

any C stock prior to year 6, D purchased 20 percent of the C stock in year 6, and then acquired all of the remaining C stock in year 7, the C stock purchased in year 6 and the C stock acquired in year 7 (even if purchased) would not be treated as “other property” because C becomes a DSAG member. See paragraph (g)(2)(i) of this section.

*Example 3. Intra-SAG transaction.* For more than five years, D has owned all of the stock of S. D and S, in the aggregate, have owned section 368(c) stock but not section 1504(a)(2) stock of C. Therefore, D and S are DSAG members, but C is not. In year 6, D purchases S’s C stock. If D distributes all of its C stock within five years after the year 6 purchase, the distribution of the C stock purchased in year 6 would not be treated as “other property.” D’s purchase of the C stock from S is disregarded for purposes of paragraph (g)(1) of this section because that C stock was owned by the DSAG immediately before and immediately after the purchase. See paragraph (g)(1) of this section.

*Example 4. Affiliate exception.* For more than five years, P has owned 90 percent of the sole outstanding class of the stock of D and a portion of the stock of C, and X has owned the remaining 10 percent of the D stock. Throughout this period, D has owned section 368(c) stock but not section 1504(a)(2) stock of C. In year 6, D purchases P’s C stock. However, D does not own section 1504(a)(2) stock of C after the year 6 purchase. If D distributes all of its C stock to X in exchange for X’s D stock within five years after the year 6 purchase, the distribution of the C stock purchased in year 6 would not be treated as “other property” because the C stock was purchased from a member (P) of the affiliated group (as defined in § 1.355–3(b)(4)(iv)) of which D is a member, and P did not purchase that C stock within the pre-distribution period. See paragraph (g)(2)(ii) of this section.

\* \* \* \* \*

(i) *Effective/applicability date.* Paragraphs (g)(1) through (g)(5) of this section apply to distributions occurring after October 20, 2011. For rules regarding distributions occurring on or before October 20, 2011, see § 1.355–2T(i), as contained in 26 CFR part 1, revised as of April 1, 2011.

**§ 1.355–0T [Removed]**

■ **Par. 5.** Section 1.355–0T is removed.

**§ 1.355–2T [Removed]**

■ **Par. 6.** Section 1.355–2T is removed.

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

Approved: October 14, 2011.

**Emily S. McMahon,**

*Acting Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 2011–27240 Filed 10–19–11; 8:45 am]

**BILLING CODE 4830–01–P**

**DEPARTMENT OF JUSTICE**

**28 CFR Part 104**

[Docket No. CIV 151]

RIN 1105–AB39

**James Zadroga 9/11 Health and Compensation Act of 2010**

**AGENCY:** Department of Justice.

**ACTION:** Final rule; correction.

**SUMMARY:** The Department of Justice is correcting a final rule that appeared in the *Federal Register* of August 31, 2011 (76 FR 54112). That document issued regulations implementing the amendments made by the James Zadroga 9/11 Health and Compensation Act of 2010 (Zadroga Act) with respect to the September 11th Victim Compensation Fund of 2001.

**DATES:** Effective October 3, 2011.

**FOR FURTHER INFORMATION CONTACT:**

Kenneth L. Zwick, Director, Office of Management Programs, Civil Division, U.S. Department of Justice, Main Building, Room 3140, 950 Pennsylvania Avenue, NW., Washington, DC 20530, telephone 855–885–1555 (TTY 855–885–1558).

**SUPPLEMENTARY INFORMATION:** In FR Doc. 2011–22160 appearing on page 54112 in the *Federal Register* on Wednesday, August 31, 2011, the following correction is made:

1. On page 54119, in the third column, the paragraph following the heading “Small Business Regulatory Enforcement Fairness Act of 1996” is revised to read as follows:

“The Office of Management and Budget has determined that this rule is a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act), 5 U.S.C. 804. This rule will not result in a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets. However, the compensation benefits awarded to eligible claimants will have an annual beneficial impact on the economy of \$100,000,000 or more in certain years until the amounts authorized and appropriated for the Victims Compensation Fund are fully distributed.

“Title II of the Zadroga Act reactivates the September 11th Victim Compensation Fund of 2001 and requires a Special Master, appointed by

the Attorney General, to provide compensation to any individual (or a personal representative of a deceased individual) who suffered physical harm or was killed as a result of the terrorist-related aircraft crashes of September 11, 2001, or the debris removal efforts that took place in the immediate aftermath of those crashes. In view of the need to begin processing compensation claims as soon as possible, it is impracticable for the Department to comply with the requirements of section 801 of the Congressional Review Act, 5 U.S.C. 801, pertaining to delayed effective dates of major rules without unduly delaying the processing of claims. Section 808(2) of the Congressional Review Act, 5 U.S.C. 808(2), provides: “Notwithstanding section 801—\* \* (2) any rule which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the Federal agency promulgating the rule determines.” Were the Department not to invoke the exception provided in section 808(2) of the Congressional Review Act, eligible claimants would have to wait substantially longer to begin filing their claims, thereby impairing Congress’s goal of providing compensation in as expeditious a manner as possible (as evidenced by the short statutory deadline for implementation). Such a delay in implementing the compensation process would be clearly contrary to the public interest. For the foregoing reasons, the Special Master finds pursuant to section 808(2) of the Congressional Review Act, 5 U.S.C. 808, that good cause exists to make this final rule effective October 3, 2011.”

Dated: October 12, 2011.

**Sheila L. Birnbaum,**

*Special Master.*

[FR Doc. 2011–27121 Filed 10–19–11; 8:45 am]

**BILLING CODE 4410–12–P**

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**32 CFR Part 211**

[Docket ID: DOD–2011–OS–0054; RIN 0790–AI69]

**Mission Compatibility Evaluation Process**

**AGENCY:** Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, DoD.

**ACTION:** Interim final rule.

**SUMMARY:** The Department of Defense (DoD) is issuing this interim final rule to implement section 358 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011. That section requires that the DoD issue procedures addressing the impacts upon military operations of certain types of structures if they pose an unacceptable risk to the national security of the United States. The structures addressed are those for which an application is required to be filed with the Secretary of Transportation. Section 358 also requires the designation of a lead organization to coordinate DoD review of applications for projects filed with the Secretary of Transportation and received by the Department of Defense from the Secretary of Transportation. Section 358 also requires the designation of certain officials by the Secretary of Defense to perform functions pursuant to the section and this implementing rule. Section 358 also requires the establishment of a comprehensive strategy for addressing military impacts of renewable energy projects and other energy projects, with the objective of ensuring that the robust development of renewable energy sources and the expansion of the commercial electrical grid may move forward in the United States, while minimizing or mitigating any adverse impacts on military operations and readiness. That requirement, however, is not required at this time and is not part of this rule. Other aspects of section 358 not required at this time, such as annual reports to Congress, are also not addressed in this rule. Nor does this rule deal with other clearance processes not included in section 358, such as those applied by the Bureau of Land Management, Department of the Interior.

**DATES:** This rule is effective upon publication in the **Federal Register**. Comments must be received by December 19, 2011.

**ADDRESSES:** You may submit comments, identified by docket number and or Regulatory Information Number (RIN) and title, by any of the following methods:

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

- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350-3100.

*Instructions:* All submissions received must include the agency name and docket number or RIN for this **Federal**

**Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** David Belote, (703) 697-7301, or Bill Van Houten, (703) 571-9068, both can be contacted at [DoDSitingClearing-house@osd.mil](mailto:DoDSitingClearing-house@osd.mil).

**SUPPLEMENTARY INFORMATION:**

Section 358 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, Public Law 111-383, became law on January 7, 2011. In that provision, Congress required, among other things, that the DoD implement new procedures relating to how the DoD reviews and comments on applications filed with the Secretary of Transportation pursuant to 49 U.S.C. 44718. Section 358 also specifies who within DoD may provide such comments to the Secretary of Transportation, that DoD will engage in outreach activities with interested parties, and that Congress must be advised when the DoD objects to an application filed pursuant to 49 U.S.C. 44718.

Section 211.1 of this Interim Rule states the two primary purposes of the rule which are to provide for DoD commenting on applications filed pursuant to 49 U.S.C. 44718 and requests for reviews of projects prior to applications being filed pursuant to 49 U.S.C. 44718.

Section 211.2 addresses the applicability of part 211. This part applies to all components of the DoD, those applicants filing applications pursuant to 49 U.S.C. 44718 when those applications are conveyed by the Secretary of Transportation to the Department of Defense, those requesting reviews of projects prior to applications being filed under 49 U.S.C. 44718 (including State and local officials), and those providing comments to DoD relating to its actions in reviewing applications. It also applies, geographically, to the United States.

Section 211.3 provides definitions. The definition of “adverse impact on military operations and readiness” provides that a demonstrable impairment or degradation of the ability of the armed forces to perform their warfighting missions constitutes an adverse impact. The definition of “applicant” refers to an entity filing a proper application with the Secretary of Transportation pursuant to 49 U.S.C.

44718, and whose application has been provided by the Secretary of Transportation to the DoD. The definition of “armed forces” refers to the definition at 10 U.S.C. 101(a)(4), which includes the Army, Navy, Air Force, and Marine Corps, but excludes the Coast Guard. The definition of “congressional defense committees” is taken from section 3 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, which, in turn, adopts by reference the definition of the term in 10 U.S.C. 101(a)(16). The definition of “military readiness” is taken from the definition of the term provided in section 358. The definition of “mitigation” provides a general description of the term while leaving to individual actions more specific examples of what may constitute mitigation. The definition of “proposed project” is the project as submitted to the Secretary of Transportation pursuant to 49 U.S.C. 44718. The definition of “requester” refers to a developer of a renewable energy development or other energy project or a state or local official seeking an informal review of a project by the DoD prior to the project being submitted for formal review pursuant to 49 U.S.C. 44718. The definition of “section 358” refers to the authorizing provision, section 358 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011. The definition of “unacceptable risk to the national security of the United States” includes the two existing criteria found in 49 U.S.C. 44718, namely the construction, alteration, establishment, or expansion, or the proposed construction, alteration, establishment, or expansion, of a structure or sanitary landfill that endangers safety in air commerce or interferes with the efficient use and preservation of the navigable airspace and of airport traffic capacity at public-use airports, but, for purposes of this rule, only when related to the activities of the DoD. The definition also includes an additional criterion consisting of actions that will significantly impair or degrade the capability of the DoD to conduct training, research, development, testing, and evaluation, and operations or to maintain military readiness. The definition of “United States” is included to provide the geographical limitation of the part, clarifying that the part does not apply outside of the United States.

Section 211.4 provides the general policy of the part, taken from section 358(a). It also limits the participation of DoD in the Federal Aviation Administration’s process under 49

U.S.C. 44718 to the process provided in this rule.

Section 211.5 specifies the officials with authorities and responsibilities under the part pursuant to section 358. The Deputy Secretary of Defense is designated as the senior officer who is authorized to provide a determination to the Secretary of Transportation that a project filed pursuant to 49 U.S.C. 44718 would result in an unacceptable risk to the national security of the United States. The Under Secretary of Defense for Acquisition, Technology, and Logistics is designated as the senior official who may make a recommendation to the Deputy Secretary of Defense that such a project would result in such a risk. The Deputy Under Secretary of Defense (Installations & Environment) is designated as the official who, in coordination with the Deputy Assistant Secretary of Defense (Readiness) and the Principal Deputy Director, Operational Test and Evaluation, reviews such a project and provides a preliminary assessment of the level of risk of adverse impact on military operations and readiness that would arise from the project and the extent of mitigation that may be needed to address such risk. The Office of the Deputy Under Secretary of Defense (Installations & Environment) is designated as the lead organization, and the DoD Siting Clearinghouse is established and organized under the Deputy Under Secretary.

Section 211.6 provides the procedures for formal DoD review of a project filed by an applicant with the Secretary of Transportation pursuant to 49 U.S.C. 44718.

Section 211.7 provides the procedures for informal DoD review of a project submitted by a requester prior to submitting a formal application pursuant to 49 U.S.C. 44718.

Section 211.8 directs DoD Components to forward any inquiries or requests they may receive to the Clearinghouse so as to avoid unauthorized action by a Component outside of the process established by this rule.

Section 211.9 provides some of the types of mitigation to be considered by the DoD and the applicant/requester when discussing mitigation.

Section 211.10 provides for the notification to Congress required by section 358 when the senior officer makes a determination that a project presents an unacceptable risk to the national security of the United States.

Section 211.11 provides for a public Web site where the public can review the actions being considered by DoD,

track their progress, and offer comments.

**Executive Order 12866, Regulatory Planning and Review and Executive Order 13563, Improving Regulation and Regulatory Review**

It has been determined that this rule is not a significant regulatory action. This rule does not:

- (1) Have an annual effect to the economy of \$100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;
- (2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

**Section 202, Public Law 104-4, Unfunded Mandates Reform Act**

It has been certified that 32 CFR part 211 does not contain a Federal mandate that may result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

**Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601)**

The Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended, 5 U.S.C. 601-612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The RFA requires agencies to analyze the economic impact of regulations to determine the extent to which there is anticipated to be a significant economic impact on a substantial number of small entities. DoD anticipates that the Interim Rule could potentially affect a few entities that might otherwise have located structures on public or private lands that would present an unreasonable risk to the national security of the United States. DoD further anticipates that some of these entities will be small entities as defined by the Small Business Administration; however, DoD does not expect the potential impact to be significant because this rule provides

procedures to mitigate the impact of such an unreasonable risk to the benefit of both the proponent and DoD.

**Public Law 96-511, Paperwork Reduction Act (44 U.S.C. Chapter 35)**

Section 211.7 of this interim final rule contains information collection requirements. DoD has submitted the following proposal to OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

*Title:* Information for DoD Informal Review of Renewable Energy Source Projects.

*Type of Request:* New.

*Number of Respondents:* 350.

*Responses per Respondent:* 15.

*Annual Responses:* 5,250.

*Average Burden per Response:* 1 hour.

*Annual Burden Hours:* 5,250 hours.

*Needs and Uses:* This information is necessary to allow the Department of Defense to assess the impact on military operations and the risk to national security of proposed construction, alteration, establishment, or expansion, of a structure or sanitary landfill.

*Affected Public:* Business or other for-profit; State, local or tribal governments.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Written comments and recommendations on the information collection should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, DoD Desk Officer, Room 10102, New Executive Office Building, Washington, DC 20503, with a copy to the Executive Director, DoD Siting Clearinghouse, Office of the Deputy Under Secretary of Defense (Installations and Environment), 3400 Defense Pentagon, Room 5C646, Washington, DC 20301-3400.

Comments can be received from 30 to 60 days after the date of this notice, but comments to OMB will be most useful if received by OMB within 30 days after the date of this notice.

You may also submit comments, identified by docket number [DoD-2011-OS-0113] and title, by the following method:

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

*Instructions*: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

To request more information on this information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Executive Director, DoD Siting Clearinghouse, Office of the Deputy Under Secretary of Defense (Installations and Environment), 3400 Defense Pentagon, Room 5C646, Washington, DC 20301-3400.

#### Executive Order 13132, Federalism

It has been certified that this part does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

- (1) The States;
- (2) The relationship between the National Government and the States; or
- (3) The distribution of power and responsibilities among the various levels of Government.

#### List of Subjects in 32 CFR Part 211

Energy; Evaluation.

■ Accordingly 32 CFR Part 211 is added to read as follows:

### PART 211—MISSION COMPATIBILITY EVALUATION PROCESS

#### Subpart A—General

- Sec.
- 211.1 Purpose.
  - 211.2 Applicability.
  - 211.3 Definitions.

#### Subpart B—Policy

- 211.4 Policy.
- 211.5 Responsibilities.

#### Subpart C—Project Evaluation Procedures

- 211.6 Initiating a Formal DoD Review of a Proposed Project.
- 211.7 Initiating an Informal DoD Review of a Project.
- 211.8 Inquiries Received by DoD Components.
- 211.9 Mitigation Options.
- 211.10 Reporting Determinations to Congress.

#### Subpart D—Communications and Outreach

- 211.11 Communications With the Clearinghouse.

211.12 Public Outreach.

**Authority**: Public Law 111-383, Section 358.

#### Subpart A—General

##### § 211.1 Purpose.

This part prescribes procedures pursuant to section 358 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 to provide:

(a) A formal review of projects for which applications are filed with the Secretary of Transportation under 49 U.S.C. 44718, to determine if they pose an unacceptable risk to the national security of the United States.

(b) An informal review of a renewable energy development or other energy project in advance of the filing of an application with the Secretary of Transportation under 49 U.S.C. 44718.

##### § 211.2 Applicability.

This part applies to:

(a) The Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as the “DoD Components”).

(b) Persons filing applications with the Secretary of Transportation for proposed projects pursuant to 49 U.S.C. 44718, when such applications are received by the Department of Defense from the Secretary of Transportation.

(c) A State or local official or a developer of a renewable energy project seeking a review of such project by DoD.

(d) Members of the general public from whom comments are received on notices of actions being taken by the Department of Defense under this part.

(e) The United States.

##### § 211.3 Definitions.

(a) *Adverse impact on military operations and readiness*. Any adverse impact upon military operations and readiness, including flight operations, research, development, testing, and evaluation, and training that is demonstrable and is likely to impair or degrade the ability of the armed forces to perform their warfighting missions.

(b) *Applicant*. An entity filing an application with the Secretary of Transportation pursuant to 49 U.S.C. 44718, and whose proper application has been provided by the Secretary of Transportation to the Clearinghouse.

(c) *Armed forces*. This term has the same meaning as provided in 10 U.S.C.

101(a)(4) but does not include the Coast Guard.

(d) *Clearinghouse*. The DoD Siting Clearinghouse, established under the Deputy Under Secretary of Defense (Installations & Environment).

(e) *Congressional defense committees*. The—

(1) Committee on Armed Services and the Committee on Appropriations of the Senate; and

(2) Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(f) *Days*. All days are calendar days but do not include Federal holidays.

(g) *Military readiness*. Includes any training or operation that could be related to combat readiness, including testing and evaluation activities.

(h) *Mitigation*. Actions taken by either or both the DoD or the applicant to ensure that a project does not create an unacceptable risk to the national security of the United States.

(i) *Proposed project*. A proposed project is the project as described in the application submitted to the Secretary of Transportation pursuant to 49 U.S.C. 44718 and transmitted by the Secretary of Transportation to the Clearinghouse.

(j) *Requester*. A developer of a renewable energy development or other energy project or a state or local official seeking an informal review by the DoD of a project.

(k) *Section 358*. Section 358 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, Public Law 111-383.

(l) *Unacceptable risk to the national security of the United States*. The construction, alteration, establishment, or expansion, or the proposed construction, alteration, establishment, or expansion, of a structure or sanitary landfill that:

(1) Endangers safety in air commerce, related to the activities of the DoD.

(2) Interferes with the efficient use and preservation of the navigable airspace and of airport traffic capacity at public-use airports, related to the activities of the DoD.

(3) Will significantly impair or degrade the capability of the DoD to conduct training, research, development, testing, and evaluation, and operations or maintain military readiness.

(m) *United States*. The several States, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Mariana Islands, American Samoa, Guam, Midway and Wake Islands, the U.S. Virgin Islands, any other territory or possession of the United States, and associated navigable

waters, contiguous zones, and territorial seas and the airspace of those areas.

## Subpart B—Policy

### § 211.4 Policy.

(a) It is an objective of the Department of Defense to ensure that the robust development of renewable energy sources and the increased resiliency of the commercial electrical grid may move forward in the United States, while minimizing or mitigating any adverse impacts on military operations and readiness.

(b) The participation of the DoD in the process of the Federal Aviation Administration conducted pursuant to 49 U.S.C. 44718 shall be conducted in accordance with this part. No other process shall be used by a DoD Component.

(c) Nothing in this part shall be construed as affecting the authority of the Secretary of Transportation under 49 U.S.C. 44718.

### § 211.5 Responsibilities.

(a) Pursuant to subsection (e)(4) of section 358, the Deputy Secretary of Defense is designated as the senior officer. Only the senior officer may convey to the Secretary of Transportation a determination that a project filed with the Secretary of Transportation pursuant to 49 U.S.C. 44718 would result in an unacceptable risk to the national security of the United States.

(b) Pursuant to subsection (b)(1) of section 358, the Under Secretary of Defense for Acquisition, Technology, and Logistics is designated as the senior official. Only the senior official may provide to the senior officer a recommendation that the senior officer determine a project filed with the Secretary of Transportation pursuant to 49 U.S.C. 44718 would result in an unacceptable risk to the national security of the United States.

(c) Pursuant to subsection (e)(1) of section 358, the Deputy Under Secretary of Defense (Installations & Environment), in coordination with the Deputy Assistant Secretary of Defense (Readiness) and the Principal Deputy Director, Operational Test and Evaluation, shall review a proper application for a project filed pursuant to 49 U.S.C. 44718 and received from the Secretary of Transportation and provide a preliminary assessment of the level of risk of adverse impact on military operations and readiness that would arise from the project and the extent of mitigation that may be needed to address such risk.

(d) Pursuant to subsection (b)(1) of section 358, the Office of the Deputy Under Secretary of Defense (Installations & Environment) is designated as the lead organization. Under the authority, direction, and control of the Under Secretary of Defense for Acquisition, Technology, and Logistics, there is, within the Office of the Deputy Under Secretary, a DoD Siting Clearinghouse. The Clearinghouse:

(1) Shall have a governing board organized in accordance with DoD Instruction 5105.18, DoD Intergovernmental and Intragovernmental Committee Management Program.

(2) Has an executive director who is a Federal Government employee, appointed by the Deputy Under Secretary of Defense (Installations & Environment).

(3) Performs such duties as assigned in this part and as the Deputy Under Secretary directs.

## Subpart C—Project Evaluation Procedures

### § 211.6 Initiating a Formal DoD Review of a Proposed Project.

(a) A formal review of a proposed project begins with the receipt from the Secretary of Transportation by the Clearinghouse of a proper application filed with the Secretary of Transportation pursuant to 49 U.S.C. 44718.

(1) The Clearinghouse will convey the application as received to those DoD Components it believes may have an interest in reviewing the application.

(2) The DoD Components that receive the application shall provide their comments and recommendations on the application to the Clearinghouse no later than 20 days after they receive the application.

(3) Not later than 30 days after receiving the application from the Secretary of Transportation, the Clearinghouse shall evaluate all comments and recommendations received and take one of two actions:

(i) Determine that the proposed project will not have an adverse impact on military operations and readiness, in which case it shall notify the Secretary of Transportation of such determination.

(ii) Determine that the proposed project may have an adverse impact on military operations and readiness. When the Clearinghouse makes such a determination it shall immediately—

(A) Notify the applicant of the determination of the Clearinghouse and offer to discuss mitigation with the applicant to reduce the adverse impact;

(B) Designate one or more DoD Components to engage in discussions with the applicant to attempt to mitigate the adverse impact;

(C) Notify the Secretary of Transportation that the Department of Defense has determined that the proposed project may have an adverse impact on military operations and readiness, and, if the cause of the adverse impact is due to the proposed project exceeding an obstruction standard set forth in subpart C of part 77 of title 14 of the Code of Federal Regulations, identify the specific standard and how it would be exceeded; and

(D) Notify the Secretary of Transportation and the Secretary of Homeland Security that the Clearinghouse has offered to engage in mitigation discussions with the applicant.

(4) The applicant must provide to the Clearinghouse its agreement to discuss the possibility of mitigation within five days of receipt of the notification from the Clearinghouse.

(b) If the applicant agrees to enter into discussions with the DoD to seek to mitigate an adverse impact, the designated DoD Components shall engage in discussions with the applicant to attempt to reach agreement on measures that would mitigate the adverse impact of the proposed project on military operations and readiness. The Clearinghouse shall invite the Administrator of the Federal Aviation Administration and the Secretary of Homeland Security to participate in such discussions.

(1) Such discussions shall not extend more than 90 days beyond the initial notification to the applicant, unless both the designated DoD Components and the applicant agree, in writing, to an extension of a specific period of time.

(i) If agreement between the applicant and the designated DoD Components has not been reached on mitigation measures by that time and no extension has been mutually agreed to, the designated DoD Components shall notify the Clearinghouse of the results of the discussions and the analysis and recommendations of the Components with regard to the proposed project as it is proposed after discussions.

(ii) If agreement between the applicant and the designated DoD Components has been reached on mitigation measures that remove the adverse impact of the proposed project on military operations and readiness, the DoD Components shall notify the Clearinghouse of the agreement and the applicant shall notify the Secretary of

Transportation of such agreement and amend its application accordingly.

(2) If the applicant and the designated DoD Components are unable to reach agreement on mitigation, the Clearinghouse shall review the analysis and recommendations of the DoD Components and determine if the proposed project as it may have been modified by the applicant after discussions would result in an unacceptable risk to the national security of the United States.

(i) If the Clearinghouse determines that the proposed project as it may have been modified by the applicant after discussions would result in an unacceptable risk to the national security of the United States, it shall make a recommendation to the senior official to that effect. If the Clearinghouse determines, contrary to the recommendations of the DoD Components, that the proposed project as it may have been modified by the applicant after discussions would not result in an unacceptable risk to the national security of the United States, it shall make a recommendation to the senior official to that effect.

(ii) If the senior official concurs with the recommendation of the Clearinghouse, the senior official shall make a recommendation to the senior officer that is consistent with the recommendation of the Clearinghouse. If the senior official does not agree with the recommendation of the Clearinghouse, the senior official may make a recommendation to the senior officer to that effect.

(iii) The senior officer shall consider the recommendation of the senior official, and, after giving full consideration to mitigation actions available to the DoD and those agreed to by the applicant, determine whether the proposed project as it may have been modified by the applicant would result in an unacceptable risk to the national security of the United States. If the senior officer makes such a determination, the senior officer shall convey that determination to the Secretary of Transportation, identifying which of the three criteria in section 211.3(l) creates the unacceptable risk to the national security of the United States.

(iv) Any mitigation discussions engaged in by the Department of Defense pursuant to this part shall not be binding upon any other Federal agency, nor waive required compliance with any other law or regulation.

(c)(1) If the applicant does not agree to enter into discussions with the DoD to seek to mitigate an adverse impact, the Clearinghouse shall review the

analysis and recommendations of the designated DoD Components and determine if the proposed project would result in an unacceptable risk to the national security of the United States. If the Clearinghouse determines that the proposed project would result in an unacceptable risk to the national security of the United States, it shall make a recommendation to the senior official to that effect. If the Clearinghouse determines, contrary to the recommendations of the DoD Components, that the proposed project would not result in an unacceptable risk to the national security of the United States, it shall make a recommendation to the senior official to that effect.

(2) If the senior official concurs with the recommendation of the Clearinghouse, the senior official shall make a recommendation to the senior officer that is consistent with the recommendation of the Clearinghouse. If the senior official does not agree with the recommendation of the Clearinghouse, the senior official may make a recommendation to the senior officer to that effect.

(3) The senior officer shall consider the recommendation of the senior official, and, after giving full consideration to mitigation actions available to the DoD and those agreed to by the applicant, determine whether the proposed project would result in an unacceptable risk to the national security of the United States. If the senior officer makes such a determination, the senior officer shall convey that determination to the Secretary of Transportation, identifying which of the three criteria in section 211.3(l) creates the unacceptable risk to the national security of the United States.

(d) The Clearinghouse may, on behalf of itself, the senior official, or the senior officer, seek an extension of time from the Secretary of Transportation for consideration of the application.

#### **§ 211.7 Initiating an Informal DoD Review of a Proposed Project.**

(a) An informal review of a project begins with the receipt from a requester by the Clearinghouse of a request for an informal review. In seeking an informal review, the requester shall provide the following information to the Clearinghouse:

(1) The geographic location of the project including its latitude and longitude; and

(2) The nature of the project.

(3) The requester is encouraged to provide as much additional information as is available. The more information provided by the requester, the greater

will be the accuracy and reliability of the resulting DoD review.

(b) The Clearinghouse shall, within five days of receiving the information provided by the requestor, convey that information to those DoD Components it believes may have an interest in reviewing the request.

(1) The DoD Components that receive the request from the Clearinghouse shall provide their comments and recommendations on the request to the Clearinghouse no later than 30 days after they receive the request.

(2) Not later than 50 days after receiving the request from the requester, the Clearinghouse shall evaluate all comments and recommendations received and take one of two actions:

(i) Determine that the project will not have an adverse impact on military operations and readiness, in which case it shall notify the requester of such determination. In doing so, the Clearinghouse shall also advise the requester that the informal review by the DoD does not constitute an action under 49 U.S.C. 44718 and that neither the DoD nor the Secretary of Transportation are bound by the determination made under the informal review.

(ii) Determine that the project will have an adverse impact on military operations and readiness.

(A) When the requester is the project proponent and the Clearinghouse makes such a determination, the Clearinghouse shall immediately—

(1) Notify the requester of the determination and the reasons for the conclusion of the Clearinghouse and advise the requester that the DoD would like to discuss the possibility of mitigation to reduce any adverse impact; and

(2) Designate one or more DoD Components to engage in discussions with the requester to attempt to mitigate the adverse impact.

(B) When the requester is a state or local official, notify the requester of the determination of the Clearinghouse and the reasons for that conclusion.

(c) If the requester is the project proponent and agrees to enter into discussions with the DoD to seek to mitigate an adverse impact, the designated DoD Components shall engage in discussions with the requester in an attempt to reach agreement on measures that would mitigate the adverse impact of the project on military operations and readiness.

#### **§ 211.8 Inquiries Received by DoD Components.**

(a) An inquiry received by a DoD Component other than the

Clearinghouse relating to an application filed with the Secretary of Transportation pursuant to 49 U.S.C. 44718 shall be forwarded to the Clearinghouse by the DoD Component except when that DoD Component has been designated by the Clearinghouse to engage in discussions with the entity making the inquiry.

(b) A request for informal DoD review or any other inquiry related to matters covered by this part and received by a DoD Component other than the Clearinghouse shall be forwarded to the Clearinghouse by that Component except when that DoD Component has been designated by the Clearinghouse to engage in discussions with the entity making the request.

#### **§ 211.9 Mitigation Options.**

(a) In discussing mitigation to avoid an unacceptable risk to the national security of the United States, the DoD Components designated to discuss mitigation with an applicant or requester shall, as appropriate and as time allows, analyze the following types of DoD mitigation to determine if they identify feasible and affordable actions that may be taken to mitigate adverse impacts of projects on military operations and readiness:

- (1) Modifications to military operations.
- (2) Modifications to radars or other items of military equipment.
- (3) Modifications to military test and evaluation activities, military training routes, or military training procedures.
- (4) Providing upgrades or modifications to existing systems or procedures.
- (5) The acquisition of new systems by the DoD and other departments and agencies of the Federal Government.

(b) In discussing mitigation to avoid an unacceptable risk to the national security of the United States, the applicant or requester, as the case may be, should consider the following possible actions:

- (1) Modification of the proposed structure, operating characteristics, or the equipment in the proposed project.
- (2) Changing the location of the proposed project.
- (3) Providing a voluntary contribution of funds to offset the cost of measures undertaken by the Secretary of Defense to mitigate adverse impacts of the project on military operations and readiness.

#### **§ 211.10 Reporting Determinations to Congress.**

(a) Not later than 30 days after making a determination of unacceptable risk pursuant to section 211.6, the senior

officer shall submit to the congressional defense committees a report on such determination and the basis for such determination.

(b) Such a report shall include—

- (1) An explanation of the operational impact that led to the determination.
- (2) A discussion of the mitigation options considered.
- (3) An explanation of why the mitigation options were not feasible or did not resolve the conflict.

### **Subpart D—Communications and Outreach**

#### **§ 211.11 Communications With the Clearinghouse.**

All communications to the Clearinghouse by applicants, requesters, or members of the public should be addressed to:

Executive Director, DoD Siting Clearinghouse, Office of the Deputy Under Secretary of Defense (Installations and Environment), Room 5C646, 3400 Defense Pentagon, Washington, DC 20301–3400 or to such internet address as the Clearinghouse may provide.

#### **§ 211.12 Public Outreach.**

(a) The DoD shall establish a Web site accessible to the public that—

- (1) Lists the applications and requests for informal review the DoD is currently considering.
- (2) Identifies the stage of the action, e.g., preliminary review, referred for mitigation discussions, determined to be an unacceptable risk.
- (3) Indicates how the public may provide comments.

(b) The Clearinghouse shall publish a handbook to provide applicants, requesters, and members of the public with necessary information to assist them in participating in the Mission Compatibility Evaluation Process.

Dated: October 12, 2011.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer,  
Department of Defense.*

[FR Doc. 2011–26987 Filed 10–19–11; 8:45 am]

**BILLING CODE 5001–06–P**

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

#### **33 CFR Part 117**

[Docket No. USCG–2011–0816]

RIN 1625–AA09

#### **Drawbridge Operation Regulation; Bear Creek, Sparrows Point, MD**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is canceling a portion of an existing drawbridge operation regulation. The Baltimore County Revenue Authority (Dundalk Avenue) highway toll drawbridge across Bear Creek, mile 1.5, Sparrows Point, MD was replaced with a fixed bridge in 1998. Therefore, that portion of the operating regulation, as it pertains to the Dundalk Avenue highway toll drawbridge, is no longer applicable or necessary.

**DATES:** This rule is effective October 20, 2011.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket USCG–2011–0816 and are available by going to <http://www.regulations.gov>, inserting USCG–2011–0816 in the “Keyword” box, and then clicking “Search.” This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Lindsey Middleton, Coast Guard; telephone 757–398–6629, e-mail [Lindsey.R.Middleton@uscg.mil](mailto:Lindsey.R.Middleton@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

#### **SUPPLEMENTARY INFORMATION:**

##### **Regulatory Information**

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary