

DEPARTMENT OF DEFENSE**Office of the Secretary****32 CFR Part 179****Munitions Response Site Prioritization Protocol**

AGENCY: Department of Defense.

ACTION: Proposed rule.

SUMMARY: The Department of Defense (DoD) is proposing a rule that establishes the Munitions Response Site Prioritization Protocol (hereinafter referred to as the "Protocol"). The purpose of the Protocol is to assign a relative priority for munitions responses to each location in the inventory of munitions response sites known or suspected of containing unexploded ordnance, discarded military munitions, or munitions constituents.

DATES: Written comments on this proposed rule will be accepted until November 20, 2003.

ADDRESSES: Written comments should be mailed to: Munitions Response Site Prioritization Protocol, P.O. Box 4231, McLean, Virginia 22103-4231. Comments will also be accepted via electronic mail ("e-mail") at mmrp@www.denix.osd.mil or via the World Wide Web at <http://www.denix.osd.mil/MMRP>. For comments submitted via electronic mail, please include in the subject line the statement "Comments on Proposed Protocol."

FOR FURTHER INFORMATION CONTACT: If there are specific questions, please contact Ms. Patricia Ferrebee, Office of the Deputy Under Secretary of Defense (Installations & Environment) (ODUSD(I&E)), 703-695-6107. This proposed rule along with relevant background information is available on the World Wide Web at the Defense Environmental Network & Information eXchange Web site, <http://www.denix.osd.mil/MMRP>.

SUPPLEMENTARY INFORMATION:**I. Protocol**

The Protocol reflects the statement in 10 U.S.C. 2710(b)(2) that the priority assigned should be based on the overall conditions at each location, taking into consideration various factors relating to safety and environmental hazard potential. As required under 10 U.S.C. 2710(b)(1), the priority assigned to each munitions response site will be included with the inventory information made publicly available. The requirement for an inventory of munitions response sites known or suspected of containing unexploded

ordnance, DMM, or MCs is found at 10 U.S.C. 2710(a). The assigned priority will be updated annually to reflect new information that becomes available.

The Protocol evaluates the following potential explosive safety and environmental hazards:

- Explosive hazards posed by unexploded ordnance (UXO) and discarded military munitions (DMM)
- Hazards associated with the effects of chemical warfare materiel (CWM)
- The chronic health and environmental hazards posed by munitions constituents (MC) or other chemical constituents.

DoD recognizes the different hazards inherent to each class of materials. To address these differences, the Protocol has three hazard evaluation modules, each of which is specific to one type of hazard, specifically:

- Explosive hazards are evaluated using the Explosives Hazard Evaluation (EHE) module.
- CWM-related hazards are evaluated using the Chemical Warfare Materiel Hazard Evaluation (CHE) module.
- Health and environmental hazards posed by MC are evaluated using the Relative Risk Site Evaluation (RRSE) module.

DoD recognizes that sufficient data to apply all three of the hazard evaluation modules may not be immediately available for some munitions response sites. In such cases where data are available for only one or two of the modules, the priority will be assigned based on the modules for which sufficient data are available. This initial priority may change when additional data are collected and all three modules are evaluated. Modules for which there are insufficient data will be assigned a status of "evaluation pending."

Upon completion of all necessary munitions responses at a munitions response site, the status "prioritization no longer required" will be assigned. The sequencing of munitions response sites for environmental restoration activities will be based primarily on the priority assigned using this Protocol, but may also reflect other relevant information, such as stakeholder concerns, economic issues, and program management considerations.

DoD is proposing to promulgate this Protocol as a Federal regulation. When promulgated as a Federal regulation, per 10 U.S.C. 2710(b)(3), the priority assigned to each munitions response site " * * * shall not impair, alter, or diminish any applicable Federal or State authority to establish requirements for the investigation of, and response to, environmental problems" at the munitions response site. It is also

important to note that the priority assigned does not impact the actions taken during a munitions response. All munitions response sites known or suspected to contain UXO, DMM, or MC will be investigated and, as required by site-specific conditions, the UXO, DMM, or MC present will be addressed through removal actions, remedial actions, or a combination of removal and remedial actions.

II. Legal Authority

This part is proposed under the authority of 10 U.S.C. 2710(b).

III. Background

Through the Defense Environmental Restoration Program (DERP), the Department of Defense (DoD) is protecting human health and the environment at its active and closing installations, as well as at Formerly Used Defense Sites. In all 50 States, the District of Columbia, and U.S. territories, DoD is making measurable progress in cleaning up chemical contamination from past defense activities to protect its forces, their families, and civilian neighbors from environmental health and safety hazards. DoD is now beginning to undertake similar efforts under the DERP to address potential health and safety hazards associated with its past use of military munitions.

A. Scope of the Defense Environmental Restoration Program

Section 211 of the Superfund Amendments and Reauthorization Act (SARA) of 1986¹ (codified at 10 U.S.C. 2701) established the DERP. Per the provisions in 10 U.S.C. 2701(a), the "Secretary of Defense shall carry out a program of environmental restoration at facilities under the jurisdiction of the Secretary." The phrase "under the jurisdiction of the Secretary" is further described by 10 U.S.C. 2701(c), which states: "The Secretary shall carry out (in accordance with the provisions of this chapter and CERCLA) all response actions with respect to releases of hazardous substances from each of the following: (A) Each facility or site owned by, leased to, or otherwise possessed by the United States and under the jurisdiction of the Secretary. (B) Each facility or site which was under the jurisdiction of the Secretary and owned by, leased to, or otherwise

¹ SARA was signed into law on October 17, 1986, amending the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, 42 U.S.C. 9601 *et seq.* Related sections in Title 10 of the United States Code, 10 U.S.C. 2702-2710 and 2810-2811, further define the DERP.