

by the State regulators. For the site inspection, interviews, and after action report, DoD estimates this step to require between 3 and 24 hours. The final step in State oversight of applying the Protocol would be for the regulators to meet with DoD personnel to discuss and apply the Protocol to MRS using the available information. DoD estimates this step would require between 3 and 8 hours. In total, between 8 and 40 hours would be required for State oversight at each site.

An average labor cost of \$24.25 per hour for oversight is assumed. To arrive at this average, DoD assumed an average yearly salary as \$50,000, with 2,060 business hours per year. For the purposes of this estimate, DoD assumes a State would use a three-person team to accomplish all requirements of overseeing the application of the Protocol within their State. To this end, DoD estimates the approximate average per MRS cost for State oversight of administering the Protocol is between \$194 and \$2,910. These low and high site estimates translate into an estimated oversight cost of between \$340,276 and \$10,208,280 for the entire munitions response site inventory. In addition, since DoD reimburses States for the costs incurred as a result of oversight through the Defense and State Memorandum of Agreement (DSMOA) program, the overall impact to a State is further reduced.

Otherwise, the Protocol will not adversely affect the economy as a whole, any particular sector of the economy, productivity, competition, or jobs since the Protocol does not establish any new spending amounts. Rather, the Protocol merely provides guidance on allocating funds among the MRS.

The Protocol does not have a direct adverse effect on the environment, public health, and safety even though certain sites will be designated as a low priority and, as a result, not see response activities begin in the near-term. Any adverse effects were either a result of the actions that caused the UXO, DMM, or MC to be present at the site (e.g., use as a range, treatment of waste military munitions, all of which pre-date the application of the Protocol) or are the result of the munitions response activities that are implemented after the application of the Protocol. In the former instance, any effects should have been evaluated as part of the decision to undertake the actions. In the latter case, munitions response activities are undertaken under CERCLA and the NCP. The evaluation of response alternatives under CERCLA and the NCP has been determined by the U.S.

Department of Justice (DOJ) to be the functional equivalent of an assessment under the National Environmental Policy Act (NEPA).

The Protocol also does not have any adverse affect on the economy, environment, public health, and/or safety programs of State, local, or Tribal governments or communities near a MRS. Again, any adverse effects were either a result of the actions that caused the UXO, DMM, or MC to be present at the site (e.g., use as a range, treatment of waste military munitions, all of which pre-date the application of the Protocol) or are the result of the munitions response activities that are implemented after the application of the Protocol. With respect to impacts occurring as a result of the munitions response at the MRS, State, local, or Tribal governments are offered the opportunity to be involved in the planning and execution of the munitions response. The DoD has estimated that the cost of engaging or overseeing munitions response activities is not significant, as that measure is defined by Executive Order 12866. Further, DoD believes that the resources expended on oversight will be returned in the form of benefits to the community through reuse of the property.

For these reasons, DoD has determined that the Protocol will not 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) The Protocol will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

Implementation of the Protocol will not create a serious inconsistency or otherwise interfere with another agency's action because DoD has lead authority for administering the DERP under 10 U.S.C. 2701(a)(1). The DERP statute delineates the responsibilities of DoD and authority of EPA to some extent. The DoD is required by 10 U.S.C. 2701(a)(3) to consult with the EPA in its administration of the environmental restoration program. Further, Section 2701(c)(2) of the statute gives DoD the responsibility of conducting environmental restoration activities on all properties owned or leased by it, except those for which EPA has entered into a settlement with a potentially responsible party. The Protocol ranking system will not interfere with the Hazard Ranking System (HRS) maintained by the EPA because each serves its own purpose. EPA uses the HRS to place uncontrolled waste sites

on the National Priorities List (NPL). EPA does not use the HRS to determine the priority in funding EPA remedial response actions. The DoD will use the Protocol to rank the risks posed by each site, relative to other sites, and may use the Protocol as a basis for determining which sites will receive funding. The DoD's use of the Protocol generally will not interfere with EPA's use of the HRS. DoD action may interfere with EPA action in a situation where EPA decides to pursue response action at a site that DoD has designated as a low priority. Where this occurs, DoD will cooperate with EPA to the extent possible and rely on existing interagency processes to reach agreement on site priorities and response actions. Based on the above reasoning, DoD has determined that there is minimal potential for inconsistencies or interference with action by any other agency.

(3) The Protocol does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

The Protocol will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof because no entitlements, grants, user fees, or loan programs are invoked through prioritization of sites for response activities.

(4) The Protocol will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Finally, the Protocol does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Regulatory Impact Analysis. Congress has already established the requirement for environmental restoration of MRS and for DoD's development of a Protocol for prioritization of MRS. The Protocol is merely a method for DoD to determine a relative priority of MRS for response action. DoD has identified no novel legal or policy issues that this Protocol will create on either a MRS-specific basis or overall. Nor has DoD identified any novel legal or policy issues arising out of the President's priorities or principles set forth in the Regulatory Impact Analysis.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), requires that an agency conduct a regulatory flexibility analysis when