

period under the Administrative Procedure Act. However, the Department chose to provide a 30-day period for post-promulgation public comment for each rule.

The Department received fewer than ten substantive comments on the two rules. The comments discussed the need to ensure that regulated parties have notice of legal obligations, and for enforcement actions to be predicated on statutes and regulations. Other comments noted the importance of issuing agency guidance to the public, as agencies use interpretative guidance to explain legal requirements and put them in context. The Department has considered these comments in connection with the decision to revoke the rules.

III. Conclusion

After having considered Executive Order 13992, the views of the Department's components and their experience with the two rules, and the public comments on the two IFRs published in 2020, the Department has concluded that the best approach at this point is to revoke the two regulations, 28 CFR 50.26 and 50.27, in their entirety, effective immediately. Revocation frees Department personnel, including those in its litigating components and those in components that issue guidance documents, from the overly prescriptive nature of these two regulations. Accordingly, this rule removes the regulations at 28 CFR 50.26 and 50.27.

The current provisions of the Justice Manual at sections 1–19.000 and 1–20.000 (<https://www.justice.gov/jm/justice-manual>) will be revised as appropriate at a later date. The new Attorney General Memorandum, issued concurrently with this rule, sets forth the Department's policies in this area going forward.

III. Regulatory Certifications

A. Administrative Procedure Act

This rule relates to a matter of agency management or personnel and is a rule of agency organization, procedure, or practice. As such, this rule is exempt from the usual requirements of prior notice and comment and a 30-day delay in effective date. See 5 U.S.C. 553(a)(2), (b)(A), (d). The rule is effective upon signature. The Department, however, is, in its discretion, seeking post-promulgation public comment on this rulemaking.

B. Regulatory Flexibility Act

A Regulatory Flexibility Analysis was not required for this final rule because

the Department was not required to publish a general notice of proposed rulemaking for this matter. See 5 U.S.C. 601(2), 604(a).

C. Executive Orders 12866 and 13563—Regulatory Review

This rule has been drafted and reviewed in accordance with Executive Order 12866, “Regulatory Planning and Review,” section 1(b), The Principles of Regulation, and Executive Order 13563, “Improving Regulation and Regulatory Review,” section 1(b), General Principles of Regulation.

This final rule is “limited to agency organization, management, or personnel matters” and thus is not a “rule” for purposes of review by the Office of Management and Budget (OMB), a determination in which OMB has concurred. See Executive Order 12866, sec. 3(d)(3). Accordingly, this rule has not been reviewed by OMB. The Department had claimed a similar exemption at the time of promulgating the two regulations (28 CFR 50.26 and 50.27) that are being revoked by this rule. See 85 FR 50951, 50952; 85 FR 63200, 63201.

D. Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, “Civil Justice Reform.”

E. Executive Order 13132—Federalism

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, “Federalism,” the Department has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted for inflation) in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*

G. Congressional Review Act

This rule is not a major rule as defined by section 804 of the Congressional Review Act (CRA), 5 U.S.C. 804. This action pertains to agency management or personnel, and agency organization, procedure, or practice, and does not substantially affect the rights or obligations of non-agency parties. Accordingly, it is not a “rule” as that term is used in the CRA, 5 U.S.C. 804(3)(B), (C), and the reporting requirement of 5 U.S.C. 801 does not apply.

H. Paperwork Reduction Act of 1995

This final rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521.

List of Subjects in 28 CFR Part 50

Administrative practice and procedure.

Accordingly, for the reasons set forth in the preamble, part 50 of chapter I of title 28 of the Code of Federal Regulations is amended as follows:

PART 50—STATEMENTS OF POLICY

■ 1. The authority citation for part 50 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 1162; 28 U.S.C. 509, 510, 516, and 519; 42 U.S.C. 1921 *et seq.*, 1973c; and Pub. L. 107–273, 116 Stat. 1758, 1824.

§§ 50.26 through 50.27 [Removed and reserved]

■ 2. Sections 50.26 and 50.27 are removed and reserved.

Dated: July 1, 2021.

Merrick B. Garland,
Attorney General.

[FR Doc. 2021–14480 Filed 7–15–21; 8:45 am]

BILLING CODE 4410–BB–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 169 and 169a

[Docket ID: DOD–2019–OS–0113]

RIN 0790–AK91

Commercial Activities Program

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: This final rule removes DoD's regulations concerning the Commercial Activities Program. The regulations are obsolete since they have been

superseded by statute, regulation, and policy and, therefore, can be removed from the Code of Federal Regulations (CFR).

DATES: This rule is effective on July 16, 2021.

FOR FURTHER INFORMATION CONTACT: Jason M. Beck, (703) 697-1735 (desk); 571-309-0478 (mobile).

SUPPLEMENTARY INFORMATION: This final rule removes the DoD regulations at 32 CFR part 169, most recently updated on May 19, 1989 (54 FR 21726), and 32 CFR part 169a, most recently updated on July 1, 1992 (57 FR 29207), because they are obsolete. This action is predicated on reissued guidance and policy from the Office of Management and Budget (OMB), cancellation of associated DoD policies, and the enactment of statute in title 10 of the United States Code (U.S.C.).

The content of 32 CFR part 169 was based on the DoD policy document, DoD Instruction 4100.15, "Commercial Activities Program," which was subsequently cancelled on July 10, 2013, because it was obsolete. The content of 32 CFR part 169a was based on the DoD policy document, DoD Instruction 4100.33, "Commercial Activities Program Procedures," which was also subsequently cancelled on March 4, 2011, because it was obsolete. DoD's commercial activities program was based on a previous version of OMB Circular A-76, "Performance of Commercial Activities," which was rescinded and replaced in May 2003 (available at https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A76/a76_incl_tech_correction.pdf).

In addition to the cancellation of the associated DoD Instructions for parts 169 and 169a that deem the rules obsolete, the subject matter aligned to these rules have substantially changed and been addressed in other areas. For example, 10 U.S.C. 2330a and 10 U.S.C. 2461 were enacted in 2008 and 1996, respectively; the Federal Activities Inventory Reform (FAIR) Act was enacted in 1998; the definitions and policy in the Federal Acquisition Regulation (FAR) Parts 2, 7.3, and 7.5, as well as the Defense Federal Acquisition Regulation Supplement (DFARS) 207.5 were changed to reflect the new rules in the FAIR Act and the 2003 version of OMB Circular A-76; and the Office of Federal Procurement Policy (OFPP) issued Policy Letter 11-01, "Performance of Inherently Governmental and Critical Functions," in 2011 (76 FR 56227). These laws, regulations, and Federal policies all substantially address the policy space

covered by 32 CFR parts 169 and 169a. The FAIR Act, for example, establishes in law the framework of inherently governmental and commercial activities functions, while 10 U.S.C. 2461 establishes the requirement for public/private competitions before conversion to contractor performance—competitions which are covered under OMB Circular A-76. The FAR and DFARS regulations, as well as OFPP Policy Letter 11-01, go even farther than the FAIR Act and delineate additional categories of functions (such as closely associated with inherently governmental and critical) which are not mentioned in 32 CFR 169 and 169a. Similarly, 10 U.S.C. 2330a establishes law for the collection of contract services data, another area related to the commercial activities discussed in 32 CFR 169 and 169a, but not covered by them.

Additionally, the OMB Circular A-76 public-private competition process has been under a Congressional moratorium since 2008. If the moratorium were lifted, the rules would still be considered obsolete and unnecessary, and promulgating new rules would be unnecessary due to the inclusion of language in title 10 U.S.C., the FAR, DFARS, and elsewhere in executive agency policy, as previously noted. These acts and policies address and cover the intent of parts 169 and 169a and, therefore, no longer make them applicable and worthy of staying active. Furthermore, not only are parts 169 and 169a unnecessary, they are no longer current with the statutory, regulatory, and policy framework that governs the acquisition of services and functions in the Total Force Management policy space.

It has been determined that publication of these CFR part removals for public comment is impracticable, unnecessary, and contrary to public interest since they are based on the removal of obsolete information. These removals are not significant under Executive Order (E.O.) 12866, "Regulatory Planning and Review."

List of Subjects in 32 CFR Parts 169 and 169a

Armed forces, Government procurement.

Accordingly, the Department of Defense amends 32 CFR chapter I as follows:

PART 169—[REMOVED]

■ 1. Under the authority of 5 U.S.C. 301, 32 CFR part 169 is removed.

PART 169a—[REMOVED]

■ 2. Under the authority of 5 U.S.C. 301, 32 CFR part 169a is removed.

Dated: July 13, 2021.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021-15163 Filed 7-15-21; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2021-0470]

RIN 1625-AA00

Safety Zone; Upper Mississippi River, Mile Marker 579.7 Approximately 1,000 Feet Northwest of the Ulysses S. Grant Memorial Hwy., Dubuque, IA

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Upper Mississippi River at mile marker 579.7 extending 500 feet from the left descending bank approximately 1,000 feet northwest of the Ulysses S. Grant Memorial Hwy. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by a fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Upper Mississippi River or a designated representative.

DATES: This rule is effective on July 17, 2021, from 9 p.m. through 10:30 p.m.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0470 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Stephanie Moore, Sector Upper Mississippi River Waterways Management Division, U.S. Coast Guard; telephone 314-269-2560, email Stephanie.R.Moore@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations