

Remarks: 1

23. Are FOIA fees collected for technical data retained by the organization providing the technical data?

Response: Yes ___ No ___ NA ___

Remarks: 1

Event Cycle 3: Records Management.

Risk: Valuable records needed for court actions are destroyed or cannot be located.

Control Objective: Records containing "For Official Use Only" information are correctly marked and FOIA requests are properly maintained throughout their life cycle.

Control Technique: Ensure the prescribed policies and procedures are followed during the life cycle of information.

Test Questions

1. Are unclassified documents containing "For Official Use Only" information marked "FOR OFFICIAL USE ONLY" in bold letters at least $\frac{3}{16}$ of an inch high at the bottom of the outside of the front cover (if any), on the first page, and on the outside of the back cover (if any)?

Response: Yes ___ No ___ NA ___

Remarks: 1

2. Are individual pages containing both "For Official Use Only" and classified information marked at the top and bottom with the highest security classification of information appearing on the page?

Response: Yes ___ No ___ NA ___

Remarks: 1

3. Are photographs, films, tapes, slides, and microform containing "For Official Use Only" information so marked "For Official Use Only" to ensure recipient or viewer is aware of the information therein?

Response: Yes ___ No ___ NA ___

Remarks: 1

4. Is "For Official Use Only" material transmitted outside the Department of the Army properly marked "This document contains information EXEMPT FROM MANDATORY DISCLOSURE under the FOIA. Exemption * * * applies"?

Response: Yes ___ No ___ NA ___

Remarks: 1

5. Are permanently bound volumes of "For Official Use Only" information so marked on the outside of the front and back covers, title page, and first and last page?

Response: Yes ___ No ___ NA ___

Remarks: 1

6. Is DA Label 87 (For Official Use Only Cover Sheet) affixed to "For Official Use Only" documents when removed from a file cabinet?

Response: Yes ___ No ___ NA ___

Remarks: 1

7. Do electrically transmitted messages contain the abbreviation "FOUO" before the beginning of the text?

Response: Yes ___ No ___ NA ___

Remarks: 1

8. Are "For Official Use Only" records stored properly during nonduty hours?

Response: Yes ___ No ___ NA ___

Remarks: 1

9. Are FOIA records maintained and disposed of in accordance with AR 25-400-2, The Modern Army Recordkeeping System (MARKS)?

Response: Yes ___ No ___ NA ___

Remarks: 1

1. Explain rationale for YES responses or provide cross-reference where rationale can be found. For NO responses, cross-reference to where corrective action plans can be found. If response is NA, explain rationale.

I attest that the above-listed internal controls provide reasonable assurance that Army resources are adequately safeguarded. I am satisfied that if the above controls are fully operational, the international controls for this subtask throughout the Army are adequate.

Director of Information for Command, Control, Communications, and Computers

Functional Proponent

I have reviewed this subtask within my organization and have supplemented the prescribed internal control review checklist when warranted by unique environmental circumstances. The controls prescribed in this checklist, as amended, are in place and operational for my organization (except for the weaknesses described in the attached plan, which includes schedules for correcting the weaknesses).

Operating Manager

PART 519—PUBLICATION OF RULES AFFECTING THE PUBLIC

GENERAL

Sec.

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INVITING PUBLIC COMMENT ON CERTAIN PROPOSED RULES AND SUBMISSION OF PETITIONS

- 519.63 General.
- 519.64 Applicability.
- 519.65 Procedure when proposing rules.
- 519.66 Consideration of public comment.
- 519.67 Procedure when publishing adopted rules.
- 519.68 Submission of petitions.
- 519.69 Cases in which public comment is impractical.

AUTHORITY: Sec. 3012, 70A Stat. 157, (10 U.S.C. 3012); sec. 3, 60 Stat. 238, (5 U.S.C. 552).

SOURCE: 42 FR 26424, May 24, 1977, unless otherwise noted. Redesignated at 48 FR 35590, Aug. 16, 1982.

GENERAL

§ 519.51 Purpose.

This regulation prescribes procedures and responsibilities for publishing certain Department of the Army policies, practices and procedures in the FEDERAL REGISTER as required by statute, and for inviting public comment thereon, as appropriate. This regulation implements a portion of the Freedom of Information Act, 5 U.S.C. 552(a)(1), and DoD Directive 5400.9, December 23, 1974 (32 CFR part 296, 40 FR 4911).

§ 519.52 Explanation of terms.

(a) *Rule.* The whole or a part of any Department of the Army Statement (regulation, circular, directive, or other media) of general or particular applicability and future effect, which is designed to implement, interpret, or prescribe law or policy or which describes the organization, procedure, or practice of the Army. See 5 U.S.C. 551(4).

(b) *FEDERAL REGISTER.* A document published daily, Monday through Friday (except holidays), by the Office of the Federal Register, National Archives and Records Service, General Service Administration (GSA) to inform the public about the regulations of the executive branch and independent administrative agencies of the U.S. Government. The FEDERAL REGISTER includes Presidential proclamations, Executive orders, Federal agency documents having general applicability and legal effect or affecting the public, and documents required to be published by Act of Congress.

(c) *Code of Federal Regulations.* A document published by GSA which contains a codification of the general and permanent rules published in the FEDERAL REGISTER by the executive departments and executive agencies of the Federal Government. It consists of 120 volumes, divided into 50 titles. Each title represents a broad area that is subject to Federal regulation. Army documents are published in title 32, National Defense, and in title 33, Navigation and Navigable Waters. (The FEDERAL REGISTER and the Code of Federal Regulations must be used together to determine the latest version of any given rule.)

§ 519.53 Responsibilities.

(a) The Adjutant General (TAG) is responsible for policies concerning Army rules, and proposed rules published in the FEDERAL REGISTER, and for ensuring Army compliance with this regulation. TAG will assist the officials listed in table 1 in the performance of their responsibilities. TAG will represent the Army in submitting to the Office of the Federal Register any matter published in accordance with this regulation.

(b) The officials listed in table 1 (hereinafter referred to as proponents) are responsible for determining whether any rule originated in their areas of jurisdiction falls within the purview of § 519.64, and for taking all actions specified in §§ 519.65 through 519.69. They are also responsible for determining which matters within their areas of jurisdiction must be published in accordance with § 519.59 and for submission actions specified in § 519.61.

(c) Legal officers and staff judge advocates supporting the proponents will provide legal advice and assistance in connection with proponent responsibilities contained herein.

TABLE 1—RULEMAKING PROPONENTS

Official	Area of jurisdiction
Administrative Assistant to the Secretary of the Army.	Office of the Secretary of the Army.
Director of the Army staff.	Elements, Office of the Chief of Staff, U.S. Army.
Head of each Army staff agency.	Headquarters of the agency and its field operating and staff support agencies.

TABLE 1—RULEMAKING PROPONENTS—
Continued

Official	Area of jurisdiction
Commander, MA COM	Headquarters of MA COM and all subordinate installations, activities and units.
The Adjutant General ...	All other Army elements.

§ 519.54 Designation of Rulemaking Coordinators.

The officials listed in table 1 will designate Rulemaking Coordinators to perform the duties listed in paragraphs (a) through (d) of this section for their areas of functional responsibility. At the time of designation, the Adjutant General (DAAG-AMR-R) will be informed of the name and telephone number of the designated individual. The designee will perform the following duties:

- (a) Editorial review of all rules, notices, and highlight statements required to be published in the FEDERAL REGISTER.
- (b) Transmitting material to TAG and providing TAG with the name, office symbol, and telephone number of the action officer for each rule or general notice for inclusion in the FEDERAL REGISTER.
- (c) Coordinating with Publication Control Officers to ensure submission of Statements of Compliance required by § 519.55.
- (d) Notifying HQDA (DAAG-AMR-R), WASH DC 20314, when a regulation published in the FEDERAL REGISTER becomes obsolete or is superseded by another regulation.

§ 519.55 Statement of compliance.

In order to ensure compliance with the regulation, no rule will be issued unless there is on file with The Adjutant General (DAAG-AMR-R) a statement to the effect that it has been evaluated in terms of this regulation. If the proponent determines that the provisions of this regulation are inapplicable, such determination shall be explained in the statement.

§ 519.56 Submission of publications for printing.

When Army-wide publications or directives are transmitted to The Adjutant General (DAAG-PAP) for publica-

tion, the DA Form 260 (Request for Printing of Publication) or other transmittal paper will contain a statement that the directive has been processed for publication in the FEDERAL REGISTER or that it falls within the exempted category. DAAG-PAP will not publish any rule unless this statement is on DA Form 260. A copy of DA Form 260 may be submitted to DAAG-AMR-R in lieu of the statement required by § 519.55.

§ 519.57 Incorporation by reference.

(a) With the approval of the Director of the Federal Register, the requirements for publication in the FEDERAL REGISTER may be satisfied by reference in it to other publications, provided they are reasonably available to the class of persons affected and contain the information which must otherwise be published. For example, it can be purchased from the Superintendent of Documents, Government Printing Office or GPO bookstores at a reasonable cost, or is available for review at Army installations, or depository libraries. Therefore, before a document can be incorporated by reference, the proponent must determine that it is available to the public. See 5 U.S.C. 552(a)(1); 1 CFR part 51; 37 FR 23614 (4 Nov 1972).

(b) Incorporation by reference is not acceptable as a complete substitute for promulgating in full the material required to be published. It may, however, be utilized to avoid unnecessary repetition of published information already reasonably available to the class of persons affected. Examples include:

- (1) Construction standards issued by a professional association of architects, engineers, or builders,
- (2) Codes of ethics issued by professional organizations, and,
- (3) Forms and formats publicly or privately published and readily available to the persons required to use them.

(c) Proposals for incorporation by reference will be submitted to HQDA (DAAG-AMR-R), WASH DC 20314 by letter giving an identification and subject description of the document, statement of availability, indicating document will be reasonably available to the class of persons affected, where and

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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

adopted rule. The proponent shall discuss in the preamble the comments received in response to the proposed rule and the decision to accept or reject the comments in revisions to the proposed rule. Preparation will be in accordance with guidance contained in the Federal Register Handbook on Document Drafting.

(c) The original and three copies of the preamble and revised rule will be forwarded to HQDA (DAAG-AMR-R), WASH DC 20314 in the proper format. The Adjutant General will then prepare the required certification and submit the documents to the Office of the Federal Register for publication in the form of an adopted rule.

§ 519.68 Submission of petitions.

Each proponent of a rule will grant to any interested person the right to submit a written petition calling for the issuance, amendment, or repeal of any rule to which §§ 519.64 through 519.67 applies or would apply if issued, as specified in § 519.64. Any such petition will be given full and prompt consideration by the proponent. If compatible with the orderly conduct of public business, the appropriate official may, at his discretion, allow the petitioner to appear in person for the purpose of supporting this petition. After consideration of all relevant matters by the proponent, the petitioner will be advised in writing by the proponent of the disposition of any petition, together with the reasons supporting that disposition. This provision does not apply to comments submitted on proposed rules in § 519.66.

§ 519.69 Cases in which public comment is impractical.

(a) Whenever a rulemaking proponent determines for good cause that inviting public comment regarding a proposed rule would be impractical, unnecessary, or contrary to the public interest, he will prepare a brief statement of the reasons supporting this determination for incorporation in the preamble to the adopted rule. The preamble and adopted rule will then be published in the form outlined in § 519.67 (b) and (c).

(b) Alternatively, the proponent may request The Adjutant General (DAAG-AMR-R) (by letter or disposition form,

as appropriate) to adopt and publish in the FEDERAL REGISTER a separate rule exempting from the prepublication notice provisions of this regulation those specific categories of rules which the rulemaking proponent has determined that public comment would be unnecessary, impractical, or contrary to the public interest. The request to The Adjutant General will contain an explanation of the reasons why the proponent believes that a particular category of rule or rules should not be published in proposed form for public comment. If The Adjutant General agrees that public comment should not be invited with respect to the cited category, he will adopt and publish a separate rule in the FEDERAL REGISTER exempting such rule or rules from the requirements of this regulation. This separate rule will include an explanation of the basis for exempting each particular category from the provisions of this regulation.

**PART 525—ENTRY AUTHORIZATION
REGULATION FOR KWAJALEIN
MISSILE RANGE**

Sec.

- 525.1 General.
- 525.2 Background and authority.
- 525.3 Criteria.
- 525.4 Entry authorization (policy).
- 525.5 Entry authorization (procedure).

AUTHORITY: 44 U.S.C. 1681, 50 U.S.C. 797, 18 U.S.C. 1001, and E.O. 11021.

SOURCE: 48 FR 34028, July 27, 1983, unless otherwise noted.

§ 525.1 General.

(a) *Purpose.* This regulation prescribes policies and procedures governing entry of persons, ships, and aircraft into the Kwajalein Missile Range (KMR), Kwajalein Atoll, Marshall Islands.

(b) *Scope.* (1) This regulation is applicable to all persons, ships and aircraft desiring entry into KMR.

(2) The entry authorizations issued under this authority are limited to KMR and do not apply to entry to any other areas of the Marshall Islands.

(3) In addition to the controls covered by this regulation movement within the Kwajalein Missile Range, the territorial sea thereof and airspace