * * * * *	To show that a whole row of a table is unchanged (see <a href="#">section 7.4, Example 7-7</a> )

### USE OF 5 ASTERISKS

Use 5 asterisks to show that a whole paragraph, including its subordinate paragraphs, is unchanged.

In [Example 3-71](#), the 5 asterisks before revised paragraph (d) show that paragraphs (a), (b) and (c) remain unchanged. The 5 asterisks that follow revised paragraph (d) show that the remaining text in the section is also unchanged. However, if paragraph (d) is the last paragraph in the section, asterisks following it are unnecessary.

Example 3-71: Using 5 asterisks
<p>Amend § 166.15 by revising paragraph (d) to read as follows:</p> <p><b>§ 166.15 State status.</b> * * * * *</p> <p>(d) The following States issue licenses under cooperative agreements with the Animal and Plant Health Inspection Service, but do not have primary enforcement responsibility under the Act: Kentucky, Maryland, Puerto Rico, Texas, and Washington. * * * * *</p>

### USE OF 3 ASTERISKS

Use 3 asterisks when you change text at a subordinate level. This shows that the higher level paragraphs remain unchanged.

In [Example 3-72](#), the 5 asterisks before paragraph (b) show that paragraph (a) remains unchanged. The 3 asterisks following “(b)” show that (b)(1) through (4) remain unchanged, and the 3 asterisks following “(5)” show that the introductory text of (b)(5) is unchanged.

The 5 asterisks that follow revised paragraph (b)(5)(i) show that the remaining text in the section is unchanged.

**Example 3-72: Using 3 asterisks**

Revise § 202.3(b)(5)(i) to read as follows:

**§ 202.3 Registration of copyright.**

\* \* \* \* \*

(b) \* \* \*

(5) \* \* \*

(i) The Library of Congress receives two complimentary copies promptly after publication of each issue of the serial.

\* \* \* \* \*

The smallest unit you may revise is a sentence. If you revise only a sentence of a paragraph, use 3 asterisks to show that the preceding or remaining sentences (or both) in the paragraph are unchanged (see **Example 3-73**).

**Example 3-73: Using asterisks to revise a sentence**

Amend § 416.916 by revising the first sentence to read as follows:

**§ 416.916 What will happen if I fail to send medical and other evidence?**

You (and, if you are a child, your parent, guardian, relative, or other person acting on your behalf) must cooperate in furnishing us with, or in helping us to obtain or identify, available medical or other evidence about your impairment(s). \* \* \*

Example 3-74: Using asterisks	
<p><b>PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS</b></p> <p>1. The authority citation for part 216 continues to read as follows: Authority: 16 U.S.C. 1361-1407.</p> <p>2. Amend § 216.24 by:</p> <p>a. Revising paragraph (b)(1)(v);</p> <p>b. Adding paragraph (b)(1)(vi); and</p> <p>c. Revising the first sentence of paragraph (b)(3), paragraph (c)(2), and introductory text of paragraph (c)(4)(i).</p> <p>The revisions and addition read as follows:</p> <p><b>§ 216.24 Taking and related acts incidental to commercial fishing operations.</b></p> <p>* * * * *</p> <p>(b) * * *</p> <p>(1) * * *</p> <p>(v) <i>Category 5:</i> Other gear. Commercial fishing operations utilizing trolling, gillnets, hook and line gear, and any gear not classified under paragraphs (b)(1)(i) and (ii) of this section.</p> <p>(vi) <i>Category 6:</i> Commercial passenger fishing vessel operation. Commercial fishing operations from a commercial passenger fishing vessel for the purpose of active sport fishing as defined in § 216.3.</p> <p>* * * * *</p> <p>(3) Send the original and two copies of the application for general permit to the Assistant Administrator. * * *</p> <p>* * * * *</p>	<b>Part Heading</b>
	<b>Authority Citation</b>
	<b>Amendatory Language</b>
	<b>Section Heading</b>
	<b>Indicates Paragraph (a) Unchanged</b>
	<b>Indicates Paragraph (b) Introductory Text Unchanged</b>
	<b>Indicates Paragraphs (b)(1) Introductory Text And (b)(1)(i) through (iv) Unchanged</b>
	<b>Revises Paragraph (b)(1)(v)</b>
	<b>Adds Paragraph (b)(1)(vi)</b>
	<b>Indicates Paragraph (b)(2) Unchanged</b>
<b>Revises First Sentence of Paragraph (b)(3) Indicates Remainder of Paragraph (b)(3) Unchanged</b>	
<b>Indicates Paragraphs (b)(4) through (7) Unchanged</b>	

<p>(c) * * *</p>	<p><b>Indicates Paragraph (c) Introductory Text and Paragraph (c)(1) Unchanged.</b></p>
<p>(2) <i>Operator's certificate of inclusion.</i> You must hold a valid operator's certificate of inclusion if you are the person in charge of and actually controlling fishing operations (after this referred to as the operator) on a vessel engaged in commercial fishing operations for which a Category 2 or Category 6 general permit is required under this subpart. You may not transfer this certificate. You have a valid certificate only for a vessel having a valid vessel certificate of inclusion for the same category. In order to receive a certificate of inclusion, the operator must satisfactorily complete required training. You must renew your operator's certificate of inclusion annually.</p>	<p><b>Revises Paragraph (c)(2).</b></p>
<p>* * * * *</p>	<p><b>Indicates Paragraph (c)(3) Unchanged</b></p>
<p>(4) * * *</p>	<p><b>Indicates Paragraph (c)(4) Introductory Text Unchanged</b></p>
<p>(i) Category 1, 3, 4, 5, and 6 applications:</p>	<p><b>Revises Paragraph (c)(4)(i) Introductory Text</b></p>
<p>* * * * *</p>	<p><b>Indicates Remainder of Section Unchanged</b></p>

**3.16 Cross-references**

We permit you to cross-reference your own or another agency's rules in limited situations. You may only reference rules that are currently in effect.

If you must modify the referenced rules, you cannot use a cross-reference. You must publish the modified rules in full.

You may cross-reference the rules of another agency only if the reference is<sup>47</sup>:

- required by court order, statute, Executive order, or reorganization plan;

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<sup>47</sup> 1 CFR 21.21.

- to rules promulgated by an agency with the exclusive legal authority to regulate in a subject matter area, but the referencing agency needs to apply those rules in its own programs;
- informational or improves clarity rather than being regulatory;
- to test methods or consensus standards produced by a Federal agency, and not eligible for incorporation by reference under 1 CFR part 51, that have replaced or preempted private or voluntary test methods or consensus standards in a subject matter area; or
- to the departmental level from one of its subagencies.

When cross-referencing, you must properly identify the CFR unit being cited. Do not use a nonspecific reference, such as “herein,” “above,” or “below.”<sup>48</sup> When cross-referencing spans of sections or paragraphs, use “through” rather than a hyphen and avoid repeating paragraph levels when possible.

Table 3-9: Cross-reference across Titles	
In title 6, when referencing title 1, chapter I, <i>write ...</i>	... 1 CFR chapter I
In title 6, when referencing title 1, chapter I, part 2, <i>write ...</i>	... 1 CFR part 2
In title 6, when referencing title 1, chapter I, part 2, § 2.7, <i>write ...</i>	... 1 CFR 2.7
In title 6, when referencing title 1, chapter I, part 2, § 2.7, paragraph (a)(2), <i>write ...</i>	... 1 CFR 2.7(a)(2)

Table 3-10: Cross-reference within a Title	
In chapter I, when referencing chapter II <i>write ...</i>	... chapter II of this title
In part 100 (chapter I), when referencing part 300 (chapter III) <i>write ...</i>	... part 300 of this title
In § 250.10 (chapter I), when referencing § 300.19 (chapter III) <i>write ...</i>	... § 300.19 of this title
In part 20, when referencing part 30 <i>write ...</i>	... part 30 of this chapter
In § 20.10, when referencing subpart A of part 30 <i>write ...</i>	... part 30, subpart A of this chapter
In § 20.10, when referencing § 30.19 <i>write ...</i>	... § 30.19 of this chapter

<sup>48</sup> 1 CFR 21.21(a).

Table 3-11: Cross-reference within a Part

In § 20.5, when referencing subpart A of part 20 <i>write ...</i>	... subpart A of this part
In § 20.5, when referencing § 20.15 <i>write ...</i>	... § 20.15
In § 20.5, when referencing § 20.15, paragraph (a), <i>write ...</i>	... § 20.15(a)
In § 20.5, when referencing Appendix A to part 20 <i>write ...</i>	... Appendix A to this part

Table 3-12: Cross-reference within Section

In paragraph (a), when referencing paragraph (b) <i>write ...</i>	... paragraph (b) of this section
In paragraph (a), when referencing paragraph (b)(1) <i>write ...</i>	... paragraph (b)(1) of this section
In paragraph (a)(1), when referencing paragraph (a)(2) <i>write ...</i>	... paragraph (a)(2) of this section
In paragraph (a)(1)(i), when referencing paragraph (a)(1)(ii) <i>write ...</i>	... paragraph (a)(1)(ii) of this section
In paragraph (a), when referencing paragraph (a) <i>write ...</i>	... this paragraph (a)



## Example 3-75: Cross-references in regulatory text

**§ 233.17 Noncompliance and program reporting by the Director.**

The Director must prepare quarterly and annual reports as detailed in **paragraphs (a) and (b) of this section** and must send them to the Regional Administrator.

(a) *Quarterly reports for State 404 programs.* The Director must send noncompliance reports for section 404 discharges specified under **§ 233.24(f)(1)(i) through (iv)** containing the following information:

(1) Name, location, and permit number of each noncomplying permittee; and  
(2) A brief description and date of each instance of noncompliance, which must include the following:

(i) Any unauthorized discharges of dredged or fill material subject to the State's jurisdiction or any noncompliance with permit conditions; and

(ii) A description of investigations conducted and of any enforcement actions taken or contemplated.

(b) *Annual report for State 404 programs.* The State Director must send an annual report assessing the cumulative impacts of the State's permit program on the integrity of State regulated waters. This report must include:

(1) The number and nature of individual permits issued by the State during the year;

(2) The number of acres for each of the categories of waters in **paragraph (b)(1) of this section** which were filled or which received any discharge of dredge material during the year;

(3) The number and nature of permits issued under emergency conditions, as provided in **§ 234.38 of this chapter**; and

(4) The approximate number of persons in the State discharging dredged or fill material under general permits and an estimate of the cumulative impacts of these activities.

**Note.** We used bold in this example as a reader aid, to help you identify the cross-references. **Do not do this in your document.**

### 3.17 What should my rule document look like?

#### Documents

Paper documents must be:

- In triplicate
- Legible
- Single-sided (if you submit an original and 2 certified copies, the copies may be double-sided)
- Double-spaced
- Accompanied by a disc with the Word file (unless you are submitting a manuscript document)

Electronic documents must be:

- Double-spaced

#### Abbreviations

Use the following abbreviations in the *Federal Register*:

- FR is *Federal Register*. (Do not use Fed. Reg. or F.R.) See example
- CFR is Code of Federal Regulations. (Do not use C.F.R.) See example
- U.S.C. is United States Code. See examples
- Pub. L. is Public Law. (Do not use P.L.) See examples
- Stat. is U.S. Statutes at Large. See examples
- a.m. or p.m. is time designation. See example
- E.O. is Executive order. See example
- Proc. is Proclamation
- sec. is section of a Public Law or the United States Code

#### Capitals

Type the following in all capital letters:

- The name of the agency or cabinet-level department (but not the name of the subagency) in the heading of a document
- FEDERAL REGISTER in the parenthetical for dates that we are to compute
- Preamble captions

**Example 3-76: Preamble captions**

**AGENCY:**  
**ACTION:**  
**SUMMARY:**  
**DATES:**  
**ADDRESSES:**  
**FOR FURTHER INFORMATION CONTACT:**  
**SUPPLEMENTARY INFORMATION:**

**Headings**

Document headings are:

- Centered or
- Flush with the left margin

Section headings:

- Are flush with the left margin
- Are on a line separate from the text of the section
- Use the § symbol

**Italics**

Use italics (we no longer require underlining) for:

- Definitions
- Paragraph headings
- Scientific terms
- Ordering statements
- Court cases
- *Federal Register*, when referring to the name of the publication (except type in all capital letters in the parenthetical for dates that we are to compute)

Do not use italics for:

- Emphasis
- Names of books
- Foreign phrases

**Margins**

- One inch at the top, bottom, and right side
- One and one-half inches on the left side

**Page numbers (required for manuscript documents only)**

Number the pages consecutively in one of the following places:

- Centered top

- Centered bottom
- Upper right-hand corner

### Quotation marks

Use quotation marks for names of books, journals, articles, and similar items.

### Quoted material

Quoted material that is appropriate for the preamble (see [section 3.6](#)) should be:

- Single-spaced
- Centered-block style
- Without quotation marks

### References

If your document relates to a previously published *Federal Register* document, you must cite the earlier document. A reference in a preamble to a previously published *Federal Register* document must identify the volume number, page number, and date of the issue in which the document appeared (see [Example 3-77](#)). Do not use legal citations or footnotes in SUMMARY.

#### Example 3-77: References to a previously published *Federal Register* document

8x FR 12345, July 23, 20xx  
8x FR 12345 (July 23, 20xx)

A reference in a preamble to material contained in the CFR should identify the CFR title and part or section number (see [Example 3-78](#)).

#### Example 3-78: References to material contained in the CFR

36 CFR part 1200  
36 CFR 1200.1

### Signature

The signature on your document must match the name in the signature block. For digitally-signed documents, the signature block must meet the name-matching requirements for the digital signature specified in [section 1.6](#).

If you are sending in 1 original and 2 certified copies of your document, certify the signature on the copies.

### Single-spacing

Single-space the following material:

- Quoted material
- Footnotes
- Tables of contents
- Examples
- Tables
- Notes to Tables
- Authority citations
- Notes
- Formulas

### § Symbol

Use the § symbol only for CFR citations. A § is for a single section and §§ is for multiple sections. However, do not use a § symbol to begin a sentence; instead, spell out the word “Section”. Do not use the § symbol or the word “section” in a full citation, for example 36 CFR 1200.1. Do not use the § in any regulatory table of contents. (See **Table 3-13.**)

**Note:** While §§ is for multiple sections, use only one § symbol when citing multiple paragraphs within a single section twist. Also use only a single section twist when citing sections with “or” instead of “and”.

Table 3-13: § symbol	
Use	Don't use
Revise § 1200.1 to read as follows: OR Section 1200.1 is revised to read as follows:	Part 1200 § 1 is revised to read as follows:

### Style

Use the [GPO Style Manual](#) as a guide for punctuation, capitalization, spelling, compounding, and other style matters not addressed in this Handbook. The GPO Style Manual is available free online.

### 3.18 Example of a rule document

#### Example 3-79: Rule document

7515-01

**NATIONAL ARCHIVES AND RECORDS ADMINISTRATION**

**36 CFR Part 1253**

**RIN 3095-AA64**

Suitland Research Room Closure

**AGENCY:** National Archives and Records Administration.

**ACTION:** Final rule.

**SUMMARY:** The National Archives and Records Administration (NARA) is closing the Suitland Research Room at the Washington National Records Center and establishing an appointment system for using archival records remaining in the Washington National Records Center. We are establishing new public research room hours at the Washington National Records Center. The use of the research room has declined since moving the archival records of the Washington National Records Center to archival facilities in Washington, DC, and College Park, MD.

**DATES:** This rule is effective as of [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Sharon Records, 301-000-0000, Sharon.Records@nara.gov.

**SUPPLEMENTARY INFORMATION:** Beginning May 6, 20xx, researchers must make advance arrangements for the use of any archival Federal records remaining in the Washington National Records Center. The last transfer of archival records from Suitland is August 30, 20xx. Call the Suitland Reference Branch at 301-000-0000, Monday through Friday, 8 a.m. to 4:30 p.m. for information on the availability of archival records or advance arrangements to use archival records which have not yet been closed for move preparation. Normally NARA requires one-day notice. When feasible you may make same day arrangements.

Agencies or researchers needing access to agency records still stored at the Washington National Records Center continue to call 301-000-0000 or 301-000-0001 for appointments. After May 3, 20xx, shuttle service for researchers from the National Archives and Records Administration Building in Washington, DC to the Washington National Records Center will be discontinued.

It is not cost-effective to operate the research room on its current schedule, 8 a.m. to 4:30 p.m., Monday through Friday, for the expected use of the room. There will be little or no impact on the public because archival records will continue to be made available to researchers. The National Archives and Records Administration considers this rule to be a procedural rule which is exempt from notice-and-comment under 5 U.S.C. 533(b)(3)(A).

This rule is not a significant rule for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, NARA certifies that these regulatory amendments will not have a significant impact on small business entities.

**List of Subjects in 36 CFR Part 1253**

Archives and records.

For the reasons set forth in the preamble, the National Archives and Records Administration amends part 1253 of title 36 of the Code of Federal Regulations as follows:

**PART 1253—LOCATION OF RECORDS AND HOURS OF USE**

1. The authority citation for part 1253 continues to read:

Authority: 44 U.S.C. 2104(a).

2. Revise § 1253.4 to read as follows:

**§ 1253.4 Washington National Records Center.**

Washington National Records Center, 4205 Suitland Road, Suitland, MD. Mailing address: Washington National Records Center, 4205 Suitland Road, Washington, DC 20409-0002. Hours: 8:30 a.m. to 4 p.m., Monday through Friday. From May 6, 20xx, through August 30, 20xx, make appointments to use archival records at the center appointments to use archival records at the center by calling the Suitland Reference Branch at 301-000-0000.

Dated: March 27, 20xx.

*Signature*

Type name,  
Title.

### 3.19 Other types of rule documents

#### INTERIM RULE

The interim rule responds to an emergency situation and is usually followed by a rule document which confirms that the interim rule is final and may include further amendments. You may request comments in an interim rule and address the comments received in the final rule that adopts the interim rule as final. Or, based on the comments, you may decide to keep the interim rule effective while going through proposed rulemaking. If an interim rule is in effect as of the revision date of the CFR title it amends, we will include it in the CFR (see **Example 3-80, Example 3-81**).

Example 3-80: Interim rule adopted as final without change.

**PART 78—BRUCELLOSIS**

Accordingly, the interim rule amending 9 CFR part 78 which was published at 8x FR 12345 on February 11, 20xx, is adopted as final without change.

Example 3-81: Interim rule adopted as final with change.

Accordingly, the interim rule amending 9 CFR part 51 which was published at 8x FR 12345 on November 26, 20xx, is adopted as final with the following change:

**PART 51—ANIMALS DESTROYED BECAUSE OF BRUCELLOSIS**

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 594.

2. Amend § 51.9 by revising paragraph (h) to read as follows:

**§ 51.9 Claims not allowed.**

\* \* \* \* \*

(h) In the opinion of the Veterinarian in charge, a brucellosis reactor animal may remain in the herd if a reasonable search has been made for the brucellosis reactor animal and the brucellosis reactor animal could not be found and removed.

#### DIRECT FINAL RULE

A direct final rule is not preceded by a proposed rule. It may be used for routine and noncontroversial regulations that your agency believes will not generate adverse comment. A direct final rule becomes effective on a specific future date, unless adverse comment is



received on the rule within a specified comment period before that date. If adverse comment is received, your agency withdraws the rule before its effective date.

A confirmation document is optional. If you receive no adverse comment, your agency is not required to confirm the effective date of the direct final rule, unless you stated in the rule that you would follow-up with a confirmation document.

---

### SPECIAL REQUIREMENTS

In addition to the general requirements for rule documents, some special requirements apply to direct final rules. You must:

- Provide both an effective date and a comment date.
- Explain that the rule is conditional on the non-receipt of adverse comments.
- State that if your agency does receive adverse comments, it will publish a timely *Federal Register* document that withdraws the rule.
- Provide an address for comments.

See **Example 3-82** for a recommended DATES caption in a direct final rule.

#### Example 3-82: DATES caption in a direct final rule

**DATES:** This rule is effective [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further action, unless adverse comment is received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If adverse comment is received, [YOUR AGENCY] will publish a timely withdrawal of the rule in the *Federal Register*.

---

### WITHDRAWAL OF A DIRECT FINAL RULE

A “timely withdrawal” means that your agency commits to publish a document in the Rules category of the *Federal Register* withdrawing the direct final rule on or before its effective date (see **Example 3-83**). If you fail to withdraw the rule by its effective date, you must amend the CFR to restore the previous regulatory text or remove any text added by the direct final rule.

Make sure that you allow enough time between the close of the comment period and the rule’s effective date to prepare and publish a withdrawal document, if one is needed. We recommend you allow at least 60 days between the close of the comment period and the effective date. Withdraw the entire rule if a withdrawal is necessary. Withdrawing only a portion can be confusing to the regulated public. If a partial withdrawal is essential, you

may only withdraw text that was to be added—at the CFR paragraph level or higher—or an entire amendatory instruction and the text that follows it.

If you must withdraw a direct final rule, you may issue another direct final rule on the same subject withdrawing the previous rule. Or you may issue a separate proposed rule document on that subject.

You may publish a companion proposed rule document in the same issue of the *Federal Register* as the initial direct final rule. Then, if you withdraw the direct final rule, that proposed rule can be the prerequisite for a regular final rule. This technique may minimize delays in establishing a final effective date.

**Example 3-83: DATES caption in a document withdrawing a direct final rule.**

**DATES:** Effective [SPECIFY A DATE ON OR BEFORE THE EFFECTIVE DATE OF THE DIRECT FINAL RULE], the direct final rule published at 8x FR 12345, May 15, 20xx is withdrawn.

#### TEMPORARY RULE

A temporary rule responds to a situation that requires a rule be effective for a short, definable period of time. A temporary rule should contain both a beginning effective date and an end date, on which the rule expires (see **Example 3-84**). All regulatory text (additions, revision, nomenclature changes, etc) associated with a temporary rule will be removed from the CFR on the end date. However, text removed or replaced by the temporary rule will not be restored.

You cannot **revise** an authority citation in a temporary rule. If you do revise the authority citation in a temporary rule, the authority citation for the part is removed with the expiration of the temporary rule.

**Example 3-84: DATES caption in a temporary rule**

**DATES:** Effective June 1, 2009 through noon on September 1, 2009.

Adding a “T” to the section designation to identify a section as temporary requires deviation approval and an expiration date in DATES.

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## CRA REVOCATION

Under the Congressional Review Act (CRA), Congress can disapprove, nullify, and revoke regulations that already in effect. But, as with any change in circumstance, we can only take action to remove those regulations following explicit agency instructions in a final rule document.

Contact OFR's Legal Division while you are drafting the rule for publication, to ensure all issues are addressed during the drafting process.

### 3.20 Checklist for rule documents

Use the following checklist to review your proposed rule document before you send it to us:

- ✓ **Billing code.** See **section 1.3.**
  - Is the billing code at the top of the first page in the right-hand corner?
- ✓ **Headings.** See **sections 1.4, 3.3.**
  - Are the correct headings used?
- ✓ **Preamble.** See **section 3.4.**
  - Are all required elements of the preamble included?
  - Does the SUMMARY answer all three questions?
- ✓ **List of Subjects.** See **section 3.7.**
  - Are subject terms listed for each CFR part affected?
  - Are they placed at the end of the preamble?
- ✓ **Words of issuance.** See **section 3.8.**
  - Have you provided a link between the preamble and the regulatory text?
  - Have you removed “proposed” or “proposes” in the words of issuance?
- ✓ **Authority citation.** See **section 3.12.**
  - Is the authority citation correctly placed in the document?
- ✓ **Amendatory language.** See **section 3.14.**
  - Does it specify the exact CFR unit being changed?
  - Does it use the correct terms?
- ✓ **Table of contents.** See **section 3.11.**
  - Is the table of contents included for each subpart or part being set out in full?
  - Do entries agree with the regulatory text?
- ✓ **Paragraphs.** See **section 3.13.**
  - Are all paragraphs of regulatory text indented and lettered or numbered correctly?
- ✓ **Asterisks.** See **section 3.15.**
  - Is the correct style used?
  - Do references meet our criteria?
- ✓ **Tables and illustrations.** See **Chapter 7.**
  - Are they placed exactly where they are to be printed?
  - Are they completely legible?
  - Are charts and maps of photographic quality?
- ✓ **OMB Control Number.** See **section 3.5.**

- If included with the regulatory text, is it placed properly and in the correct style?
- ✓ **Signature and title.** See **sections 1.6, 1.7.**
  - Is the original signature (handwritten in ink, preferably blue) included on the document? (One person may not sign for another or initial a signature.)
  - Is the signer's name and title typed beneath the signature?
  - If a signature date is given, is it correct and not post-dated?
- ✓ **Digital signature.** See **sections 1.6, 1.7 and Chapter 6.**
  - Have you properly set up your digital signature for our web portal?
  - Does the signature name in the document match the digital signature applied to the document?
- ✓ **Quality.** See **section 3.17.**  
*For All Documents*
  - Are original(s) and certified copies legible?
  - Is the document double-spaced?
  - Are the page numbers placed correctly (for manuscript documents)?
  - Are all pages numbered consecutively?
  - Are all pages included?
  - Are the copies properly signed or certified?
- For Documents Physically Submitted*
  - Are there matching copies and certification? See **section 8.2.**
  - Are the original and two copies identical?
  - Are ink changes printed, dated, and initialed on all three copies with the changes reflected in the companion Word document? See **Chapter 5.**
- ✓ **Disks.** See **Chapter 6.** If you have included a disk or CD with your document:
  - Is your file in Microsoft Word? We do not accept \*.pdf format.
  - Is every document on a separate disk or CD?
  - Is the file on the disk identical to the signed original document?
  - Did you include the certification/verification letter stating that the file and document are identical?
  - Is your document the only file on the disk or CD?
  - Does the disk have a label that identifies your agency, the document's subject, and the file name?
  - Is the disk virus-free?
  - Are the file and disk or CD free of password protection or other security measures?
  - Is the file scrubbed clean of hidden meta-data?

## Chapter 4: HOW DO I WRITE A DOCUMENT FOR THE NOTICES CATEGORY?

### 4.1 Notice category document

Use the notices category to provide information of public interest.

Notice documents do not have regulatory text, do not impose requirements with general applicability and legal effect, and do not affect a rulemaking proceeding. Some notices are required to be published by law.

Typical notice documents announce:

- Meetings.
- Availability of applications.
- Issuance or revocation of a license.
- Deadlines for grant applications.
- Availability of certain environmental impact statements.
- Certain petitions.
- Orders or decisions affecting named parties.

### 4.2 Document requirements

In addition to the requirements of **Chapter 1: What are the requirements for drafting any document?**, the headings of a document published in the notices category must include the following items:

- Document Headings
- Authority Citation
- Content

### 4.3 Document Headings

Begin each notice document with headings that identify your agency and the subject matter of the document. If you have information in addition to the requirements of **Chapter 1: What are the requirements for drafting any document?**, present headings for a notice document using the appropriate format, as follows:

Table 4-1: List of document headings		
Department Name	OR	Agency Name
Subagency Name		<b>Agency Docket Number</b>
<b>Agency Docket Number</b>		<b>Regulation Identifier Number (RIN)</b>
<b>Regulation Identifier Number (RIN)</b>		Subject Heading
Subject Heading		

**AGENCY DOCKET NUMBER**

The “agency docket number” is your agency’s internal file number, which may be assigned by FDMS.gov. If you have an agency docket number, you must include it as shown in **Example 1-4, Example 1-7, and Example 1-8**. If you have questions about docket numbers, speak with your agency. We do not know if you have one or if you need one.

**RIN**

The “RIN” is assigned by the Regulatory Information Service Center (also known as RISC) and identifies each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions. Your agency, in consultation with the Office of Management and Budget (OMB), determines if you need a RIN. If you have a RIN, you must include it as shown in **Example 1-3, Example 1-4, Example 1-6, Example 1-7, and Example 1-8**. We do not know if you have a RIN or if you need one.

**4.4 Authority Citations**

You must cite the authority that authorizes your agency to issue your notice.<sup>49</sup> There are two types of authority:

- Statutory:
  - Public Law.
  - United States Code.
- Non-Statutory:

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<sup>49</sup> 1 CFR 22.2.

- Presidential Executive order.
- Presidential Administrative order.
- Presidential Memorandum.
- Agency delegation, policy, or directive.
- Office of Management and Budget circular.
- CFR regulations.

Give the authority citation in the shortest form. The authority citation may appear in narrative form within the notice or in a parenthesis on a separate line at the end of the notice before the signature block.

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### STATUTORY AUTHORITY

Notices are the only document where you may cite a public law, popular law name, or the U.S. Statutes at Large. Each citation of statutory authority must use the United States Code citation, if one exists. To determine the United States Code citation, use one of the following:

- The current edition of the United States Code or its supplement.
- The slip law, for recently signed public laws.

#### Example 4-1: Statutory authority – U.S. Code

Authority: 44 U.S.C. 2101-2118; 50 U.S.C. 6909.

We generally recommend that you use only the United States Code citation (see **Example 4-1**). When a United States Code citation does not exist (for example, in appropriations laws), you must cite the section of the public law, if appropriate, the public law, and the U.S. Statutes at Large (see **Example 4-2**).

#### Example 4-2: Statutory authority – Public Law

Authority: Sec. 8067, Pub. L. 98-473, 98 Stat. 1937.

If you choose to cite the public law and the U.S. Statutes at Large in addition to the United States Code, present them in the order shown in **Example 4-3**.

#### Example 4-3: Statutory authority – Public Law with U.S. Code (same provision)

Authority: Sec. 8, Pub. L. 98-328, 82 Stat. 470 (34 U.S.C. 21).

If you cite two different laws where one has a United States Code citation and the other does not, place the United States Code citation first (see **Example 4-4**).



Example 4-4: Statutory authority – Public Law with U.S. Code (different provisions)

Authority: 42 U.S.C. 2996; Pub. L. 104-208, 110 Stat. 3009; Pub. L. 104-134, 110 Stat. 1321.

NON-STATUTORY AUTHORITY

Cite non-statutory authority by document designation, *Federal Register* citation, and CFR citation (see **Example 4-5**).

Example 4-5: Non-statutory authority – Executive Order

Authority: E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105.

If you include statutory and non-statutory citations in the same authority citation, place the statutory citation first (see **Example 4-6**).

Example 4-6: Statutory and non-statutory authority

Authority: 8 U.S.C. 1161(f); 29 U.S.C. 1801-1872; Secretary's Order 6-84, 49 FR 32473.

4.5 Content format

You may present the text of your notice document in any organized and logical format. If you choose to use OFR’s standard preamble headings, you must use them in the correct order. We recommend that you use the standard headings since your readers can find information more easily and we can tag and share the data electronically.

The preamble captions are:

- AGENCY:**
- ACTION:**
- SUMMARY:**
- DATES:**
- ADDRESSES:**
- FOR FURTHER INFORMATION CONTACT:**
- SUPPLEMENTARY INFORMATION:**

These captions must appear in the order shown, but each is optional for a Notice document. The following are examples and explanations of information for each caption.

**AGENCY**

AGENCY identifies the “who” of a document by specifying the issuing agency. This caption usually repeats the name of the department or non-departmental agency as carried in the document’s headings (see **Example 1-3, Example 1-4**), as well as the subagency name if applicable (see **Example 1-6**). However, unlike the headings section, you may choose to include in this caption the name of offices or agencies which are not listed in the document’s heading (see **Example 1-7**) and which have not signed the document. When these names appear together, put them in order of smallest to largest (see **Example 4-7**).

Example 4-7: AGENCY caption	
<b>AGENCY:</b> Office of the Secretary, USDA.	Subagency, Department
<b>AGENCY:</b> Environmental Protection Agency.	Department
<b>AGENCY:</b> National Park Service, Interior.	Agency, Department
<b>AGENCY:</b> Bureau of Public Debt, Fiscal Service, Treasury.	Bureau, Subagency, Department

**ACTION**

ACTION identifies the type of document by stating what the document does. It does not summarize the substance of a document. Do not allow this caption to become too long.

Example 4-8: Frequently used lines for ACTION caption	
<b>ACTION:</b>	Announcement of meeting.
<b>ACTION:</b>	Availability of survey.
<b>ACTION:</b>	Solicitation of applications.
<b>ACTION:</b>	Notice of availability; request for comments.

This is not an exclusive list of available ACTION lines. If you use a different line, we recommend that you not include the word “Notice” by itself. If you are unsure of using a different ACTION line, check with the Scheduling Unit.

**SUMMARY**

In SUMMARY, you explain the “what,” “why,” and “effect” of the document (see **Example 4-9**). Your SUMMARY should not be longer than a paragraph and should answer these three questions:

- What action is being taken?
- Why is this action necessary?
- What is the intended effect of this action?

Table 4-2: SUMMARY	
Use the following guidelines in preparing a SUMMARY	
DO	DON'T
Be brief.	Use numbered or bulleted lists.
Use language a non-expert will understand.	Include qualifications, exceptions, or specific details.
Describe what the document does, not how it affects the CFR.	Use legal citations (for example, do not use 40 CFR part 52 or 5 U.S.C. 552) or footnotes.
Refer to an act of Congress by the popular name of the act.	Quote
Be brief.	Include more detail than in SUPPLEMENTARY INFORMATION

You may not use the SUMMARY to prove a point or argue a case.

Supporting information, details, discussion of the regulatory history, and precise legal citations are essential in an adequate preamble but do not belong in the SUMMARY. Extended discussion of the rule belongs in SUPPLEMENTARY INFORMATION.

Example 4-9: SUMMARY caption

**SUMMARY:** NMFS has received an update to an application for a direct take permit, in the form of a Hatchery and Genetic Management Plan (HGMP), from the Chelan County Public Utility District (PUD) pursuant to the Endangered Species Act (ESA). The HGMP specifies the operation of a portion of a hatchery program rearing salmon in the Methow Basin within the State of Washington. The update to the existing permit application is available for public comment before NMFS will decide whether to issue the permit for the proposed hatchery program. NMFS intends to issue a separate ESA permit to the Confederated Tribes and Bands of the Yakama Nation for operation of a component of the program described in the application update.

**DATES**

DATES presents the “when” of a document. Include *all* dates that are essential to the document in DATES.

Include the following dates, as applicable:

- Meeting dates.
- Comment deadlines.
- Extension of comment deadlines.
- Expiration dates.
- Other dates the public may need to know.

*Note: Most Notice documents should not include an “effective” date. The “effective” date is the date that the document specifically impacts the CFR and our editors amend the CFR. So, only documents that amend the CFR should have an “effective” date. In some circumstances, you may make an action **described** in a Notice document effective. If you need to make an action described in a document effective, contact us to work out appropriate language.*

Example 4-10: DATES caption format with multiple dates

**DATES:** *Comments due: July 10, 20xx.*

*Workshops:*

1. March 26, 20xx, 9:30 a.m. to 5 p.m., Washington, DC.
2. April 3, 20xx, 9:30 a.m. to 5 p.m., Pittsburgh, PA.
3. April 8, 20xx, 9:30 a.m. to 5 p.m., Hudson, WI.
4. April 15, 20xx, 9:30 a.m. to 5 p.m., Madison, WI.

Only include date information in DATES.

Group dates according to type of date (such as comment and meeting). Place any discussion related to the dates (for example, meeting location, docket access, meeting agenda, content of material available for inspection) in ADDRESSES or SUPPLEMENTARY INFORMATION, as applicable.

### *Calculated dates vs. specific dates*

We only calculate and insert dates tied to *Federal Register* publication or filing on public inspection. In calculating the date, we count the day after publication as the first day, and then each succeeding day, including Saturdays, Sundays, and holidays. When the calculated date falls on a weekend or a Federal holiday, we use the next Federal business day. You can use the “Table of Effective Dates and Time Periods” to see which date we will use. This table appears in the Reader Aids section of the first *Federal Register* issue each month and is available at [www.federalregister.gov](http://www.federalregister.gov). If you need us to calculate and insert a date, present the date as shown in **Example 4-11**. If your agency is using a date, or dates, (frequently referred to as a date certain) for your document, use the format in **Example 4-12**.

#### Example 4-11: DATES caption with an OFR-calculated effective date

**DATES:** Comments are due by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

#### Example 4-12: DATES caption for a document with agency-provided date

**DATES:** Comments due by January 1, 20xx.

## ADDRESSES

ADDRESSES contains the “where” of the document. If you have an address relevant to the document, you must include ADDRESSES.

Include the following types of address (including electronic), as applicable, needed for:

- Mailing public comments
- Sending public comments electronically

- Hand-delivering public comments
- Attending a public hearing (or meeting)
- Examining any material available for public inspection

Only include address information in ADDRESSES.

Include the electronic address and only brief instructions for how to send comments via [www.Regulations.gov](http://www.Regulations.gov), an agency website, or email, and group them by type (see **Example 4-14**). If you need to include detailed instructions, add them to SUPPLEMENTARY INFORMATION. Place any discussion related to the addresses (for example, how to register for a meeting, meeting agenda, or content of material available for inspection) in the SUPPLEMENTARY INFORMATION section (see **Example 4-16**).

OMB has issued a directive that requires agencies to use the “ADDRESSES” template displayed in **Example 4-13** when drafting regulatory actions that offer opportunity for public comment. Even though Notice documents are not classified as regulatory actions under 1 CFR 5.9, you may still need to publish Notice documents that OMB has determined need public comment. You can tailor the following template for your Notice document.

**Example 4-13: OMB-required ADDRESSES template for actions offering the opportunity for public comment**

**ADDRESSES:** You may send comments, identified by [docket number and/or RIN number], by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for sending comments.
- Agency Web Site: [Complete URL]. Follow the instructions for sending comments on the [Agency electronic docket site / website].
- E-mail: [E-mail Address]. Include [docket number and/or RIN number] in the subject line of the message.
- Fax: [Fax Number].
- Mail: [Mailing Address for paper, disk, or CD-ROM submissions].
- Hand Delivery / Courier: [Street Address].

*Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to [Complete URL], including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Public Participation” heading of the SUPPLEMENTARY INFORMATION section of this document.

*Docket:* For access to the docket to read background documents or comments received, go to [Complete URL(s) and/or Street Address(es)].

Remember to:

- Substitute appropriate information for the bracketed items
- List all applicable submission methods
- State full URLs:
  - <http://www.xxxxx.gov>
  - <http://documents.xxxx.gov>
  - <ftp://www.xxx.gov>

You may include brief instructions following bulleted items or in the optional Instructions paragraph. You may also use the optional Instructions and Docket paragraphs to highlight or cross-reference agency-specific instructions and to provide access to rulemaking dockets. Detailed or lengthy instructions (which could include for documents issued by more than one agency) may need to go into SUPPLEMENTARY INFORMATION.

**Example 4-14: Format with different addresses for comments and information collection**

**ADDRESSES:** Address all comments concerning this Notice to Nell C. Commentary, Commissioner, Rehabilitation Services Administration, Mary E. Switzer Building, Room 3325, 330 C Street SW, Washington DC 20202-2735.

Send a copy of any comments that concern information collection requirements to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington DC 20503; Attention: Daniel J. Information.

**Example 4-15: Format with one address for multiple purposes.**

**ADDRESSES:** Mail comments and requests to testify to Hearing Clerk, Room 000, Department of XXXXX, 000 Independence Avenue, SW, Washington DC 20553-0002; the hearing will be held in Room 111, 000 Independence Avenue, SW, Washington DC 20553-0002.

Place detailed information about electronic access and filing in the SUPPLEMENTARY INFORMATION section of the preamble under a heading such as “Electronic Access and Filing Addresses” (see **Example 4-16**).



**Example 4-16: Format directing the public to SUPPLEMENTARY INFORMATION for details on how to submit electronic comments and data.**

**ADDRESSES:** Submit electronic comments and other data to [oppdocket@epamail.epa.gov](mailto:oppdocket@epamail.epa.gov). See SUPPLEMENTARY INFORMATION for file formats and other information about electronic filing.  
[omitted preamble text]

**SUPPLEMENTARY INFORMATION:**  
[omitted preamble text]Electronic Access and Filing  
You may submit comments and data by sending electronic mail (E-mail) to: [oppdocket@epamail.epa.gov](mailto:oppdocket@epamail.epa.gov).

Submit comments as an ASCII file avoiding the use of special characters and any form of encryption. The OPP also accepts comments and data on disks in Word file format. Identify all comments and data in electronic form by the docket number [PP 4F4327/R2253]. You may file electronic comments on this proposed rule online at many Federal Depository Libraries. File an electronic copy of objections and hearing requests with the Hearing Clerk at: [oppdocket@epamail.epa.gov](mailto:oppdocket@epamail.epa.gov).

**FOR FURTHER INFORMATION CONTACT**

In FOR FURTHER INFORMATION CONTACT, you must include the name and telephone number of a **person** within your agency who can answer questions about the document. You should also include their email address. This email address may appear in both this section and the ADDRESSES section if your point-of-contact manages another aspect of the document, such as the location to send email comments. You may list two or more people to contact concerning different aspects of a document (see **Example 4-17**). You may also include a group email address.

**Example 4-17: FOR FURTHER INFORMATION CONTACT caption with contact information**

**FOR FURTHER INFORMATION CONTACT:** John Regwriter, 202-000-0000, [John.Regwriter@agency.gov](mailto:John.Regwriter@agency.gov).

**FOR FURTHER INFORMATION CONTACT:**  
*Technical information:* John Regwriter, 202-000-0000, [John.Regwriter@agency.gov](mailto:John.Regwriter@agency.gov).  
*Legal information:* Mary Regulatory, 202-000-0001, [mregulatory@agency.gov](mailto:mregulatory@agency.gov).

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## SUPPLEMENTARY INFORMATION

In this section, include background information and necessary details in language easily understood by the reader. Use descriptive headings to highlight topics or organize text. If a reference to the *Federal Register* or CFR is necessary, use the format shown in **Example 4-19, Example 4-20**.

You may use the SUPPLEMENTARY INFORMATION section to provide additional information that is required by law, agency policy, or Executive Order.

### 4.6 What is an OMB control number and where do I put it?

The Paperwork Reduction Act requires that all agencies submit their information collection requirements and related forms to the Office of Management and Budget (OMB) for review. If OMB approves the information collection requirements, it assigns them a control number.

### 4.7 When can I use direct quotes?

The OFR does not allow lengthy or excessive quotation from Federal regulations or Federal law. This includes text from regulatory documents published in the *Federal Register*. However, if your agency has a compelling legal reason to extensively quote this type of material, contact OFR's Legal Affairs and Policy Division ([fedreg.legal@nara.gov](mailto:fedreg.legal@nara.gov)) before you submit your document for publication.

## 4.8 What should my notice document look like?

### Documents

Paper documents must be:

- In triplicate
- Legible
- Single-sided (if you submit an original and 2 certified copies, the copies may be double-sided)
- Double-spaced
- Accompanied by a disc with the Word file (unless you are submitting a manuscript document)

Electronic documents must be:

- Double-spaced

### Abbreviations

Use the following abbreviations in the *Federal Register*:

- FR is *Federal Register*. (Do not use Fed. Reg. or F.R.) See example
- CFR is Code of Federal Regulations. (Do not use C.F.R.) See example
- U.S.C. is United States Code. See examples
- Pub. L. is Public Law. (Do not use P.L.) See examples
- Stat. is U.S. Statutes at Large. See examples
- a.m. or p.m. is time designation. See example
- E.O. is Executive order. See example
- Proc. is Proclamation
- sec. is section of a Public Law or the United States Code

### Capitals

Type the following in all capital letters:

- The name of the agency or cabinet-level department (but not the name of the subagency) in the heading of a document
- FEDERAL REGISTER in the parenthetical for dates that we are to compute
- Preamble captions

Example 4-18: Preamble captions

**AGENCY:**  
**ACTION:**  
**SUMMARY:**  
**DATES:**  
**ADDRESSES:**  
**FOR FURTHER INFORMATION CONTACT:**  
**SUPPLEMENTARY INFORMATION:**

### Headings

Document headings are:

- Centered or
- Flush with the left margin

### Italics

Use italics (we no longer require underlining) for:

- Definitions
- Paragraph headings
- Scientific terms
- Ordering statements
- Court cases
- *Federal Register*, when referring to the name of the publication (except type in all capital letters in the parenthetical for dates that we are to compute)

Do not use italics for:

- Emphasis
- Names of books
- Foreign phrases

### Margins

- One inch at the top, bottom, and right side
- One and one-half inches on the left side

### Page numbers(required for manuscript documents only)

Number the pages consecutively in one of the following places:

- Centered top
- Centered bottom
- Upper right-hand corner

### Quotation marks

Use quotation marks for names of books, journals, articles, and similar items.

### Quoted material

Quoted material should be:

- Single-spaced
- Centered-block style
- Without quotation marks

### References

If your document relates to a previously published *Federal Register* document, you must cite the earlier document. A reference in a preamble to a previously published *Federal Register* document must identify the volume number, page number, and date of the issue in which the document appeared (see **Example 4-19**). Do not use legal citations or footnotes in SUMMARY.

**Example 4-19: References to a previously published *Federal Register* document**

8x FR 12345, July 23, 20xx  
8x FR 12345 (July 23, 20xx)

A reference in a preamble to material contained in the CFR should identify the CFR title and part or section number (see **Example 4-20**).

**Example 4-20: References to material contained in the CFR**

36 CFR part 1200  
36 CFR 1200.1

**Signature**

The signature on your document must match the name in the signature block. For digitally-signed documents, the signature block must meet the name-matching requirements for the digital signature specified in **section 1.6**.

If you are sending in 1 original and 2 certified copies of your document, certify the signature on the copies.

**Single-spacing**

Single-space the following material:

- Quoted material
- Footnotes
- Tables of contents
- Examples
- Tables
- Notes to Tables
- Authority citations (if not in narrative form)
- Notes
- Formulas

**§ Symbol**

Use the § symbol only for CFR citations. A § is for a single section and §§ is for multiple sections. However, do not use a § symbol to begin a sentence; instead, spell out the word “Section”. Do not use the § symbol or the word “section” in a full citation, for example 36 CFR 1200.1. (See **Table 4-3**.)

**Note:** While §§ is for multiple sections, use only one § symbol when citing multiple paragraphs within a single section twist. Also use only a single section twist when citing sections with “or” instead of “and”.

Table 4-3: § symbol	
Use	Don't use
In § 1200.1, which provides that... OR Section 1200.1 provides that ...	1200 § 1 provides that ...
Under 36 CFR 1200.1, we can ...	Under 36 CFR Section 1200.1, we can ... OR Under 36 CFR § 1200.1, we can ...

**Style**

Use the [GPO Style Manual](#) as a guide for punctuation, capitalization, spelling, compounding, and other style matters not addressed in this Handbook. The GPO Style Manual is available free online.

## 4.9 Example of a notice document

### Example 4-21: Notice document

[Billing Code]

**DEPARTMENT OF EDUCATION**  
**[Docket No.: ED-2016-ICCD-0042]**

**Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application Package for Strengthening Historically Black Graduate Institutions (HBGI)**

**AGENCY:** Office of Postsecondary Education (OPE), Department of Education (ED).

**ACTION:** Notice of Information Collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new information collection.

**DATES:** Interested persons are invited to submit comments on or before May 18, 2016.

**ADDRESSES:** To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED- 2016-ICCD-0042. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E-103, Washington, DC 20202-4537.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Win Sherry, 202-555-5555.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and



provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* Application Package for Strengthening Historically Black Graduate Institutions (HBGI).

*OMB Control Number:* 1840-NEW. *Type of Review:* A new information collection.

*Respondents/Affected Public:* State, Local, and Tribal Governments.

*Total Estimated Number of Annual Responses:* 24.

*Total Estimated Number of Annual Burden Hours:* 576.

*Abstract:* The Strengthening Historically Black Graduate Institutions (HBGI) Program provides grants to assist institutions in establishing and strengthening their physical plants, development offices, endowment funds, academic resources and student services so that they may continue to participate in fulfilling the goal of equality of educational opportunity in graduate education.

Dated: March 27, 20xx.

*Signature*

Type name,  
Title.

## 4.10 Special types of notice documents

### SUNSHINE ACT NOTICES

The Government in the Sunshine Act requires certain agencies to publish notices of meetings. The law requires that these notices be publicly announced one week prior to the meeting and submitted immediately for publication in the *Federal Register*. To speed publication, we have developed standard formats for Sunshine Act documents. Sunshine Act documents received before 4 p.m. are published on a 2-day publication schedule and Sunshine Act documents received after 4 p.m. are placed on a 3-day publication schedule.

There are three formats for Sunshine Act documents: one for meetings completely open or closed to the public (see **Example 4-22**), one partially open or closed to the public (see **Example 4-23**), and one for changes to a previously announced meeting (see **Example 4-24**). You may also use our standard document and content headings, but you may NOT use some standard headings and some Sunshine Act headings.

#### Example 4-22: Completely open or closed to the public

<p>[NAME OF YOUR AGENCY]  Sunshine Act Meetings  <b>TIME AND DATE:</b>  <b>PLACE:</b>  <b>STATUS:</b>  <b>MATTERS TO BE CONSIDERED:</b>  <b>CONTACT PERSON FOR MORE INFORMATION:</b>  <i>Signature</i>  Type name,  Title</p>	Billing Code
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Example 4-23: Partially open or closed to the public	
<p>[NAME OF YOUR AGENCY] Sunshine Act Meetings</p> <p><b>TIME AND DATE:</b></p> <p><b>PLACE:</b></p> <p><b>STATUS:</b> Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.</p> <p><b>MATTERS TO BE CONSIDERED:</b></p> <p><b>PORTIONS OPEN TO THE PUBLIC:</b></p> <p><b>PORTIONS CLOSED TO THE PUBLIC:</b></p> <p><b>CONTACT PERSON FOR MORE INFORMATION:</b></p> <p><i>Signature</i></p> <p>Type name, Title</p>	<p>Billing Code</p>

Example 4-24: Change to previously announced meeting	
<p>[NAME OF YOUR AGENCY] Sunshine Act Meetings</p> <p><b>FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:</b></p> <p><b>PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:</b></p> <p><b>CHANGES IN THE MEETING:</b></p> <p><b>CONTACT PERSON FOR MORE INFORMATION:</b></p> <p><i>Signature</i></p> <p>Type name, Title</p>	<p>Billing Code</p>

**PRIVACY ACT DOCUMENTS**

The Privacy Act requires each agency to publish its systems of records in the *Federal Register* in individual system of records notices (SORN).

OMB Circular A-108<sup>50</sup> requires that each SORN published in the *Federal Register* must contain a preamble with all of the captions listed in **section 4.5** (also see **Example 4-18**). All SORNs have the same subject line: **Privacy Act of 1974; System of Records**. You must use an appropriate ACTION line from **Table 4-4**.

Table 4-4: SORN ACTION lines

- ACTION:** Notice of a new system of records.
- ACTION:** Notice of a modified system of records.
- ACTION:** Rescindment of a system of records notice.
- ACTION:** Notice of a new matching program.
- ACTION:** Notice of a modified matching program.

Each system of records has specific information which we identify as data elements. OMB has provided a standard caption heading for each data element, along with a description of the information that goes with each caption. Include all required information in your SORN under one of these data elements (see **Example 4-25**, **Example 4-26**). You must present the data element as shown including capitalization and punctuation. You must use the data elements designated with asterisks. Do not use any other data elements.

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<sup>50</sup> 81 FR 94424 (December 23, 2016).

Example 4-25: The system of records data elements

**\*SYSTEM NAME AND NUMBER:** [A name for the system that is unambiguous and clearly identifies the purpose or character of the system, and the number of the system].

**\*SECURITY CLASSIFICATION:** [An indication of whether any information in the system is classified].

**\*SYSTEM LOCATION:** [The address of the agency and/or component responsible for the system, as well as the address of any third-party service provider].

**\*SYSTEM MANAGER(S):** [The title, business address, and contact information of the agency official who is responsible for the system].

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:** [The specific authority that authorizes the maintenance of the records in the system].

**PURPOSE(S) OF THE SYSTEM:** [A description of the agency's purpose(s) for maintaining the system].

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:** [The categories of individuals on whom records are maintained in the system].

**CATEGORIES OF RECORDS IN THE SYSTEM:** [The categories of records maintained in the system and, if practicable and useful for public notice, specific data elements].

**RECORD SOURCE CATEGORIES:** [The categories of sources of records in the system].

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:** [Each routine use of the records contained in the system, including the categories of users and the purpose of such use].

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:** [The policies and practices of the agency regarding the storage of records].

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:** [The policies and practices of the agency regarding retrieval of records].

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:** [The policies and practices of the agency regarding retention and disposal of records].

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:** [A description of the administrative, technical, and physical safeguards to which the system is subject].

**RECORD ACCESS PROCEDURES:** [The agency procedures whereby an individual can be notified at his or her request how he or she can gain access to any record pertaining to him or her in the system].

**CONTESTING RECORD PROCEDURES:** [The agency procedures whereby an individual can be notified at his or her request how he or she can contest the content of any record pertaining to him or her in the system].

**NOTIFICATION PROCEDURES:** [The agency procedures whereby an individual can be notified at his or her request if the system contains a record pertaining to him or her].

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:** [Any Privacy Act exemptions promulgated for the system].

**\*HISTORY:** [Citation(s) to the last full Federal Register notice that includes all of the elements that are required to be in a SORN, as well as any subsequent notices of revision].

Example 4-26: Matching program data elements

**\*PARTICIPATING AGENCIES:** [The name of the participating agency or agencies, including any non-Federal agencies].

**AUTHORITY FOR CONDUCTING THE MATCHING PROGRAM:** [The specific authority for conducting the matching program].

**PURPOSE(S):** [A plain-language description of the agency's purpose(s) for conducting the matching program].

**CATEGORIES OF INDIVIDUALS:** [The categories of individuals whose information is involved in the matching program].

**CATEGORIES OF RECORDS:** [The categories of records involved in the matching program and the specific data elements that are matched].

**SYSTEM(S) OF RECORDS:** [The names of all relevant systems of records and a citation of the system of records notices].

MODIFYING OR RESCINDING A SYSTEM OF RECORDS

Agencies may choose to not publish the entire SORN when modifying a system of records. However, this option is **only** available **if** the original SORN was published following this format that OMB established in December 2016. Agencies must clearly establish in the modified SORN that the document only revises the data elements included and does not revise the entire SORN. When using this format, you must include the data elements in **Example 4-27** and any other relevant data elements.

When rescinding a system of records, include only the data elements in **Example 4-28**.

Example 4-27: Required data elements for modifying a system of records

**SYSTEM NAME AND NUMBER:** [A name for the system that is unambiguous and clearly identifies the purpose or character of the system, and the number of the system].

**SECURITY CLASSIFICATION:** [An indication of whether any information in the system is classified].

**SYSTEM LOCATION:** [The address of the agency and/or component responsible for the system, as well as the address of any third-party service provider].

**SYSTEM MANAGER(S):** [The title, business address, and contact information of the agency official who is responsible for the system].

\* \* \* \* \*

[Review the other elements in **Example 4-25** and include elements for which revisions are necessary. For example, if you are modifying the categories of records in the system, include that element in the revised SORN.]

\* \* \* \* \*

**HISTORY:** [Citation(s) to the last full Federal Register notice that includes all of the elements that are required to be in a SORN, as well as any subsequent notices of revision].

Example 4-28: Required data elements for rescinding a system of records

**SYSTEM NAME AND NUMBER:** [The name and number of the system that is being discontinued].

**HISTORY:** [Citation(s) to the last full Federal Register notice that includes all of the elements that are required to be in a SORN, as well as any subsequent notices of revision].

MODIFYING A MATCHING PROGRAM

Agencies may choose to not publish the entire Matching Program notice when issuing a modification. However, this option is **only** available **if** the original Matching Program notice was published following this format that OMB established in December 2016. Agencies must clearly establish in the Notice of modification that the document only revises the data elements included and does not revise the entire Matching Program. When using this format, you must include the data elements in **Example 4-29** and any other relevant data elements.

Example 4-29: Required data elements for modifying a matching program

**PARTICIPATING AGENCIES:** [The name of the participating agency or agencies, including any non-Federal agencies].

\* \* \* \* \*

[Review the other elements in **Example 4-26** and include elements for which revisions are necessary. For example, if you are modifying the categories of records involved in the matching program, include that element in the revised SORN.]



## 4.11 Checklist for notice documents

Use the following checklist to review your notice document before you send it to us:

- ✓ **Billing code.** See **section 1.3.**
  - Is the billing code at the top of the first page in the right-hand corner?
- ✓ **Headings.** See **sections 1.4, 4.3.**
  - Are the correct headings used?
- ✓ **Preamble.** See **section 4.5.**
  - Are all required elements of the preamble included?
  - Does the SUMMARY answer all three questions?
- ✓ **Authority citation.** See **section 4.4.**
  - Is the authority citation correctly placed in the document?
- ✓ **Tables and illustrations.** See **Chapter 7.**
  - Are they placed exactly where they are to be printed?
  - Are they completely legible?
  - Are charts and maps of photographic quality?
- ✓ **OMB Control Number.** See **section 4.6.**
- ✓ **Signature and title.** See **sections 1.6, 1.7.**
  - Is the original signature (handwritten in ink, preferably blue) included on the document? (One person may not sign for another or initial a signature.)
  - Is the signer's name and title typed beneath the signature?
  - If a signature date is given, is it correct and not post-dated?
- ✓ **Digital signature.** See **sections 1.6, 1.7 and Chapter 6.**
  - Have you properly set up your digital signature for our web portal?
  - Does the signature name in the document match the digital signature applied to the document?
- ✓ **Quality.** See **section 4.8.**

*For All Documents*

  - Are original(s) and certified copies legible?
  - Is the document double-spaced?
  - Are the page numbers placed correctly (for manuscript documents)?
  - Are all pages numbered consecutively?
  - Are all pages included?
  - Are the copies properly signed or certified?

*For Documents Physically Submitted*

- Are there matching copies and certification? See **section 8.2**.
- Are the original and two copies identical?
- Are ink changes printed, dated, and initialed on all three copies with the changes reflected in the companion Word document? See **Chapter 5**.
- ✓ **Disks.** See **Chapter 6**. If you have included a disk or CD with your document:
  - Is your file in Microsoft Word? We do not accept \*.pdf format.
  - Is every document on a separate disk or CD?
  - Is the file on the disk identical to the signed original document?
  - Did you include the certification/verification letter stating that the file and document are identical?
  - Is your document the only file on the disk or CD?
  - Does the disk have a label that identifies your agency, the document's subject, and the file name?
  - Is the disk virus-free?
  - Are the file and disk or CD free of password protection or other security measures?
  - Is the file scrubbed clean of hidden meta-data?

Document Drafting Handbook | April 2019

## Chapter 5: HOW DO I CORRECT A DOCUMENT?

### 5.1 Correcting a document before submission

If you find an error before you send your document to the OFR, you or your agency's Federal Register Liaison Officer may make a legible ink change to the document. Write your initials and the date in the right-hand margin where you made the change.

### 5.2 Correcting a document after submission but before publication

If you find a substantive error in an unpublished document, immediately contact your agency's Federal Register Liaison Officer.<sup>51</sup>

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#### BEFORE FILING

If we have not yet filed the document for public inspection, your Liaison Officer may request minor corrections by a letter (pdf of signed letter on agency letterhead), including the first page of the document and the page with the correction, to [fedreg.liaison@nara.gov](mailto:fedreg.liaison@nara.gov). We will make the corrections as time and resources permit.

Extensive changes are difficult to make once we have assigned a publication date for your document. If you need to make extensive changes to your document, we may withdraw the document from publication and ask you to resubmit the document for publication after you have made the corrections.

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#### AFTER FILING

If we have filed the document for public inspection, your Liaison Officer may make minor corrections by emailing a letter detailing the change.

The letter must be on agency letterhead and be signed (and scanned as a pdf) and we must receive it before 12 noon of the workday before the document's scheduled publication date.

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<sup>51</sup> 1 CFR 18.13(a).

Your Liaison Officer must also telephone us as soon as possible to confirm that we have received the letter (see [section 5.4](#)).

When we receive your letter, if we are able, we make corrections and re-post your document on public inspection with an editorial note. The OFR retains both the original document and the letter of correction.<sup>52</sup>

Extensive changes are difficult to make once we have assigned a publication date for your document. If you need to make extensive changes to your document, we may withdraw the document from publication and ask you to resubmit the document for publication after you have made the corrections.

### 5.3 Withdrawing a document from publication

If necessary, you may completely withdraw a document from publication. If we have not placed the document on file for public inspection, we will make it available for pick-up. If we have already placed the document on file for public inspection, we will withdraw it and it will not publish in the *Federal Register*. We will replace your document with a document stating the fact of the withdrawal. That document remains on public inspection through the date it was originally scheduled to publish. Further, the document becomes our record, so we cannot return it to you.<sup>53</sup>

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#### BEFORE FILING

If we have not yet filed the document for public inspection, your Liaison Officer may telephone the OFR during regular office hours (8:45 a.m. to 5:15 p.m. ET) to request that we withdraw the document from publication.

The Liaison Officer must follow up immediately with a signed letter on agency letterhead (scanned as pdf and emailed) requesting the withdrawal (see [section 5.4](#)). If you are requesting withdrawal on the business day before your document is scheduled to file, we must receive your letter before 4:00 pm to ensure that we can remove from the next day's public inspection list.

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<sup>52</sup> 1 CFR 18.13(b).

<sup>53</sup> 1 CFR 18.13(a).

**We will not withdraw the document until we receive your letter.**

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#### AFTER FILING

If we have filed the document for public inspection, your Liaison Officer may withdraw it from publication only by emailing a pdf (preferred method) or faxing the signed letter requesting the withdrawal (see [section 5.4](#)).

The letter must reach the OFR **before 12 noon** on the business day before the document's scheduled publication date.

**We will not withdraw the document until we receive your letter.**

If you wish to publish the document on a later date, we consider that a new document. You must send a new document package and request for publication, following the procedures in [Chapter 8: How do I publish a document in the Federal Register?](#)

### 5.4 Letter requirements for corrections and withdrawals

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#### SIGNATURES

OFR's standard signature policies apply to letters withdrawing or correcting documents. An employee with authority to submit *Federal Register* documents must sign this letter and that signature must match the name on the letter; usually this is your agency's Liaison Officer. If your agency's Liaison Officer or alternate is not available to sign the letter, contact OFR's Scheduling Unit to verify the authority of the signer.

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#### LETTERS

If we require a letter to correct or withdraw a document, please email us a scanned PDF file of the signed letter. If you cannot email a scanned letter, please fax it and contact our office to ensure that we received the fax. We cannot accept correction letters through the web portal. Please follow these steps to submit a letter via email:

- Follow the appropriate format in [Appendix A: Model Letters](#).
- Print and sign your letter. Make sure the name in the signature block and the signature name match.
- Scan the letter and save it as a .pdf file.

- Email the file to the Office of the Federal Register. If you have already been in contact with a staff member and have discussed the corrections with them, you may send it to them directly. If you have not been in contact with a staff member, please email it to the general scheduling email ([fedreg.liaison@nara.gov](mailto:fedreg.liaison@nara.gov)).

## 5.5 Who is responsible for correcting my document?

Generally, the party making the error has the responsibility to correct it.<sup>54</sup>

### OFR CORRECTIONS TO A PUBLISHED DOCUMENT

If the OFR or GPO makes a processing error that changes the text of a document, then we will fix it with an OFR correction.

**Note:** *Non-substantive edits that conform to GPO style requirements are not processing errors and we will not issue a correction to address these edits.*

As soon as possible after publication, proofread the published document against a copy of the document that was sent.

If you find a significant printing error, your Liaison Officer must contact us to arrange for a correction. We will prepare and publish a correction that conforms to your original document. We use a unique correction format to reduce confusion. Do not use this format to prepare corrections that your agency is responsible for.<sup>55</sup>

However, if the processing error was caused by hidden characters or fields or because of information or code in document headers or footers, we may decline to publish a correction.

### AGENCY CORRECTIONS TO A PUBLISHED DOCUMENT

As soon as possible after publication, proofread the published document against a copy of the document that was sent.

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<sup>54</sup> 1 CFR 18.15(c).

<sup>55</sup> 1 CFR 18.15(b).

If you find an error in your original document, you must issue a signed document correcting the error. Use the format appropriate for the section of the *Federal Register* where the original document appeared. Do not use the OFR format to prepare your agency's corrections.

## 5.6 Corrections to a rule

### NON-SUBSTANTIVE ERRORS

If you discover obvious misspellings or other non-substantive errors in CFR text as set out in a rule document, your Liaison Officer should contact our Code of Federal Regulations unit. We sometimes make these corrections in the next edition of the CFR without requiring a *Federal Register* correction.<sup>56</sup>

### SUBSTANTIVE ERRORS

You must publish a document in the *Federal Register* to correct substantive errors in your original document. A document that corrects a previously published rule must:

- Repeat the agency headings of the document being corrected.
- Carry a CFR heading for only the CFR parts affected by the correction (list all CFR parts if the preamble is corrected).
- Carry a Docket number if the original document carried a Docket number.
- Carry a RIN if the original document carried a RIN.
- Repeat the subject heading of the document being corrected with a semicolon and the word "Correction" added at the end.
- Follow the preamble requirements for a rule.
- Provide an Effective Date:
  - For CFR text (even if the preamble is also corrected), the date must match the original effective date
  - For preamble corrections only, you may have a different effective date
- To correct an entire paragraph, set out the section heading, and use asterisks (see [section 3.15](#)).

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<sup>56</sup> 1 CFR 18.15(a).

There are two different formats for correcting regulatory text in a rule document. Both require signed documents. The format used depends on whether the effective date of the rule has occurred.

**Note:** *If you are correcting only a docket number or preamble text, use the format in **Example 5-1**, even if the effective date has passed.*

If the effective date of the rule you are correcting has not yet occurred, use the format for corrections to the *Federal Register* in **Example 5-1, Example 5-2**.



Example 5-1: Corrections to the *Federal Register* - amendatory instruction 1 sentence

The Food and Drug Administration published a rule on December 23, 20xx which will become effective one year later on December 23, 20XX. On April 14, 20XX (before the effective date), FDA published a correction to the Federal Register.

BILLING CODE

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 341**

**[Docket No. 76N-052G]**

**RIN 0910-AA01**

**Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Final Monograph for Combination Drug Products; Correction**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a final rule that appeared in the *Federal Register* on December 23, 20XX. The document issued a final monograph that established conditions under which over-the-counter (OTC) cold, cough, allergy, bronchodilator, and antiasthmatic (cough-cold) combination drug products are generally recognized as safe and effective and not misbranded as part of its ongoing review of OTC drug products.

**DATES:** Effective December 23, 20XX.

**FOR FURTHER INFORMATION CONTACT:** Cazemiro R. Martin or Gerald M. Rachanow, Center for Drug Evaluation and Research (HFD-560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-2222.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 02-32158 appearing on page 78158 in the *Federal Register* of Monday, December 23, 20xx, the following corrections are made:

**§ 341.40 [Corrected]**

1. On page 78168, in the second column, in part 341, in amendment 2, the instruction “Section 341.40 is added to subpart C to read as follows:” is corrected to read “Section 341.40 is added to subpart B to read as follows:”

**§ 341.70 [Corrected]**

2. On page 78170, in the second column, in § 341.70, in paragraph (b), “Repeat every hour as needed or as directed by a doctor.” is corrected to read “Repeat every 2 hours as needed or as directed by a doctor.”

Dated: April 8, 20XX.

Name,

Title

### Example 5-2: Corrections to the Federal Register – paragraph

[PREAMBLE]

#### **Federal Register Correction**

Effective March 13, 2018, in rule document 2016-28714 at 81 FR 90126 in the issue of December 13, 2016, on page 90172, in the third column, in amendatory instruction 18, paragraph (e)(1) is corrected to read as follows:

#### **§ 91.175 [Corrected]**

(e) \* \* \*

(1) Whenever operating an aircraft pursuant to paragraph (c) of this section or § 91.176 of this part, and the requirements of that paragraph or section are not met at either of the following times:

(i) When the aircraft is being operated below MDA; or

(ii) Upon arrival at the missed approach point, including a DA/DH where a DA/DH is specified and its use is required, and at any time after that until touchdown.

If the effective date of the rule you are correcting has already occurred, [see section 5.9](#)

## 5.7 Corrections to a proposed rule

A document that corrects a previously published proposed rule must:

- Repeat the agency headings of the document being corrected.
- Carry a CFR heading for only the CFR parts affected by the correction (list all CFR parts if the preamble is corrected).
- Carry a Docket number if the original document carried a Docket number.
- Carry a RIN if the original document carried a RIN.
- Repeat the subject heading of the document being corrected, followed by a semicolon and the word “Correction.”
- Follow the preamble requirements for a proposed rule.
- Cite the *Federal Register* date, page, column, CFR section, paragraph, and line or sentence in the correcting instruction.
- Present a correction to an entire sentence or larger unit of CFR text as an amendment.
- Use the amendatory term “correct,” set out the section heading, and use asterisks (see [section 2.15](#)).

Example 5-3: Proposed rule correction

[BILLING CODE]

**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

**25 CFR Part 290**

**RIN 1076-AD14**

**Tribal Revenue Allocation Plans; Correction**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Proposed rule; correction.

**SUMMARY:** This document corrects the preamble to a proposed rule published in the *Federal Register* of June 7, 20xx, regarding Tribal Revenue Allocation Plans. This correction clarifies that the proposed rule applies prospectively to plans submitted for approval from the effective date of the final rule.

**DATES:** January 29, 20XX.

**FOR FURTHER INFORMATION CONTACT:** Nancy Jones, 202-000-0000.

**SUPPLEMENTARY INFORMATION:**

**Correction**

In proposed rule FR Doc. 9x-14061, beginning on page 12345 in the issue of June 7, 20xx, make the following correction, in the Supplementary Information section. On page 12346 in the 3rd column, add at the end of the second paragraph the following:

“This rule applies to Tribal Revenue Allocation Plans submitted and approved after the effective date of the final rule. You need not resubmit previously approved Tribal Revenue Allocation Plans for review and approval by the BIA. The previously approved plans remain in effect. However, submit amendments to approved Tribal Revenue Allocation Plans to the BIA for approval under the proposed regulation.”

Dated: July 23, 20xx.

[SIGN]

Type name,

Title.

**5.8 Corrections to a notice**

A correction to a notice document must:

- Repeat the agency and subject headings of the document being corrected with a semicolon and the word “Correction” at the end of the subject heading.
- Carry a Docket number if the original document carried a Docket number.
- Carry a RIN if the original document carried a RIN.
- Cite the *Federal Register* date, page, column, and location (paragraph, sentence, or line) in the correction instruction.