

[68-20-27-M]

Title 1—General Provisions

CHAPTER II—OFFICE OF THE
FEDERAL REGISTERPART 51—INCORPORATION BY
REFERENCE

Publication Procedures

AGENCY: Office of the Federal Register.

ACTION: Final rule.

SUMMARY: The Office of the Federal Register (OFR) amends its regulations on incorporation by reference to require that agencies follow new procedures to maintain approval of their incorporations by reference in the Code of Federal Regulations (CFR). These amendments are necessary for the OFR to compile inventories of all materials approved for incorporation by reference and to keep those materials approved for incorporation by reference up-to-date.

EFFECTIVE DATE: April 27, 1979.

FOR FURTHER INFORMATION CONTACT:

Ann Stevens, Office of the Federal Register, National Archives and Records Service, Washington, D.C. 20408, 202-523-4534.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Under certain circumstances, a Federal agency may comply with the requirement that regulations must be published in the FEDERAL REGISTER by referring to materials that have already been published elsewhere. Use of this device, called "incorporation by reference," was authorized in 1966 by the Congress in 5 U.S.C. 552(a) to reduce the volume of material published in the FEDERAL REGISTER and the CFR. The legal effect of incorporation by reference is that the material is treated as though it were actually published in full in the FEDERAL REGISTER and the CFR.

Under § 552(a), the Director of the FEDERAL REGISTER is authorized to decide when an agency may incorporate material by reference. The Director was given this authority to insure that use of incorporation by reference did not undermine the notice-giving function of the FEDERAL REGISTER system created by the Federal Register Act of 1935 (44 U.S.C. Ch. 15). To carry out this objective, the OFR established procedures in 1967 that agencies must follow before an incorporation by reference will be approved (32 FR 7899). These procedures, as

amended, appear in Title 1, Part 51 of the CFR. One of the most important of the required procedures is the filing of the incorporated material with the OFR. The filing requirement is consistent with the policy behind the Federal Register Act that the OFR be the central depository of all Government regulatory documents.

PROCEDURES

In this document, we announce new procedures that agencies must follow to continue the Director's approval of material previously incorporated by reference. We developed these procedures: (1) to make it easier for the public to identify incorporated material; and (2) to insure that only material currently enforced by the agency is incorporated by reference.

IDENTIFICATION OF INCORPORATED
MATERIALS

Before 1967, some agencies used the incorporation by reference device even though it was not explicitly authorized by statute. There are numerous examples of these pre-1967 incorporations by reference throughout the CFR. There are also numerous examples of incorporations by reference published after 1967 that were not approved by the Director of the Federal Register. Neither of these incorporations by reference have the legal standing that is available under 5 U.S.C. 552(a) and 1 CFR Part 51.

While the OFR established procedures for incorporation by reference in 1967 (32 FR 7899), we did not require agencies to file a copy of incorporated materials with us until 1973 (37 FR 23614). Therefore, we do not have a complete file of all materials that we have approved for incorporation by reference. We have since determined that a complete file of incorporated material is necessary to enable us to carry out our central depository function under the Federal Register Act.

We receive numerous inquiries from the public and from Government agencies about material that has been approved for incorporation by reference. The new procedures will help us handle these inquiries effectively and maintain and publish in the FEDERAL REGISTER an inventory of all material incorporated by reference. This inventory was recommended in the Administrative Conference of the United States Recommendation 78-4, Federal Agency Interaction with Private Standards-setting Organizations in Health and Safety Regulations (44 FR 1357). We also plan to list incorporated material at relevant parts throughout the CFR. This agency listing is necessary for historical research purposes. It will reflect exactly what material was incorporated by reference on a given date after July 1, 1980, and

will help researchers determine what was in effect on that date.

We believe that the most effective way to assure the accuracy of this inventory is to withdraw all existing incorporations by reference and to require agencies that wish to do so to apply again to the Director for approval to incorporate by reference.

MAINTENANCE OF MATERIALS

Much of the material that has been incorporated by reference has been revised since its approval. Agencies that wish to apply these revisions are required by 1 CFR and §§ 51.5 and 51.8 to send us any revisions of the material and to publish a document in the FEDERAL REGISTER giving the public notice of these revisions. However, not all agencies follow this procedure. As a result, there are numerous references in the early editions of the CFR to materials that have been revised, even though the agency enforces the later edition.

We believe that withdrawal of all existing approvals of incorporations by reference is the most effective way to insure that only material currently enforced by the agency is incorporated by reference. If agencies reapply for incorporation by reference approval, we will review material submitted to determine if it is still eligible for incorporation by reference in light of our experience since 1967 and in light of recent trends toward increased public participation in the rulemaking process.

To assure that the system is kept up-to-date after material is approved and that we periodically review the eligibility of this material, we developed new procedures for maintaining incorporations by reference. These procedures require agencies to submit to the Director a list identifying all incorporated material enforced by the agency and the date of its last revision. This information will be published in relevant portions of the CFR.

PUBLICATION AS A FINAL RULE

The public will be affected by these procedures only to the extent that they will benefit from publication of the inventories of incorporated materials and from the maintenance of material approved for incorporation by reference. Since the procedures outlined in this document relate to agency management they are exempt from the notice and comment requirements of 5 U.S.C. 553.

FRED J. EMERY,
Director, Office of
the Federal Register.

MARCH 23, 1979.

Accordingly, under the authority vested in the Office of the Federal Register by 5 U.S.C. 552(a), 1 CFR

Part 51 is amended by adding a new section 51.13 to read as follows:

§ 51.13. Procedures for approval and maintenance of incorporations by reference.

(a) The Director withdraws approval of all material incorporated by reference in the *Code of Federal Regulations* (CFR) effective on the following dates:

Incorporations by reference appearing in	Are withdrawn on
CFR Titles 1 through 16.....	January 1, 1981
CFR Titles 17 through 27.....	April 1, 1981
CFR Titles 28 through 41.....	July 1, 1980
CFR Titles 42 through 50.....	October 1, 1980

(b) Each agency that wishes material incorporated by reference in the CFR to be effective after the dates set forth in paragraph (a) of this section shall—

(1) Request the Director's approval as required by this Part and send with the request a copy of the material to be incorporated by reference unless the material is on file with the Office of the Federal Register and is currently enforced by the agency; or

(2) Submit to the Director a list of that material and the date of its last revision unless the material is on file with the Office of the Federal Register and is currently enforced by the agency.

(c) Each agency that wishes material incorporated by reference in the CFR to remain effective shall annually submit to the Director a list of that material and the date of its last revision. The agency shall submit this list at least 30 days before the revision date of the CFR title in which the incorporation by reference appears.

[FR Doc. 79-9578 Filed 3-27-79; 8:45 am]