

the public. The comments and ideas received were in five general areas, including:

- *Definitions.* Most of these comments and ideas submitted addressed recommendations that would provide greater clarity in the definitions.

- *Factors or Data Elements.* Most of these comments and ideas addressed the need for a specific data element that the commenter thought should be included in the Protocol. Other comments addressed the scores for each of the data elements and factors included in one of the deliberative drafts provided to stakeholders during the development process.

- *Policy.* In general, the comments and ideas in this area related to questions or recommendations related to the scope and application of the Protocol.

- *Other Protocols.* These comments and ideas focused primarily on other Protocols or tools that DoD should evaluate for their utility as a prioritization tool. Other comments addressed specific features (e.g., data elements) of other tools that the commenter thought DoD should consider in developing this Protocol.

- *Other Issues.* The comments and ideas in this area were unrelated to the development of this Protocol. Examples include comments regarding the inventory of MRS required under 10 U.S.C. 2710(a) and funding policy.

DoD carefully reviewed and considered each of the comments submitted. The value of these comments and ideas is shown by the fact that this Protocol incorporates many of the ideas provided by interested parties. DoD would like to express its gratitude to all who gave of their time and effort by submitting comments and ideas. To ensure that DoD did consider each of the comments or ideas submitted, a matrix was developed, each comment tracked, and DoD's response to the comment documented. A summary of the comments and DoD's responses can be found at http://www.denix.mil/MMRP_Protocol/comments.html.

XIII. Notice of Proposed Rulemaking

DoD now solicits comments from the public on this Protocol. In particular, DoD seeks comment on the form and workability of the Protocol, the data elements considered in each module, the factors considered in each module, the rating system for each module, the weight afforded to each module in determining its evaluation hazard score, and the rating system for each MRS priority.

XIV. Summary

The Protocol developed by DoD in consultation with States and Tribes is proposed for public comment for subsequent codification in the Code of Federal Regulations. DoD developed the Protocol to meet the requirements set out in the 10 U.S.C. 2710 to consider and assign relative priorities to MRS based on environmental and explosive hazards. These hazards are evaluated in three areas:

- The explosive hazards posed by any UXO or DMM present at the MRS,
- The hazards posed by any CWM present at the MRS, and
- The health and environmental hazards posed by any MC at the MRS.

The priority assigned to each MRS, as well as the ratings of each of the three hazard evaluation modules (i.e., Explosive Hazard Evaluation, Chemical Warfare Materiel Hazard Evaluation, and Relative Risk Site Evaluation) will be reported in an inventory.

XV. Administrative Requirements

A. Regulatory Impact Analysis Under Executive Order 12866

Executive Order 12866, (58 FR 51735 (October 4, 1993)) requires each Agency taking regulatory action to determine whether that action is "significant." The Agency must submit any regulatory actions that qualify as "significant" to the Office of Management and Budget (OMB) for review, assess the costs and benefits anticipated as a result of the proposed action, and otherwise ensure that the action meets the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a 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 obligations 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 the Executive Order.

DoD has determined that today's Protocol is not a significant rule under Executive Order 12866 because it is not likely to result in a rule that will meet any of the four prerequisites.

(1) The Protocol will not have an annual effect on the economy of \$100

million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities.

The primary effect on the economy will be the necessity for State and/or local governments to conduct oversight of the environmental restoration activities. The Department of Defense has determined it would not place a burden in excess of \$100 million each year on State, local, and Tribal governments from implementing the Protocol.

In completing (in FY02) the initial inventory of MRS known or suspected to contain UXO, DMM, or MC, the DoD Components identified 2,307 MRS. The current estimate of the costs of munitions responses is in excess of \$11.5 billion, which will be expended over many years. Although this is a significant expenditure, the proposed rule will not increase or decrease response costs, it will only prioritize the response effort among sites.

In determining the total burden placed on State oversight as a result of applying the Protocol at these MRS, a number of specific oversight steps are assumed. Assumptions regarding individual steps in Protocol application and the estimated time necessary to complete each step were based on experience gained during Protocol testing as well as DoD's experience in the application of other priority-setting models, such as the *Risk Assessment Code* (RAC) applied to FUDS and BRAC installations, the *Range Rule Risk Methodology* (R3M) used to screen explosives hazards, as well as other models. In addition, DoD has developed a significant body of experience in conducting activities similar to those required in application of the Protocol during the course of its execution of the DERP. DoD estimates that State regulators, when applying the Protocol to MRS, will first perform a preliminary document review. It is assumed that this step would include reviewing the Protocol materials and guidance; reviewing existing site background documents, such as USACE Archive Search Reports or State and local property records; and preparing materials for a site inspection. DoD assumes this step to take between 2 and 8 hours. DoD then assumes State regulators would perform a non-invasive site inspection, including a site walkthrough and various interviews with personnel familiar with the site. DoD assumes an after-action report, detailing the findings and results of the site inspection, would then be written