

incompatible with range activities. (10 U.S.C. 2710(e)(5))

*Range activities* means research, development, testing, and evaluation of military munitions, other ordnance, and weapons systems; and the training of military personnel in the use and handling of military munitions, other ordnance, and weapons systems.

*Unexploded ordnance (UXO)* means military munitions that:

(1) Have been primed, fuzed, armed, or otherwise prepared for action;

(2) Have been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard to operations, installations, personnel, or material; and

(3) Remain unexploded either by malfunction, design, or any other cause. (10 U.S.C. 2710(e)(9) and 40 CFR 266.201)

*United States* means, in a geographic sense, the States, territories, and possessions and associated navigable waters, contiguous zones, and ocean waters of which the natural resources are under the exclusive management authority of the United States. (10 U.S.C. 2710(e)(10))

#### **§ 179.4 Policy.**

(a) In assigning a relative priority for response activities, DoD generally considers those MRS posing the greatest hazard as having the highest priority for action. 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.

(b) It is DoD policy to ensure that EPA, other Federal agencies (as appropriate or required), State regulatory agencies, Native American or Alaskan Native Tribes, local restoration advisory boards (RABs) or technical review committees (TRCs), and local stakeholders are offered opportunities to participate in the application of the Protocol and making sequencing decisions.

#### **§ 179.5 Responsibilities.**

For the MRS in the inventory required under 10 U.S.C. 2710(a), each DoD Component shall:

(a) Apply the Protocol to each MRS:

(1) Under its administrative control.

(2) Within an MRA such that the total acreage of each MRA is evaluated.

(3) When sufficient data are available to populate all the data elements within at least one of the three hazard evaluation modules that comprise the Protocol.

(i) In such cases where data are not sufficient to populate one or two of the hazard evaluation modules (e.g., there is

no constituent sampling data for the relative risk site evaluation module), DoD Components will assign an MRS priority based on the hazard evaluation modules evaluated and reapply the Protocol once sufficient data to run the remaining hazard evaluation modules are available.

(ii) When an MRS comprises the total area of its MRA (i.e., the MRA has either not been characterized such that more than one MRS has been delineated, or characterization has determined that further delineation is not necessary), DoD Components shall apply the Protocol to that MRS when sufficient data are available to populate all the data elements within at least one of the three hazard evaluation modules. Upon further delineation and characterization of the MRA into more than one MRS, Components shall reapply the Protocol to all MRS within the MRA.

(b) Ensure that EPA, other Federal agencies (as appropriate or required), State regulatory agencies, Native American or Alaskan Native Tribes, local RABs or TRCs, and local community stakeholders are offered opportunities as early as possible and throughout the process to participate in the application of the Protocol and making sequencing decisions.

(1) To ensure EPA, other Federal agencies, State regulatory agencies, Native American and Alaskan Native Tribes, and local government officials are aware of the opportunity to participate in the initial application of the Protocol, the DoD Component organization responsible for implementing a munitions response at the MRS shall send a certified letter to the heads of these organizations (or their designated point-of-contact), as appropriate, seeking their involvement. A copy of these letters will be placed in the Administrative Record and Information Repository for the MRS.

(2) To ensure the local community is aware of the opportunity to participate in the initial application of the Protocol, the DoD Component organization responsible for implementing a munitions response at the MRS shall publish an announcement in a local community publication requesting information pertinent to prioritization or sequencing decisions.

(c) Establish a quality assurance panel to review all MRS prioritization decisions. This panel will not include any participant involved in applying the Protocol to the MRS. If the panel recommends a change that results in a different priority, the DoD Component shall report, in the inventory data submitted to the Office of the Deputy Under Secretary of Defense

(Installations & Environment), the rationale for this change. The DoD Component shall also provide this rationale to the appropriate regulatory agencies and involved stakeholders for comment before finalizing the change.

(d) Following the panel review, submit the results of applying the Protocol along with the other inventory data that 10 U.S.C. 2710(c) requires be made publicly available, to the ODUSD (I&E). ODUSD (I&E) shall publish this information in the *Defense Environmental Restoration Program Annual Report to Congress* for that fiscal year. If sequencing decisions result in action at an MRS with a lower MRS priority ahead of an MRS with a higher MRS priority, the DoD Component shall provide specific justification to ODUSD (I&E).

(e) Document in a Management Action Plan (MAP) or its equivalent all aspects of the munitions responses required at all MRS for which that MAP is applicable. DoD guidance requires that MAPs are developed and maintained at an installation (or Formerly Used Defense Site (FUDS) property) level. For the FUDS program, a State-wide MAP may also be developed.

(f) Sequencing decisions at installations and FUDS shall be developed with input from stakeholders, such as the regulatory and community members of an installation's RAB or TRC, and be documented in the MAP. Final sequencing may be impacted by DoD Component program management considerations. If the sequencing of any MRS is changed from the sequencing reflected in the current MAP, the DoD Component shall provide information to the stakeholders documenting the reasons for the sequencing change and shall request their review and comment on that decision.

(g) Ensure that information provided by stakeholders that may influence the MRS priority assigned or sequencing decision concerning an MRS is included in the Administrative Record and the Information Repository.

(h) Review each MRS priority, at least annually, and update the priority as necessary, to reflect new information. Reapplication of the Protocol is required under any of the following circumstances:

(1) Upon completion of a response action that could change site conditions evaluated by the hazard evaluation modules at the MRS.

(2) To update or validate a previous module evaluation at an MRS when new information is available.