

**§ 404.1071 Ministers and members of religious orders.**

(a) If you are a duly ordained, commissioned, or licensed minister of a church, or a member of a religious order who has not taken a vow of poverty, the services you perform in the exercise of your ministry or in the exercise of duties required by the order (§ 404.1023(c) and (e)) are a trade or business unless you filed for and were granted an exemption from coverage under section 1402(e) of the Code, and you did not revoke such exemption in accordance with the Social Security Amendments of 1977, section 1704(b) of the Tax Reform Act of 1986, or section 403 of the Ticket to Work and Work Incentives Improvement Act of 1999. An exemption cannot be granted if you filed a valid waiver certificate under the provisions of section 1402(e) that apply to taxable years ending before 1968.

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**§ 404.1093 [Amended]**

10. Section 404.1093 is amended by adding “the Commonwealth of the Northern Mariana Islands,” after “Guam.”

**§ 404.1096 [Amended]**

11. Section 404.1096 is amended in paragraph (d) by adding “the Commonwealth of the Northern Mariana Islands” after “Guam.”

**Subpart M—[Amended]**

12. The authority citation for subpart M of part 404 continues to read as follows:

**Authority:** Secs. 205, 210, 218, and 702(a)(5) of the Social Security Act (42 U.S.C. 405, 410, 418, and 902(a)(5)); sec. 12110, Pub. L. 99–272, 100 Stat. 287 (42 U.S.C. 418 note); sec. 9002, Pub. L. 99–509, 100 Stat. 1970.

**§ 404.1200 [Amended]**

13. Section 404.1200 is amended in paragraph (b) by adding “the Commonwealth of the Northern Mariana Islands” after “Guam.”

**§ 404.1202 [Amended]**

14. In § 404.1202(b), the definition of “State” is amended by adding “the Commonwealth of the Northern Mariana Islands” after “Guam.”

[FR Doc. 04–7733 Filed 4–6–04; 8:45 am]

**BILLING CODE 4191–02–P**

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 1**

[REG–167265–03]

RIN 1545–BC95

**Guidance Under Section 1502; Application of Section 108 to Members of a Consolidated Group; Computation of Taxable Income When Section 108 Applies to a Member of a Consolidated Group; Correction**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to notice of proposed rulemaking; notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** This document corrects a notice of proposed rulemaking; notice of proposed rulemaking by cross-reference to temporary regulations (REG–167265–03) that was published in the **Federal Register** on Monday, March 15, 2003 (69 FR 12091) containing proposed regulations under section 1502 that govern the timing of certain basis adjustments in respect of the realization of discharge of indebtedness income that is excluded from gross income and the reduction of attributes in respect of that excluded income.

**FOR FURTHER INFORMATION CONTACT:** Candace B. Ewell, (202) 622–7530 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:****Background**

The notice of proposed rulemaking; notice of proposed rulemaking by cross reference to temporary regulations (REG–167265–03) that is the subject of this correction are under section 1502 of the Internal Revenue Code.

**Need for Correction**

As published, the notice of proposed rulemaking; notice of proposed rulemaking by cross reference to temporary regulations (REG–167265–03) contains errors that may prove to be misleading and are in need of clarification.

**Correction of Publication**

Accordingly, the notice of proposed rulemaking; notice of proposed rulemaking by cross reference to temporary regulations (REG–167265–03) is corrected as follows:

**§ 1.1502–11 [Corrected]**

1. On page 12095, column 1, § 1.1502–11, paragraph (c)(5), paragraph

(i) of *Example 1*, last line in the paragraph, the language “basis of \$0 and a fair market value of \$10.” is corrected to read “basis of \$0 and a fair market of \$20.”.

2. On page 12095, column 2, paragraph (c)(5), paragraph (ii) of *Example 1*, line 14, the language “the principles of § 1.1501–21T(b)(2)(iv), is” is corrected to read the principles of § 1.1502–21T(b)(2)(iv) is.”.

3. On page 12096, column 3, paragraph (c)(5), paragraph (ii)(E) of *Example 3*, line 10, the language “COD income in the amount of \$100.” is corrected to read “COD income in the amount of \$80.”.

**Cynthia E. Grigsby,**

*Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures and Administration).*

[FR Doc. 04–7797 Filed 4–6–04; 8:45 am]

**BILLING CODE 4830–01–P**

**DEPARTMENT OF DEFENSE****Department of the Army****32 CFR Part 519**

RIN 0702–AA40–U

**Publication of Rules Affecting the Public**

**AGENCY:** Department of the Army, DOD.

**ACTION:** Proposed rule; Request for comments.

**SUMMARY:** The Department of the Army is proposing to revise our rules concerning the publication of rules affecting the public to incorporate requirements and policies required by various acts of Congress and Executive Orders, and due to changes in program proponenty and policies within the Department of the Army.

**DATES:** Comments submitted to the address below on or before June 7, 2004 will be considered.

**ADDRESSES:** You may submit comments, identified by “32 CFR Part 519 and RIN 0702–AA40” in the subject line, by any of the following methods:

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

• *E-mail:* [Brenda.Kopitzke@rmda.belvoir.army.mil](mailto:Brenda.Kopitzke@rmda.belvoir.army.mil). Include “32 CFR Part 519 and RIN 0702–AA40” in the subject line of the message.

• *Mail:* U.S. Army Records Management and Declassification Agency, ATTN: AHRC-PDD-RP (Ms. Kopitzke), Casey Bldg., Rm. 102, 7701 Telegraph Road, Alexandria, VA 22315–3860.

**FOR FURTHER INFORMATION CONTACT:**  
Brenda Kopitzke (703) 428-6437 or  
Brenda Bowen (703) 428-6422.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This proposed revision prescribes procedures and responsibilities for publishing applicable Department of the Army policies, practices, and procedures as required by statutes. It also delineates responsibilities for complying with this regulation, Regulatory Flexibility Act, 5 U.S.C. 601-612 (E.O. 12866), and the Congressional Review Act (CRA, 5 U.S.C. Chapter 8), within the Department of the Army.

**B. Regulatory Flexibility Act**

The Department of the Army has determined that the Regulatory Flexibility Act does not apply because the proposed rule does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601-612.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the proposed rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**D. Executive Order 12866**

The Department of the Army has determined that according to the criteria defined in Executive Order 12866 this proposed rule is not considered a significant regulatory action.

**Brenda Kopitzke,**  
*Army Federal Register Liaison Officer.*

**List of Subjects in 32 CFR Part 519**

Administrative practices and procedures.

For the reasons stated in the preamble, the Department of the Army proposes to revise 32 CFR Part 519 to read as follows:

**PART 519—PUBLICATION OF RULES AFFECTING THE PUBLIC**

**Subpart A—General**

- Sec.
- 519.1 Purpose.
- 519.2 Explanation of terms.
- 519.3 Responsibilities.
- 519.4 Designation of Rulemaking Coordinators.
- 519.5 Statement of compliance.
- 519.6 Submission of publications for printing.
- 519.7 Regulatory review.

**Subpart B—Information to be Published in the Federal Register**

- 519.8 General.
- 519.9 Information to be published.
- 519.10 Requirements pertaining to information to be published.
- 519.11 Incorporation by reference.
- 519.12 Exceptions.
- 519.13 Procedures.
- 519.14 Effect of not publishing.

**Subpart C—Inviting Public Comment on Certain Proposed Rules and Submission of Petitions 519.15 General.**

- 519.15 General.
- 519.16 Applicability.
- 519.17 Procedure when proposing rules.
- 519.18 OMB Control Number.
- 519.19 Consideration of public comment.
- 519.20 Procedure when publishing adopted rules.
- 519.21 Submission of petitions.
- 519.22 Cases in which public comment is impractical.

**Authority:** Sec. 3012, Pub. L. 84-1028, 70A Stat. 157, (10 U.S.C. 3013); sec. 3, Pub. L. 79-404, 60 Stat. 238, (5 U.S.C. 552).

**Subpart A—General**

**§ 519.1 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 portions of the Administrative Procedure Act (APA), 5 U.S.C. 551, Freedom of Information Act (FOIA), 5 U.S.C. 552(a)(1), as implemented by 32 CFR Part 335, Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), as implemented by 1 CFR Chapter 1, Congressional Review Act (CRA), 5 U.S.C. Chapter 8, Executive Order 12866 of September 30, 1993, and DODD 5025.1, DOD Directives System.

**§ 519.2 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.

(b) **Federal Register.** A document published daily, Monday through Friday (except holidays), by the Office of the Federal Register, 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. The annual codification of rules published by each Federal Agency. It is divided into 50 titles representing broad subject areas for each Federal Agency and these titles are further subdivided into Chapters, Subchapters, Parts, and Subparts. Army documents are published in Title 32, National Defense, Title 33, Navigation and Navigable Waters, and Title 36, Parks, Forests, and Public Property. (The **Federal Register** and the Code of Federal Regulations must be used together to determine the latest version of any given rule.)

(d) Closed Meeting. A meeting that is closed to the public.

(e) Open Meeting. A meeting that is open to the public.

**§ 519.3 Responsibilities.**

(a) The Administrative Assistant to the Secretary of the Army (AASA) acts as the regulatory officer and has oversight of the Army Federal Regulatory Program and Unified Agenda. The AASA will coordinate with Assistant Secretary for Civil Works (ASA (CW)) and the Deputy Chief of Staff, G-1 (DCS, G-1) to ensure the regulatory requirements and functions are properly executed.

(b) The ASA (CW) will submit the annual Regulatory Plan and semiannual Unified Agenda of Federal Regulatory and Deregulatory Actions to the AASA as required by Executive Order 12866 and 5 U.S.C. 601, *et seq.*

(c) The DCS, G-1 will develop policy and direction for the Rulemaking Program for the Department of the Army.

(d) The U.S. Army Records Management and Declassification Agency (RMDA) is responsible for policies concerning Army announcements and rules (proposed, interim, and final) published in the **Federal Register**, and for ensuring Army compliance with this part. The RMDA shall—

(1) Assist the officials listed in Table 1 in the performance of their responsibilities.

(2) Represent the Army in submitting to the Office of the Federal Register (OFR) any matter published per this part.

(3) Submit the annual Regulatory Plan and semiannual Unified Agenda of Federal Regulatory and Deregulatory Actions to the AASA as required by Executive Order 12866 and 5 U.S.C. 601, *et seq.*

(4) Submit a copy of published final rules (and certain analyses related to the

rule, as appropriate) to both Houses of Congress and to the General Accounting Office (GAO), per the CRA.

(e) The U.S. Army Corps of Engineers (USACE) shall—

(1) Represent the Army in submitting to the OFR only those Civil Works Program rules (proposed, interim, and final) codified in Title 33, Navigation and Navigable Waters, and Title 36, Parks, Forests, and Public Property of the CFR, subject to the terms of this part.

(2) Submit a copy of published final rules (and certain analyses related to the rule, as appropriate) to both Houses of Congress and to the General Accounting Office (GAO), per the CRA.

(3) When submitting rules codified in Titles 33 and 36 of the CFR, USACE may coordinate directly with OFR (in lieu of RMDA) but must otherwise comply with the provisions of this part. In determining the applicability of this regulation to its rulemaking activities, Army Civil Works rulemaking proponents may replace “RMDA” with “USACE,” wherever it appears in the text of this part.

(f) The officials listed in Table 1 (hereinafter referred to as proponents) are responsible for:

(1) Ensuring maximum practicable participation of the public in the formulation of Army rules that affect the public by allowing public comments in proposed rules. Where deemed appropriate by the Army proponents, the public should participate in consensual mechanisms, such as negotiated rulemaking.

(2) Determining which matters within their areas of jurisdiction must be published in accordance with §§ 519.8 through 519.14, and for submission actions specified in §§ 519.15 through 519.22.

(g) 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.	Immediate Office of the Secretary of the Army and the Office of the Administrative Assistant.
Director of the Army staff.	Elements, Office of the Chief, U.S. Army.
Head of each Army staff agency.	Headquarters of the agency and its field operating and staff agencies (including the Installation Management Agency (IMA)).

TABLE 1.—RULEMAKING PROPONENTS—Continued

Official	Area of jurisdiction
Commander, MACOM.	Headquarters of MACOM and all subordinate activities and units.
RMDA .....	All other Army elements not covered above.

#### § 519.4 Designation of Rulemaking Coordinators.

The officials listed in Table 1 will designate Rulemaking Coordinators to perform the duties prescribed by §§ 519.15 through 519.22 of this part for their areas of functional responsibility. At the time of designation, the RMDA shall be informed of the name and telephone number of the designated individual. The designee will perform the following duties:

(a) Ensure that all rules and notices to be published comply with the **Federal Register** format.

(b) Transmit material to RMDA and provide RMDA 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) Coordinate with Publication Control Officers to ensure submission of Statements of Compliance required by § 519.5.

(d) Notify RMDA, ATTN: AHRC-PDD-RP, 7701 Telegraph Road, Alexandria, VA 22315-3860, when a regulation published in the **Federal Register** becomes obsolete or is superseded by another regulation.

#### § 519.5 Statement of compliance.

In order to ensure compliance with the part, no rule will be issued unless there is on file with RMDA (AHRC-PDD-RP) a statement to the effect that it has been evaluated under the provisions of this part. If the proponent determines that the provisions of this part are inapplicable, such determination shall be explained in the statement.

#### § 519.6 Submission of publications for printing.

When Army-wide publications or directives are transmitted to the Director, U.S. Army Publishing Directorate (USAPD) for publication, 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. USAPD will not publish any rule unless this statement is on DA

Form 260. A copy of DA Form 260 may be submitted to RMDA in lieu of the statement required by § 519.5.

#### § 519.7 Regulatory review.

(a) Proponents of Army regulations shall participate in the regulatory process and adhere to the regulatory process as prescribed in this regulation when reviewing their existing publications. This review will follow the same procedural steps outlined for the development of new regulations.

(b) In selecting regulations to be reviewed, proponents shall consider such criteria as:

(1) The requirement for the regulation.

(2) Costs and benefits of the regulation to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures.

(3) The type and number of complaints or suggestions received.

(4) Burdens imposed directly or indirectly by the regulation to both the public and other government entities.

(5) Elimination of inconsistent, incompatible, overlapping or duplicative regulations.

(6) Length of time since the regulation has been reviewed for scientific, technological, economical, or administrative changes.

#### Subpart B—Information to be Published in the Federal Register

##### § 519.8 General.

The Administrative Procedure Act, as amended by the Freedom of Information Act, 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 addition, various statutory and nonstatutory authorities, as applicable, may require certain actions and studies performed in conjunction with the publication of the regulation. In general, this information explains where, how, and by what authority the Army performs any of its functions that affect the public. This chapter describes what information must be published and the effect of failing to publish it.

##### § 519.9 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. Subject to the exceptions provided in § 519.12 of this part, 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 procedures, descriptions of forms available or the places at which forms may be obtained, and the instructions 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.

(e) Documents which confer a right or privilege on a segment of the public or have a direct or substantial impact on the public or any significant portion of the public.

(f) Documents that prescribe a course of conduct that must be followed by persons outside the government to avoid a penalty, or secure a right or privilege.

(g) Documents which impose an obligation on the general public or members of a class persons outside the U.S. Government.

(h) Rules (significant) that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way, the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, tribal governments or communities.

(2) Create a serious inconsistency or otherwise interfere with an action taken by another agency.

(3) Materially alter the budgetary impact of entitlements, grants, user fees, loan programs or the rights and obligations thereof.

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles of Executive Order 12866.

(i) Open, partially-closed, and closed meetings which require members to take action on behalf of the Army where such deliberations determine or result in the joint conduct or disposition of Army business. Meetings shall be published a minimum of 15 calendar days prior to date of meeting or as prescribed by the appropriate statute. Sunshine Act meetings are published in compliance with 5 U.S.C. 552b(e)(3); attendance at these meetings may be restricted for reasons of national security or for reasons indicated in 5 U.S.C. 552b(c). Notice of Sunshine Act meetings must be published at least one week prior to the date of the meeting (5 U.S.C. 552b(e)).

(j) Notices of establishment or renewal of advisory committees in accordance with their directives, statutory and/or nonstatutory authority.

(k) Public information collection requirements in compliance with the Paperwork Reduction Act (PRA, 44 U.S.C. 3501 *et seq.*)

(l) Descriptions of particular programs, policy, or procedures in detail such as—

(1) Decisions and ruling;

(2) Grant application deadlines;

(3) Availability of Environmental Impact Statements;

(4) Delegations of authority;

(5) Issuance or revocation of licenses; and

(6) Hearings and investigations.

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

#### **§ 519.10 Requirements pertaining to the information to be published.**

The following procedures shall be completed before submitting rules/regulations for publication—

(a) An economic analysis (EA) of the proposed or existing regulation. The EA should assess the effects of the regulation on the State, local, and tribal governments, and the private sector. An EA threshold of an annual effect on the economy of \$100 million or more has been established for all regulations (Executive Order 12866.)

(b) Regulations containing collection of information requirements will be forwarded through the DCS, G-1 (DAPE-ZXI-RM) to OMB prior to publication as a proposed rule in the **Federal Register**. In addition, the proponent will address any collection of information comments filed by the Director, OMB, or the public in the final rule.

(c) Statutory and nonstatutory authorities mandate regulatory review of all DA proposed, interim, final, and withdrawn rules/regulations. The results are published in the semiannual Unified Agenda of Federal Regulatory and Deregulatory Actions. Under the requirements of regulatory review, the proponent will notify RMDA when—

(1) Drafting a regulation that would affect the public.

(2) Reviewing regulations for revision or rescission.

(3) Rescinding a regulation.

#### **§ 519.11 Incorporation by reference.**

(a) Incorporation by reference allows the proponent to comply with the requirements to publish regulations in the **Federal Register** by referencing materials published elsewhere (*e.g.* materials that may be purchased from the Government Printing Office (GPO)

or depot libraries or are available for review at Army installations.) Incorporated material has the same force and legal effect as any other properly issued regulation. 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) and 1 CFR Part 51).

(b) Material is eligible for incorporation by reference if it—

(1) Is published data, criteria, standards, specifications, techniques, illustrations or similar materials.

(2) Is reasonably available to and usable by the class of persons affected by the publication.

(3) Does not reduce the usefulness of the **Federal Register** publication system.

(4) Benefits the Federal Government and members of affected classes.

(5) Substantially reduces the volume of material published in the **Federal Register**.

(c) 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 person required to use them.

(d) Proposals for incorporation by reference will be submitted to Director, RMDA, by letter giving an identification and subject description of the document statement of availability, indicating the document will be reasonably available to the class of persons affected, where and how copies may be purchased or examined, and justification for the requirement to incorporate by reference. The request will be submitted to RMDA at least 25 working days before the proposed date for submission of the incorporation by reference notice for the **Federal Register**. The 25 working day period begins when RMDA receives the request.

(e) RMDA will consult with the Director, OFR concerning each specific request and will notify the proponent of the outcome of the consultation.

(f) The proponent will submit to RMDA a general notice upon approval from the Director, OFR to the proposal for incorporation by reference.

(g) Requirements for updating material incorporated by reference.

(1) An amendment to the CFR must be published in the **Federal Register**.

(2) The proponent must provide RMDA a copy of the incorporated material, as amended or revised, to submit to the OFR.

(3) RMDA will notify the Director, OFR of the changes.

(h) The proponent will notify RMDA within 10 working days if the rule does not go into effect or when the rule containing the incorporation by reference is removed.

#### **§ 519.12 Exception.**

(a) In accordance with 5 U.S.C. 552(b) the Army shall not publish any rule in the **Federal Register** if:

(1) It pertains to a military or foreign affairs function of the United States that, under the criteria of an Executive Order or statute, requires a security classification in the interest of national defense.

(2) It is directed at other Federal agencies, particular persons, or Army organizations.

(3) It is directed to individual persons in their capacity as Army employees.

(4) It is limited to Army management, organization, public contracts, to include nonappropriated fund contracts, or personnel matters.

(b) A rule issued at the installation level that affects only the people near a particular post does not ordinarily apply to the general public, so the Army does not usually publish it in the **Federal Register**.

(c) It is not necessary to publish in the **Federal Register** any information which comes within one or more of the exemptions to the FOIA, 5 U.S.C. 552(b), as implemented by AR 25-55, para. 3-200.

#### **§ 519.13 Procedures.**

All matters to be published in accordance with this part will be submitted to the Director, RMDA in the proper format prescribed in § 519.17. As provided in § 519.3(e) of this part, Army Civil Works proponents who are proposing rules for publication in Titles 33 and 36 of the CFR may submit the required documents directly to the OFR but must otherwise comply with the provisions of this part.

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

Except to the extent that a person has actual and timely notice thereof, the Army cannot require the general public to comply with, or be adversely affected by, a policy requirement, as determined in § 519.9, until it is published in the **Federal Register**.

### **Subpart C—Inviting Public Comment on Certain Proposed Rules and Submission of Petitions**

#### **§ 519.15 General.**

Public comment must be sought on certain proposed rules which are required to be published in accordance with § 519.9. All regulations affecting the public will be forwarded to RMDA for review and coordination with OMB. This subpart sets forth the criteria and procedures for inviting public comment before publication.

#### **§ 519.16 Applicability.**

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

- (1) Are promulgated after [Insert the effective date of this regulation];
- (2) Must be published in the **Federal Register** in accordance with § 519.9;
- (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) Unless otherwise required by law, the requirement to invite advance public comment on proposed rules does not apply to those rules or portions thereof that:

- (1) Do not come within the purview of paragraph § 519.16(a) of this section;
- (2) Involve any matter relating 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;
- (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;
- (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 § 519.22.

(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 § 519.22.

#### **§ 519.17 Procedure when proposing rules.**

(a) A description of the proposed rule will be forwarded to the Federal Register Liaison Officer (FRLO) for regulatory and OMB review. The FRLO will provide a Regulation Identifier

Number (RIN), used to identify and report the rule in the Unified Agenda to the proponent once OMB has approved the rule for publication in the Proposed Rule section of the **Federal Register**. Proposed rules that have unresolved issues shall not be published in the **Federal Register**.

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

(c) Public comment will be invited with a designated time, not less than 60 days prior to the intended adoption of the proposed rule.

(d) Rulemaking proponents will submit the original and three copies of the proposed rules and preamble in the prescribed format, to the Director, RMDA. The FRLO will ensure that the approved rules comply with executive and legislative requirements, and have the necessary coordination with OMB prior to publication. Upon OMB approval, the FRLO will certify and submit the documents to the Office of the Federal Register for publication as a proposed, interim, or final rule, as applicable.

(e) If no action has occurred within 1 year of publication, the proposed rule shall be considered for withdrawal, unless the proponent provides justification to RMDA. If the proponent determines that the proposed rule should be withdrawn, the proponent will submit a document to the FRLO to be published in the **Federal Register** withdrawing the proposed rule. The withdrawal of the proposed rule will be reported in the next edition of the Unified Agenda.

(f) Civil Works projects under the ASA (CW) shall submit updated and proposed Unified Agenda items to AASA.

#### **§ 519.18 OMB Control Number.**

Each rule OMB reviews under the Paperwork Reduction Act is assigned an OMB control number which becomes its identifier throughout its life.

#### **§ 519.19 Consideration of public comment.**

(a) Following publication of a notice of proposed rulemaking, all interested persons will be given an opportunity to participate (60 days) 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/her. A hearing file shall be established for each hearing. The hearing file shall include:

- (1) Public notices issued;
- (2) Request for the hearing;
- (3) Data or material submitted in justification thereof;
- (4) Materials submitted in opposition to the proposed action;
- (5) Hearing transcript; and
- (6) 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/her discretion.

#### **§ 519.20 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) If it is impractical for the rule proponent to finalize the rule after the comment period, due to extensive unresolved issues, the proponent will publish a document withdrawing the proposed rule.

(c) The proponent will prepare a preamble for publication with the final 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 the revision to the proposed rule. Preparation will be in accordance with guidance contained in the **Federal Register Handbook** on Document Drafting.

(d) The original and three copies of the preamble and revised rule will be forwarded to the FRLO in the proper format. The FRLO 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.

(e) The proponent shall provide to the FRLO, a copy of the final rule, a completed OMB Form "Submission of Federal Rules Under the Congressional Review Act" (available at <http://www.whitehouse.gov/WH/EOP/OMB> and <http://www.gao.gov>), and a concise statement about the rule within 14 days of publication date in the **Federal**

**Register.** The proponent will identify whether it is a major or a substantive/nonsignificant rule, its proposed effective date, significant issues of interest, and a cost-benefit analysis of the rule, as applicable. The FRLO will submit a copy of all final rules to both Houses of Congress and the Government Accounting Office (GAO) per CRA.

(f) Army Civil Works rulemaking proponents, when proposing rules governed by § 519.3(e) of this regulation, may forward the documents prescribed in § 519.20(d) and (e) directly to the OFR. Army Civil Works proponents are responsible for submitting a copy of the final rules to Congress and GAO in accordance with § 519.20(e).

#### **§ 519.21 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 this part applies or would apply if issued, as specified in § 519.16. 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 § 519.19.

#### **§ 519.22 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 § 519.20(c) and (d).

(b) Alternatively, the proponent may request Director, RMDA (by letter) 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 RMDA, 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 and a legal review by the proponent's servicing legal office. If RMDA, in coordination with the Office of Army General Counsel, agrees that public comment should not be invited with respect to the cited category, the proponent will adopt and publish a separate rule in the **Federal Register** exempting such rule or rules from the requirements of this part. This separate rule will include an explanation of the basis for exempting each particular category from the provisions of this part.

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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

[Region 2 Docket No. NY62-261, FRL-7644-3]

#### **Approval and Promulgation of Implementation Plans; Reasonably Available Control Technology for Oxides of Nitrogen for a Specific Source in the State of New York**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency is proposing to conditionally approve a revision to the State Implementation Plan (SIP) for ozone submitted by the State of New York. This SIP revision consists of a source-specific reasonably available control technology (RACT) determination for controlling oxides of nitrogen from the sodium nitrite manufacturing plant operated by General Chemical Corporation. This action proposes a conditional approval of the source-specific RACT determination that was made by New York in accordance with provisions of its regulation to help meet the national ambient air quality standard for ozone. The intended effect of this proposed rule is to conditionally approve source-specific emission limitations required by the Clean Air Act.

**DATES:** Written comments must be received on or before May 7, 2004.

**ADDRESSES:** Comments may be submitted by mail to Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. Comments may also be submitted