

C. Consultation With States, Tribes, and Others

As DoD worked to develop this Protocol, it engaged in extensive consultation with States, Tribes, and other Federal agencies. DoD also provided opportunity for interested members of the public to provide input during the development. DoD's efforts to engage stakeholders in the development process are summarized in a subsequent section. Although DoD notified all American Indian and Alaska Native Tribes of the Protocol development effort, DoD's consultation concentrated on those Tribes with interest in lands that are known or suspected of containing UXO, DMM, or MC.

V. Scope and Applicability

A. Terms Pertinent to the Protocol

In developing the Protocol, DoD realized the need for a term to describe the universe of locations subject to inclusion in the inventory and prioritization using the Protocol. DoD is creating the term "munitions response site" for this purpose. Although 10 U.S.C. 2710 had introduced the term "defense site," this term is not considered appropriate for the purposes of prioritization as not all locations that meet the definition of defense sites are known or suspected to contain UXO, DMM, or MC. By definition, the term "defense site" refers to all locations that are or were owned, leased, or otherwise used by DoD (and contains several exclusions related to the types of activities occurring at the location). For a specific location to be included in the inventory (*i.e.*, a munitions response site), it must be (1) a location that is, or was, owned by, leased to, or otherwise possessed or used by DoD (*i.e.*, a defense site), and (2) known or suspected to contain UXO, DMM, or MC.

DoD formally established its Military Munitions Response program, a subset of the DERP, in September 2001. DoD is working to build the MMRP into a robust program to address the safety and environmental hazards associated with UXO, DMM, and MC. With the exception of FUDS properties, which have been further characterized, DoD is just beginning to identify the locations where it knows of or suspects the presence of UXO, DMM, and MC remaining from its past use of military munitions. In many cases, the identified locations are large geographic areas, sometimes encompassing an entire former range. Former ranges, often comprising hundreds of thousands of acres, supported various activities on different parts of the range. These locations meet the criteria for inclusion

in the inventory, as they are (1) defense sites, and (2) known or suspected to contain UXO, DMM, or MC. DoD proposes to use the term "munitions response area (MRA)" for these large locations. MRA is defined as ". . . any area on a defense site that is known or suspected to contain UXO, DMM, or MC. Examples are former ranges or munitions burial areas. A munitions response area is comprised of one or more munitions response sites."

Because an MRA may be large and complex, DoD will work to characterize each MRA and subdivide it into discrete locations so that munitions responses specific to local conditions can be conducted. Subdivision of an MRA is not required, but permitted as needed for purposes of implementing a munitions response. A munitions response site (MRS) is defined as ". . . a discrete location within an MRA that is known to require a munitions response." Because every MRA is associated with at least one MRS and the MRS is defined by the need for a munitions response, consistent with the statutory requirement to assign a priority for response activities, the Protocol will be applied to MRS.

DoD will track the acreage of the MRA as well as each MRS to ensure that all acreage is accounted for regardless of whether or not an MRA is subdivided into more than one MRS. The total acreage of all MRS associated with the MRA must equal the total acreage of the MRA. Information about the size of each MRA and each MRS will be included with the other information in the inventory disclosed in response to the requirements of 10 U.S.C. 2710(a)(2).

B. Definitions

This proposed rule includes definitions for terms that describe the scope and applicability of the Protocol as well as terms that are integral to the hazard evaluation modules that comprise the Protocol. These definitions, unless codified elsewhere in the U.S. Code or Code of Federal Regulations (CFR) apply only to this part. Many of the terms relevant to this part are already defined in 10 U.S.C. 2710(e) and the CFR. Where this is the case, the existing statutory and regulatory definitions will be adopted for use in this part and are repeated here strictly for ease of reference.

American Indian and Alaska Native Tribes are any Federally recognized American Indian and Alaska Native tribal entity as defined by the most current Department of Interior/Bureau of Indian Affairs list of tribal entities published in the **Federal Register**

pursuant to section 104 of the Federally Recognized Tribe Act.

Barrier means a natural obstacle or obstacles (*e.g.*, difficult terrain, dense vegetation, deep or fast moving water), a man-made obstacle or obstacles (*e.g.*, fencing), or a combination of natural and man-made obstacles.

Chemical agent identification sets (CAIS) are military training aids containing small quantities of various chemical warfare agents and other chemicals.

Chemical warfare agents (CWA) are the V- and G-series nerve agents, H-series (*i.e.*, "mustard" agents) and L-series (*i.e.*, lewisite) blister agents, and certain industrial chemicals used by the military as weapons, including hydrogen cyanide (AC), cyanogen chloride (CK), or carbonyl dichloride (called phosgene or CG)). CWA do not include riot control agents (*e.g.*, w-chloroacetophenone (CN) and o-chlorobenzylidenemalononitrile (CS) tear gas), chemical herbicides, smoke or incendiary compounds, and industrial chemicals that are not configured as a military munition.

Chemical Warfare Material (CWM) is a general term that includes four subcategories of specific materials:

- *CWM, explosively configured* are all munitions that contain a CWA fill and any explosive component. Examples include M55 rockets with CWA, the M23 VX mine, and the M360 105-millimeter GB artillery cartridge.
- *CWM, nonexplosively configured* are all munitions that contain a CWA fill but that do not include any explosive components. Examples include any chemical munition that does not contain an explosive component and VX or mustard agent spray canisters.

- *CWM, bulk container* are all non-munitions-configured containers of CWA (*e.g.*, a ton container).

- *Chemical agent identification sets (CAIS)*. All forms of CAIS are scored the same except for CAIS K941, toxic gas set M-1; and K942, toxic gas set M-2/E11, which are scored higher due to the relatively large quantities of agent they contain.

In the Protocol, the general term "CWM" means all four subcategories. Where the name of one or more of the subcategories is used, the statement is specific to the subcategories specified.

Cultural resources means there are recognized cultural, traditional, spiritual, religious, or historical features or properties (*e.g.*, structures, artifacts, symbolism) on the munitions response site. For example, American Indians and Alaska Natives deem portions of or the entire munitions response site sacred.