

to the Division of Dockets Management (see **ADDRESSES**) regarding this guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at <http://www/cfsan.fda.gov/guidance.html>.

Dated: August 2, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

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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: Final rule.

SUMMARY: The Department of the Army is revising our rule concerning the publication of rules affecting the public to incorporate requirements and policies required by various acts of Congress and Executive Orders. This revision also incorporates changes to program proponenty and policies within the Department of the Army. This rule finalizes the proposed rule that was published in the **Federal Register** on April 7, 2004.

DATES: *Effective Date:* September 7, 2004.

ADDRESSES: U.S. Army Records Management and Declassification Agency, ATTN: AHRC-PDD-RP, 7701 Telegraph Road, Alexandria, VA 22315-3860.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda Bowen, Army Federal Register Liaison Officer, Alexandria, VA at (703) 428-6422 or Mrs. Brenda Kopitzke, Alternate Army Federal Register Liaison Officer, Alexandria, VA at (703) 428-6437.

SUPPLEMENTARY INFORMATION:

A. Background

In the April 7, 2004, issue of the **Federal Register** (69 FR 18314), the Department of the Army issued a proposed rule to revise 32 CFR 519. This final rule 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, the 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. The Department of the Army received responses from two commentors. No substantive changes were requested or made; however, we accepted and incorporated administrative changes to the final rule to put all verbs into the present tense and to adopt a consistent way of expressing requirements, recommendations, and discretionary actions.

B. Regulatory Flexibility Act

This rule has been reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601-612, which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small governments). The Department of the Army has determined that this rule will have no significant economic impact on small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this 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 rule is not considered a significant regulatory action.

Brenda S. Bowen,

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 revises 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.
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- 519.15 General.
- 519.16 Applicability.
- 519.17 Procedures when proposing rules.
- 519.18 OMB Control Number.
- 519.19 Consideration of public comment.
- 519.20 Procedures 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 part 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 coordinates with Assistant Secretary of the Army (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) submits 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 develops 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 Department of the Army announcements and rules (proposed, interim, and final) published in the **Federal Register**, and for ensuring Army compliance with this part. The RMDA will—

(1) Assist the officials listed in Table 1 of this section 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) will—

(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 of this section (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)).
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 of § 519.3 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, RMDA (AHRC-PDD-RP) will 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 (AHRC-PDD-RP) 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 (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 this 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 will 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 (AHRC-PDD-RP) in lieu of the statement required by § 519.5.

§ 519.7 Regulatory review.

(a) Proponents of Army regulations will 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 will 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 be 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 subpart 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 must 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, 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 can 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 can 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 that 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 that 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 that 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 will 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 will 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 Department of the Army 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 (AHRC-PDD-RP) 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 depository 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 can, 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 RMDA (AHRC-PDD-RP) (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 (AHRC-PDD-RP) 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 (AHRC-PDD-RP) 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 (AHRC-PDD-RP) 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 (AHRC-PDD-RP) 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 Exceptions.

(a) The Army shall not publish rules in the **Federal Register** that:

(1) 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.

(2) Involve any matter relating to Department of the Army Management, personnel, or public contracts, including nonappropriated fund contracts.

(3) Constitute interpretive rules, general statements of policy or rules of organization, procedure or practice.

(4) Merely interpret a rule already adopted by a higher element within the

Department of the Army or by the Department of Defense.

(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 RMDA (AHRC-PDD-RP) in the proper format prescribed in § 519.17. As provided in § 519.3(e), 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 or 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 (AHRC-PDD-RP) 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 September 7, 2004;

(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 (a) of this section;

(2) Involve any matter relating to a military or foreign affairs function of the United States that 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.

§ 519.17 Procedures when proposing rules.

(a) A description of the proposed rule will be forwarded to RMDA (AHRC-PDD-RP) for regulatory and OMB review. The RMDA 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 Rules section of the **Federal Register**. Proposed rules that have unresolved issues will 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 the proposed rule will be in accordance with guidance contained in the **Federal Register Handbook on Document Drafting**.

(c) Public comment will be invited within 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 rule and the preamble in the prescribed format to RMDA (AHRC-PDD-RP). The RMDA 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 RMDA 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 will be considered for withdrawal, unless the proponent provides justification to RMDA (AHRC-PDD-RP). If the proponent determines that the proposed rule must be withdrawn, the proponent will submit a document to RMDA (AHRC-PDD-RP) 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) will 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 can 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 will be established for each hearing. The hearing file will 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, can do so as a matter within his/her discretion.

§ 519.20 Procedures 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 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 will 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 RMDA (AHRC-PDD-RP) in the proper format. The RMDA 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 will provide to RMDA (AHRC-PDD-RP), 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 RMDA 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 paragraphs (d) and (e) of this section 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 paragraph (e) of this section.

§ 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 as outlined in § 519.20(c) and (d).

(b) Alternatively, the proponent may request RMDA (AHRC-PDD-RP) (by letter) to adopt and publish in the **Federal Register** a separate rule exempting from the republication notice provisions of this regulation those specific categories of rules that 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.

[FR Doc. 04-17998 Filed 8-5-04; 8:45 am]

BILLING CODE 3710-08-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05-04-028]

RIN 1625-AA09

Drawbridge Operation Regulation: Anacostia River, Washington, DC

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations that govern the operation of the CSX Transportation (CSX) Railroad Bridge across Anacostia River, at mile 3.4, in Washington, DC. The final rule will eliminate the need for a bridge tender by allowing the bridge to be operated from a remote location. The final rule will maintain the bridge's current level of operational capabilities and continue to provide for the reasonable needs of rail transportation and vessel navigation.

DATES: This rule is effective September 7, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05-04-028 and are available for inspection or copying at Commander (obr), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704-5004 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, at (757) 398-6222.

SUPPLEMENTARY INFORMATION:

Regulatory History

On May 17, 2004, we published a notice of proposed rulemaking (NPRM) entitled "Drawbridge Operation Regulations: Anacostia River, Washington, DC" in the **Federal Register** (69 FR 27872). We received no comments on the proposed rule. No public hearing was requested nor held.

Background and Purpose

CSX, who owns and operates this movable (vertical lift-type) bridge, requested changes to the operating procedures for the drawbridge. The bridge has a vertical clearance in the closed position to vessels of eight feet at mean low water and five feet at mean high water. Currently, 33 CFR 117.253(b) requires the bridge to open on signal: at all times for public vessels

of the United States, state and local government vessels, commercial vessels, and any vessels in an emergency involving danger to life or property; between 9 a.m. and 12 noon and between 1 p.m. and 6 p.m. from May 15 through September 30; between 6 p.m. and 7 p.m. from May 15 through September 30 if notice is given to the bridge tender not later than 6 p.m. on the day for which the opening is requested; and at all other times, if at least eight hours notice is given.

CSX proposes to remotely operate the opening and closing of the CSX Railroad Bridge across Anacostia River in Washington, DC, from the Benning Yard office, one mile away.

In the event of failure or obstruction of the motion sensors, laser scanners, video cameras or marine-radio communications, the CSX Railroad Bridge would not be operated from the remote location. In these situations, a bridge tender must be called and on-site within 30 minutes to operate the bridge.

When rail traffic has cleared, a horn will sound one prolonged blast followed by one short blast to indicate that the CSX Railroad Bridge is moving to the full open position to vessels. During open span movement, the channel traffic lights will flash red, until the bridge is in the full open position to vessels. In the full open position to vessels, the bridge channel traffic lights will flash green. Except as provided in 33 CFR 117.31(b), the opening of the draw to vessels will not exceed ten minutes after rail traffic has cleared the bridge.

During closing span movement, the channel traffic lights will flash red, the horn will sound five short blasts, and an audio voice-warning device will announce bridge movement. Five short blasts of the horn will continue until the bridge is seated and locked down. When the bridge is seated and locked down to vessels, the channel traffic lights will continue to flash red.

This change will save operational costs by eliminating bridge tenders, maintain the bridge's current level of operating capabilities and continue providing for the reasonable needs of rail transportation and vessel navigation.

Discussion of Comments and Changes

The Coast Guard received no comments on the NPRM for the CSX Railroad Bridge and no changes are being made to this final rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory