

RRC Guidance on Incorporation Links

Please Note: This document is intended to provide general guidance that would be applicable to most situations, but the factual or legal circumstances of a particular rule may lead to a different recommended approach. The Commission has approved this as non-binding guidance interpreting existing law.

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Issue:

Incorporation by reference is governed by G.S. 150B-21.6. The language at issue in this memo is: “The agency must have copies of the incorporated material available for inspection and must **specify in the rule both where copies of the material can be obtained** and the cost on the date the rule is adopted of a copy of the material.” This memo addresses the circumstance where the agency wishes to specify a website where copies of the material can be obtained.

General:

To satisfy this requirement with a website, the agency must provide a direct link to the material being incorporated in the text of the rule. The link is to be formatted according to the requirements in the OAH Style Guide and other publication requirements but, notably, cannot be a hyperlink. In choosing where to direct the link, the agency should strive to provide a website where the incorporated material can be accessed with as few additional steps as possible. If possible, there should be no more than one additional step (or click) to access the incorporated material (i.e. providing a direct link to a site where the document can be clicked on to download). In circumstances where it is not possible to provide direct access (such as when a search tool must be used within a website), the Commission may require that the rule include instructions as to how to locate the incorporated material within the website.

Note that nothing in this memo is meant to mitigate the G.S. 150B-21.6 requirement that agencies designate in the text of a rule whether the incorporation includes subsequent amendments and editions of incorporated material. A clear statement regarding the impact of subsequent changes is necessary to give the regulated public notice about substantive changes that may occur outside of the North Carolina rulemaking process.

CFR:

The Code of Federal Regulations (CFR) is a frequently incorporated source which is freely available online at <https://www.ecfr.gov/>. If the agency is incorporating multiple rules within the same part or subpart of the CFR, the rule can specify a link to the text of that part or subpart even

if they are not incorporating the entire parts. For example, if an agency were incorporating 1 CFR 51.3 and 1 CFR 51.5, it would be acceptable to use the following link for both: <https://www.ecfr.gov/current/title-1/chapter-II/part-51>.

For historical CFR citations when a section is incorporated without subsequent amendment, the eCFR website generally accommodates historical citations. For example, if an agency were incorporating those same rules as of November 15, 2022, it would be acceptable to use the following link: <https://www.ecfr.gov/on/2022-11-15/title-1/chapter-II/part-51>. Users can generate one of these links using the “go to date” function located on the left toolbar of the CFR website. For clarity, when a regulation from the CFR is incorporated without subsequent amendment the agency should also specify the CFR date in its citation in the rule text (e.g., 1 CFR 51.3 (November 15, 2022, Edition)).

USC:

The United States Code (USC) is another frequently incorporated source which is freely available online at <https://www.govinfo.gov/app/collection/uscode>. If the agency is incorporating multiple sections within the same chapter or subchapter, the rule can specify a link to the download page for the text of that chapter or subchapter even if they are not incorporating the entire chapter. For example, if an agency were incorporating 2 U.S.C. 23 and 2 U.S.C. 25 as of 2024, it would be acceptable to use the following link for both: <https://www.govinfo.gov/app/details/USCODE-2024-title2/USCODE-2024-title2-chap2>.

For historical versions of the USC when a statute is incorporated without subsequent amendment, previously published versions of the code can be accessed from the code landing cite: <https://www.govinfo.gov/app/collection/uscode>. Navigating through the appropriate code year can provide the appropriate link. For example, if an agency were incorporating those same statutes as of 2022 it would be acceptable to use the following link: <https://www.govinfo.gov/app/details/USCODE-2022-title2/USCODE-2022-title2-chap2>.

Historical Citations:

For other web sources where the agency is incorporating without subsequent amendment, if the host website does not provide a way to link to previous versions of the incorporated text, the recommended best practice is to host an electronic copy of the incorporated document on an agency-controlled website. Agencies are responsible for assessing any potential copyright issues when utilizing this approach.