

## Department of the Army, DoD

## § 519.64

how copies may be purchased or examined, and justification for the requirement to incorporate by reference. The request will be submitted to TAG at least 20 working days before the proposed date for submission of the incorporation by reference notice for the FEDERAL REGISTER.

(d) TAG will consult with the Director, Office of the Federal Register (OFR) concerning each specific request and will notify the proponent of the outcome of the consultation.

(e) If the Director, OFR agrees to the proposal for incorporation by reference, a general notice will be submitted to HQDA (DAAG-AMR-R), WASH DC 20314.

### INFORMATION TO BE PUBLISHED IN THE FEDERAL REGISTER

#### **§ 519.58 General.**

The Administrative Procedure Act, as amended by the Freedom of Information Act, 5 U.S.C. 552(a), requires that certain policies, practices, procedures, and other information concerning the Department of the Army be published in the FEDERAL REGISTER for the guidance of the public. In general, this information explains where, how, and by what authority the Army performs any of its functions that affect the public. The following sections describe that information and the effect of failing to publish it.

#### **§ 519.59 Information to be published.**

In deciding which information to publish, consideration shall be given to the fundamental objective of informing all interested persons of how to deal effectively with the Department of the Army. Information to be currently published will include:

(a) Descriptions of the Army's central and field organization and the established places at which, the officers from whom, and the methods whereby the public may obtain information, make submittals or requests, or obtain decisions;

(b) The procedures by which the Army conducts its business with the public, both formally and informally;

(c) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, the instruc-

tions as to the scope and contents of all papers, reports, or examinations;

(d) Substantive rules of applicability to the public adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the Army; and

(e) Each amendment, revision, or repeal of the foregoing.

#### **§ 519.60 Exceptions.**

It is not necessary to publish in the FEDERAL REGISTER any information which comes within one or more of the exemptions to the Freedom of Information Act, 5 U.S.C. 552(b), as implemented by paragraph 2-12, AR 340-17.

#### **§ 519.61 Procedures.**

All matters to be published in accordance with § 519.59 will be submitted to The Adjutant General (DAAG-AMR-R), WASH DC 20314, in the proper format prescribed in § 519.65.

#### **§ 519.62 Effect of not publishing.**

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, comply with, or be adversely affected by, a matter required to be published in the FEDERAL REGISTER and not so published.

### INVITING PUBLIC COMMENT ON CERTAIN PROPOSED RULES AND SUBMISSION OF PETITIONS

#### **§ 519.63 General.**

Public comment must be sought on certain of those proposed rules which are required to be published in accordance with § 519.59. The following sections set forth the criteria and procedures for inviting public comment before publication.

#### **§ 519.64 Applicability.**

(a) These provisions apply only to those Department of the Army rules or portions thereof which:

(1) Are promulgated after the effective date of this regulation; and

(2) Must be published in the FEDERAL REGISTER in accordance with § 519.59; and

(3) Have a substantial and direct impact on the public or any significant portion of the public; and

(4) Do not merely implement a rule already adopted by a higher element within the Department of the Army or by the Department of Defense.

(b) Subject to the policy in paragraph (a) of this section and unless otherwise required by law, the requirement to invite advance public comment on proposed rules does not apply to those rules or portions thereof which:

(1) Do not come within the purview of paragraph (a) of this section; or

(2) Involve any matter pertaining to a military or foreign affairs function of the United States which has been determined under the criteria of an Executive Order or statute to require a security classification in the interests of national defense or foreign policy; or

(3) Involve any matter relating to Department of the Army management, personnel, or public contracts, e.g., Armed Services Procurement Regulation, including nonappropriated fund contracts; or

(4) Constitute interpretative rules, general statements of policy or rules of organization, procedure or practice; or

(5) The proponent of the rule determines for good cause that inviting public comment would be impracticable, unnecessary, or contrary to the public interest. This provision will not be utilized as a convenience to avoid the delays inherent in obtaining and evaluating prior public comment. See also § 519.69.

**§ 519.65 Procedure when proposing rules.**

(a) A proposed rule to which this section applies will be published along with a preamble, in the Proposed Rules Section of the FEDERAL REGISTER. Public comment will be invited within a designated time, at least 30 days prior to the intended adoption of the proposed rule.

(b) The proposed rule and preamble will be prepared for publication by the proponent of the rule. Preparation will be in accordance with guidance contained in Federal Register Handbook on Document Drafting.

(c) Rulemaking proponents will submit the original and three copies of the

proposed rules and preamble, in the proper format, to HQDA (DAAG-AMR-R), WASH DC 20314. The Adjutant General will prepare the required certification and submit the documents to the Office of the Federal Register for publication as a notice of proposed rulemaking.

**§ 519.66 Consideration of public comment.**

(a) Following publication of a notice of proposed rulemaking, all interested persons will be given an opportunity to participate in the rulemaking through the submission of written data, views and arguments to the proponent of the proposed rulemaking concerned.

(b) If the proponent of the rule determines that it is in the public interest, a hearing or other opportunity for oral presentation of view may be allowed as a means of facilitating public comment. Informal consultation by telephone or otherwise may also be utilized to facilitate presentation of oral comments by interested persons. All hearings or other oral presentations will be conducted by the proponent of the rule in a manner prescribed by him. A hearing file shall be established for each hearing. The hearing file shall include any public notices issued, the request for the hearing, any data or material submitted in justification thereof, materials submitted in opposition to the proposed action, the hearing transcript, and any other material as may be relevant or pertinent to the subject matter of the hearing.

(c) There is no requirement to respond either orally or in writing, individually to any person who submits comments with respect to a proposed rule. The proponent of the rule, however, may do so as a matter within his discretion.

**§ 519.67 Procedure when publishing adopted rules.**

(a) After careful consideration of all relevant material submitted, the proponent of the rule will make such revisions in the proposed rule as appear necessary in light of the comments received.

(b) The proponent will also prepare a preamble for publication with the