

low-priority designation for some MRS located in low-income or minority neighborhoods. Under the risk-based approach, however, such prioritization would result in environmental injustice only if low-income and minority populations were disproportionately located near low-risk MRS. If this is, in fact, the case, DoD will reassess its Protocol once an initial ranking is conducted. Second, DoD has reserved a step in the Protocol for consideration of environmental justice concerns, having supplemented the risk-based prioritization decision with consideration of whether low-income or minority populations are near the MRS. Third, because the Protocol will provide DoD with an established method for choosing which MRS to address first, it will ensure uniformity among decisions and eliminate the potential for intentional discrimination against low-income and minority populations. Finally, DoD's engagement with various stakeholders, most notably Native American governments, in developing the Protocol, has helped to build consideration of environmental justice concerns into the Protocol.

DoD plans to continue to study the environmental justice effects once the Protocol is implemented. Until that time, no data exists regarding whether low-income and minority populations live near high-risk MRS as opposed to low-risk MRS. As such, there is currently no way of determining whether generally focusing response efforts first at those MRS that pose a relatively higher risk will in any way adversely affect these segments of the population. DoD decided to include environmental justice considerations in the body of the Protocol as a precautionary measure, but will examine the effect of the Protocol on low-income and minority populations once DoD has implemented it and has data from which to draw.

At this time, DoD believes that no action will directly result from the proposed rule that will have a disproportionately high and adverse human health and environmental effect on any segment of the population. DoD will examine, however, the effects of implementation to ensure that no disproportionately high and adverse human health or environmental effect occurs.

G. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), establishes certain requirements for Federal agencies issuing regulations, legislative comments, proposed legislation, or other policy statements or

actions that have "Federal implications." Under the Executive Order, any of these agency documents or actions have "Federal implications" when they have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Section 6 of the Executive Order prohibits any agency from issuing a regulation that has Federal implications, imposes substantial direct compliance costs on State and local governments, and is not required by statute. Such a regulation may only be issued if the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. Further, a Federal agency may issue a regulation that has Federalism implications and preempts State law only if the agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have Federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The statute authorizing DoD's environmental restoration program, 10 U.S.C. 2701, clearly defines the role and responsibilities of DoD with respect to State and local governments. The role and primary responsibility of DoD is to implement an appropriate environmental restoration program at MRS. The DoD funds environmental restoration activities and does not directly affect States in any manner. The only potential dispute regarding distribution of power may arise where the State attempts to require DoD to remediate its property under a State hazardous waste law, and DoD has not ranked the MRS as a high priority or allocated funding for environmental restoration of the MRS. Such a situation, however, would be dealt with per established legal principles regarding the relationship of States to the Federal government. The Protocol does not alter this relationship. Additionally, it would not be appropriate for this proposed rule to attempt to assign roles to DoD or any State because such assignment of roles is outside the scope of the statutory mandate. The Protocol does not impose direct compliance costs on State or local

governments because DoD funds environmental restoration activities. Nevertheless, DoD consulted with State and local officials throughout development of this Protocol. Finally, development of a Protocol for prioritizing action at MRS was specifically required by statute. The requirements of section 6 of the Executive Order therefore do not apply to this rule.

List of Subjects in 32 CFR Part 179

Government property; Military personnel; Hazardous substances; Environmental protection.

Accordingly, 32 CFR part 179 is proposed to be added to Chapter 1, Subchapter H to read as follows:

PART 179—MUNITIONS RESPONSE SITE PRIORITIZATION PROTOCOL

Sec.

- 179.1 Purpose.
- 179.2 Applicability and scope.
- 179.3 Definitions.
- 179.4 Policy.
- 179.5 Responsibilities.
- 179.6 Procedures.
- 179.7 Sequencing.

Appendix A to 32 CFR part 179—Tables of the Munitions Response Site Prioritization Protocol

Authority: 10 U.S.C. 2710 *et seq.*

§ 179.1 Purpose.

The Department of Defense (DoD) is adopting this Munitions Response Site Prioritization Protocol (hereinafter referred to as the "Protocol") under the authority of 10 U.S.C. 2710. Provisions of 10 U.S.C. 2710 require that DoD assign to each munitions response site in the inventory required by 10 U.S.C. 2710(a) a relative priority for response activities based on the overall conditions at each location and taking into consideration various factors related to safety and environmental hazards.

§ 179.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense, the Military Departments, the Defense Agencies and the DoD Field Activities, and any other DoD organizational entity or instrumentality established to perform a government function (hereafter referred to collectively as the "DoD Components").

(b) This part and the Protocol described herein shall be applied at all locations:

- (1) That are, or were, owned by, leased to, or otherwise possessed or used by the DoD, and
- (2) That are known to, or suspected of, containing unexploded ordnance