

## SUBCHAPTER H—CLOSURES AND REALIGNMENT

### PART 174—REVITALIZING BASE CLOSURE COMMUNITIES AND ADDRESSING IMPACTS OF REALIGNMENT

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AUTHORITY: 10 U.S.C. 113 and 10 U.S.C. 2687 note.

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### Subpart A—General

#### § 174.1 Purpose.

This part:

(a) Establishes policy, assigns responsibilities, and implements base closure laws and associated provisions of law relating to the closure and the realignment of installations. It does not address the process for selecting installations for closure or realignment.

(b) Authorizes the publication of DoD 4165.66-M, “Base Redevelopment and Realignment Manual,” in accordance with DoD 5025.1-M<sup>1</sup>, “DoD Directive System Procedures,” March 2003.

#### § 174.2 Applicability.

This part applies to:

(a) The Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as the “DoD Components”).

(b) Installations in the United States selected for closure or realignment under a base closure law.

(c) Federal agencies and non-Federal entities that seek to obtain real or personal property on installations selected for closure or realignment.

#### § 174.3 Definitions.

(a) *Base closure law*. This term has the same meaning as provided in 10 U.S.C. § 101(a)(17)(B) and (C).

(b) *Closure*. An action that ceases or relocates all current missions of an installation and eliminates or relocates all current personnel positions (military, civilian, and contractor), except for personnel required for caretaking, conducting any ongoing environmental cleanup, or property disposal. Retention of a small enclave, not associated

<sup>1</sup>Copies may be obtained at <http://www.dtic.mil/whs/directives/corres/publ.html>.

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with the main mission of the base, is still a closure.

(c) *Consultation*. Explaining and discussing an issue, considering objections, modifications, and alternatives; but without a requirement to reach agreement.

(d) *Date of approval*. This term has the same meaning as provided in section 2910(8) of the Defense Base Closure and Realignment Act of 1990, Pub. L. 101–510.

(e) *Excess property*. This term has the same meaning as provided in 40 U.S.C. § 102(3).

(f) *Installation*. This term has the same meaning as provided in the definition for “military installation” in section 2910(4) of the Defense Base Closure and Realignment Act of 1990, Pub. L. 101–510.

(g) *Local Redevelopment Authority (LRA)*. This term has the same meaning as provided in the definition for “redevelopment authority” in section 2910(9) of the Defense Base Closure and Realignment Act of 1990, Pub. L. 101–510.

(h) *Military Department*. This term has the same meaning as provided in 10 U.S.C. 101(a)(8).

(i) *National Environmental Policy Act (NEPA)*. The National Environmental Policy Act of 1969, Pub. L. 91–190, 42 U.S.C. 4321 *et seq.*, as amended.

(j) *Realignment*. This term has the same meaning as provided in section 2910(5) of the Defense Base Closure and Realignment Act of 1990, Pub. L. 101–510.

(k) *Secretary concerned*. This term has the same meaning as provided in 10 U.S.C. 101(a)(9)(A), (B), and (C).

(l) *Surplus property*. This term has the same meaning as provided in 40 U.S.C. 102(10).

(m) *Transition coordinator*. This term has the same meaning as used in section 2915 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103–160.

### Subpart B—Policy

#### § 174.4 Policy.

It is DoD policy to:

(a) Act expeditiously whether closing or realigning. Relocating activities from installations designated for clo-

sure will, when feasible, be accelerated to facilitate the transfer of real property for community reuse. In the case of realignments, the Department will pursue aggressive planning and scheduling of related facility improvements at the receiving location.

(b) Fully utilize all appropriate means to transfer property. Federal law provides the Department with an array of legal authorities, including public benefit transfers, economic development conveyances at cost and no cost, negotiated sales to state or local government, conservation conveyances, and public sales, by which to transfer property on closed or realigned installations. Recognizing that the variety of types of facilities available for civilian reuse and the unique circumstances of the surrounding communities does not lend itself to a single universal solution, the Department will use this array of authorities in a way that considers individual circumstances.

(c) Rely on and leverage market forces. Community redevelopment plans and military conveyance plans should be integrated to the extent practical and should take account of any anticipated demand for surplus military land and facilities.

(d) Collaborate effectively. Experience suggests that collaboration is the linchpin to successful installation redevelopment. Only by collaborating with the local community can the Department close and transfer property in a timely manner and provide a foundation for solid economic redevelopment.

(e) Speak with one voice. The Department of Defense, acting through the DoD Components, will provide clear and timely information and will encourage affected communities to do the same.

(f) Work with communities to address growth. The Department will work with the surrounding community so that the public and private sectors can provide the services and facilities needed to accommodate new personnel and their families. The Department recognizes that installation commanders and local officials, as appropriate (*e.g.*, State, county, and tribal), need to integrate and coordinate elements of their

local and regional growth planning so that appropriate off-base facilities and services are available for arriving personnel and their families.

**§ 174.5 Responsibilities.**

(a) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall issue DoD Instructions as necessary to further implement applicable public laws affecting installation closure and realignment implementation and shall monitor compliance with this part. All authorities and responsibilities of the Secretary of Defense—

(1) Vested in the Secretary of Defense by a base closure law, but excluding those provisions relating to the process for selecting installations for closure or realignment;

(2) Delegated from the Administrator of General Services relating to base closure and realignment matters;

(3) Vested in the Secretary of Defense by any other provision relating to base closure and realignment in a national defense authorization act, a Department of Defense appropriations act, or a military construction appropriations act, but excluding section 330 of the National Defense Authorization Act for Fiscal Year 1993; or

(4) Vested in the Secretary of Defense by Executive Order or regulation and relating to base closure and realignment, are hereby delegated to the Under Secretary of Defense for Acquisition, Technology, and Logistics.

(b) The authorities and responsibilities of the Secretary of Defense delegated to the Under Secretary of Defense for Acquisition, Technology, and Logistics under paragraph (a) of this section are hereby re-delegated to the Deputy Under Secretary of Defense (Installations and Environment).

(c) The Heads of the DoD Components shall ensure compliance with this part and any implementing guidance.

(d) Subject to the delegations in paragraphs (a) and (b) of this section, the Secretaries concerned shall exercise those authorities and responsibilities specified in subparts C through G of this part.

(e) The cost of recording deeds and other transfer documents is the responsibility of the transferee.

**Subpart C—Working with Communities and States**

**§ 174.6 LRA and the redevelopment plan.**

(a) The LRA should have broad-based membership, including, but not limited to, representatives from those jurisdictions with zoning authority over the property. Generally, there will be one recognized LRA per installation.

(b) The LRA should focus primarily on developing a comprehensive redevelopment plan based upon local needs. The plan should recommend land uses based upon an exploration of feasible reuse alternatives. If applicable, the plan should consider notices of interest received under a base closure law. This section shall not be construed to require a plan that is enforceable under state and local land use laws, nor is it intended to create any exemption from such laws.

(c)(1) The Secretary concerned will develop a disposal plan and, to the extent practicable, complete the appropriate environmental documentation no later than 12 months after receipt of the redevelopment plan. The redevelopment plan will be used as part of the proposed Federal action in conducting environmental analyses required under NEPA.

(2) In the event there is no LRA recognized by DoD or if a redevelopment plan is not received from the LRA within 9 months from the date referred to in section 2905(b)(7)(F)(iv) of Pub. L. 101-510, (unless an extension of time has been granted by the Deputy Under Secretary of Defense (Installations and Environment)), the Secretary concerned shall, after required consultation with the governor and heads of local governments, proceed with the disposal of property under applicable property disposal and environmental laws and regulations.

**Subpart D—Real Property**

**§ 174.7 Retention for DoD Component use and transfer to other Federal agencies.**

(a) To speed the economic recovery of communities affected by closures and

realignments, the Department of Defense will identify DoD and Federal interests in real property at closing and realigning installations as quickly as possible. The Secretary concerned shall identify such interests. The Secretary concerned will keep the LRA informed of these interests. This section establishes a uniform process, with specified timelines, for identifying real property that is available for use by DoD Components (which for purposes of this section includes the United States Coast Guard) or is excess to the needs of the Department of Defense and available for use by other Federal agencies, and for the disposal of surplus property for various purposes.

(b) The Secretary concerned should consider LRA input, if provided, in making determinations on the retention of property (location and size of cantonment area).

(c) Within one week of the date of approval of the closure or realignment, the Secretary concerned shall issue a notice of availability to the DoD Components and other Federal agencies covering closing and realigning installation buildings and property available for transfer to the DoD Components and other Federal agencies. The notice of availability should describe the property and buildings available for transfer. Withdrawn public domain lands which the Secretary of the Interior has determined are suitable for return to the jurisdiction of the Department of the Interior (DoI) will not be included in the notice of availability.

(d) To obtain consideration of a requirement for such available buildings and property, a DoD Component or Federal agency is required to provide a written, firm expression of interest for buildings and property within 30 days of the date of the notice of availability. An expression of interest must explain the intended use and the corresponding requirement for the buildings and property.

(e)(1) Within 60 days of the date of the notice of availability, the DoD Component or Federal agency expressing interest in buildings or property must submit an application for transfer of such property to a Military Department or Federal agency. In the case of a DoD Component that would

normally, under the circumstances, obtain its real property needs from the Military Department disposing of the real property, the application should indicate the property would not transfer to another Military Department but should be retained by the current Military Department for the use of the DoD Component. To the extent a different Military Department provides real property support for the requesting DoD Component, the application must indicate the concurrence of the supporting Military Department.

(2) Within 90 days of the notice of availability, the Federal Aviation Administration (FAA) should survey the air traffic control and air navigation equipment at the installation to determine what is needed to support the air traffic control, surveillance, and communications functions supported by the Military Department, and to identify the facilities needed to support the National Airspace System. FAA requests for property to manage the National Airspace System will not be governed by paragraph (h) of this section. Instead, the FAA shall work directly with the Military Department to prepare an agreement to assume custody of the property necessary for control of the airspace being relinquished by the Military Department.

(f) The Secretary concerned will keep the LRA informed of the progress in identifying interests. At the same time, the LRA is encouraged to contact Federal agencies which sponsor public benefit conveyances for information and technical assistance. The Secretary concerned will provide to the LRA points of contact at the Federal agencies.

(g) DoD Components and Federal agencies are encouraged to discuss their plans and needs with the LRA, if an LRA exists. If an LRA does not exist, the consultation should be pursued with the governor or the heads of the local governments in whose jurisdiction the property is located. DoD Components and Federal agencies are encouraged to notify the Secretary concerned of the results of this consultation. The Secretary concerned, the Transition Coordinator, and the DoD Office of Economic Adjustment Project Manager are available to help

facilitate communication between the DoD Components and Federal agencies, and the LRA, governor, and heads of local governments.

(h) An application for property from a DoD Component or Federal agency must contain the following information:

(1) A completed GSA Form 1334, *Request for Transfer* (for requests from DoD Components, a DD Form 1354 will be used). This must be signed by the head of the Component or agency requesting the property. If the authority to acquire property has been delegated, a copy of the delegation must accompany the form;

(2) A statement from the head of the requesting Component or agency that the request does not establish a new program (*i.e.*, one that has never been reflected in a previous budget submission or Congressional action);

(3) A statement that the requesting Component or agency has reviewed its real property holdings and cannot satisfy its requirement with existing property. This review must include all property under the requester's accountability, including permits to other Federal agencies and outleases to other organizations;

(4) A statement that the requested property would provide greater long-term economic benefits for the program than acquisition of a new facility or other property;

(5) A statement that the program for which the property is requested has long-term viability;

(6) A statement that considerations of design, layout, geographic location, age, state of repair, and expected maintenance costs of the requested property clearly demonstrate that the transfer will prove more economical over a sustained period of time than acquiring a new facility;

(7) A statement that the size of the property requested is consistent with the actual requirement;

(8) A statement that fair market value reimbursement to the Military Department will be made at the later of January of 2008, or at the time of transfer, unless this obligation is waived by the Office of Management and Budget and the Secretary concerned, or a public law specifically pro-

vides for a non-reimbursable transfer (this requirement does not apply to requests from DoD Components);

(9) A statement that the requesting DoD Component or Federal agency agrees to accept the care and custody costs for the property on the date the property is available for transfer, as determined by the Secretary concerned; and

(10) A statement that the requesting agency agrees to accept transfer of the property in its existing condition, unless this obligation is waived by the Secretary concerned.

(i) The Secretary concerned will make a decision on an application from a DoD Component or Federal agency based upon the following factors:

(1) The requirement must be valid and appropriate;

(2) The proposed use is consistent with the highest and best use of the property;

(3) The proposed transfer will not have an adverse impact on the transfer of any remaining portion of the installation;

(4) The proposed transfer will not establish a new program or substantially increase the level of a Component's or agency's existing programs;

(5) The application offers fair market value for the property, unless waived;

(6) The proposed transfer addresses applicable environmental responsibilities to the satisfaction of the Secretary concerned; and

(7) The proposed transfer is in the best interest of the Government.

(j) When there is more than one acceptable application for the same building or property, the Secretary concerned shall consider, in the following order—

(1) The need to perform the national defense missions of the Department of Defense and the Coast Guard;

(2) The need to support the homeland defense mission; and

(3) The LRA's comments as well as other factors in the determination of highest and best use.

(k) If the Federal agency does not meet its commitment under paragraph (h)(8) of this section to provide the required reimbursement, and the requested property has not yet been

transferred to the agency, the requested property will be declared surplus and disposed of in accordance with the provisions of this part.

(1) Closing or realigning installations may contain “public domain lands” which have been withdrawn by the Secretary of the Interior from operation of the public land laws and reserved for use by the Department of Defense. Lands deemed suitable for return to the public domain are not real property governed by title 40, United States Code, and are not governed by the property management and disposal provisions of a base closure law. Public domain lands are under the jurisdiction of the Secretary of the Interior and administered by the Bureau of Land Management (BLM) unless the Secretary of the Interior has withdrawn the lands and reserved them for another Federal agency’s use.

(1) The Secretary concerned will provide the BLM with information about which, if any, public domain lands will be affected by the installation’s closure or realignment.

(2) The BLM will review the information to determine if any installations contain withdrawn public domain lands. The BLM will review its land records to identify any withdrawn public domain lands at the closing installations. Any records discrepancies between the BLM and Military Departments should be resolved. The BLM will notify the Secretary concerned as to the final agreed upon withdrawn and reserved public domain lands at an installation.

(3) Upon agreement as to what withdrawn and reserved public domain lands are affected at closing installations, the BLM will initiate a screening of DoI agencies to determine if these lands are suitable for programs of the Secretary of the Interior.

(4) The Secretary concerned will transmit a Notice of Intent to Relinquish (see 43 CFR Part 2370) to the BLM as soon as it is known that there is no DoD Component interest in reusing the public domain lands. The BLM will complete the suitability determination screening process within 30 days of receipt of the Secretary’s Notice of Intent to Relinquish. If a DoD Component is approved to reuse

the public domain lands, the BLM will be notified and BLM will determine if the current authority for military use of these lands needs to be modified or amended.

(5) If BLM determines the land is suitable for return, it shall notify the Secretary concerned that the intent of the Secretary of the Interior is to accept the relinquishment of the land by the Secretary concerned.

(6) If BLM determines the land is not suitable for return to the DoI, the land should be disposed of pursuant to base closure law.

(m) The Secretary concerned should make a surplus determination within six (6) months of the date of approval of closure or realignment, and shall inform the LRA of the determination. If requested by the LRA, the Secretary may postpone the surplus determination for a period of no more than six (6) additional months after the date of approval if the Secretary determines that such postponement is in the best interests of the communities affected by the closure or realignment.

(1) In unusual circumstances, extensions beyond six months can be granted by the Deputy Under Secretary of Defense (Installations and Environment).

(2) Extensions of the surplus determination should be limited to the portions of the installation where there is an outstanding interest, and every effort should be made to make decisions on as much of the installation as possible, within the specified timeframes.

(n) Once the surplus determination has been made, the Secretary concerned shall follow the procedures in part 176 of this title.

(o) Following the surplus determination, but prior to the disposal of property, the Secretary concerned may, at the Secretary’s discretion, withdraw the surplus determination and evaluate a Federal agency’s late request for excess property.

(1) Transfers under this paragraph shall be limited to special cases, as determined by the Secretary concerned.

(2) Requests shall be made to the Secretary concerned, as specified under paragraphs (h) and (i) of this section, and the Secretary shall notify the LRA of such late request.

(3) Comments received from the LRA and the time and effort invested by the LRA in the planning process should be considered when the Secretary concerned is reviewing a late request.

**§ 174.8 Screening for properties covered by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, cross-reference.**

The Departments of Defense and Housing and Urban Development have promulgated regulations to address state and local screening and approval of redevelopment plans for installations covered by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Pub. L. 103-421). The Department of Defense regulations can be found at part 176 of this title. The Department of Housing and Urban Development regulations can be found at 24 CFR part 586.

**§ 174.9 Economic development conveyances.**

(a) The Secretary concerned may transfer real property and personal property to the LRA for purposes of job generation on the former installation. Such a transfer is an Economic Development Conveyance (EDC).

(b) An LRA is the only entity eligible to receive property under an EDC.

(c) The Secretary concerned shall use the completed application, along with other relevant information, to decide whether to enter into an EDC with an LRA. An LRA may submit an EDC application only after it adopts a redevelopment plan. The Secretary concerned shall establish a reasonable time period for submission of an EDC application after consultation with the LRA.

(d) The application shall include:

(1) A copy of the adopted redevelopment plan.

(2) A project narrative including the following:

(i) A general description of the property requested.

(ii) A description of the intended uses.

(iii) A description of the economic impact of closure or realignment on the local community.

(iv) A description of the economic condition of the community and the

prospects for redevelopment of the property.

(v) A statement of how the EDC is consistent with the overall redevelopment plan.

(3) A description of how the EDC will contribute to short- and long-term job generation on the installation, including the projected number and type of new jobs it will assist in generating.

(4) A business/operational plan for development of the EDC parcel, including at least the following elements:

(i) A development timetable, phasing schedule, and cash flow analysis.

(ii) A market and financial feasibility analysis describing the economic viability of the project, including an estimate of net proceeds over the planned life of the redevelopment project, but in no event for less than fifteen years after the initial transfer of property, and the proposed consideration or payment to the Department of Defense. The proposed consideration should describe the methodology for payment and include draft documents or instruments proposed to secure such payment.

(iii) A cost estimate and justification for infrastructure and other investments needed for redevelopment of the EDC parcel.

(iv) A proposed local investment and financing plan for the development.

(5) A statement describing why an EDC will more effectively enable achievement of the job generation objectives of the redevelopment plan regarding the parcel requested for conveyance than other federal real property disposal authorities.

(6) Evidence of the LRA's legal authority to acquire and dispose of the property.

(7) Evidence that:

(i) The LRA has authority to perform the actions required of it, pursuant to the terms of the EDC, and

(ii) That the officers submitting the application and making the representations contained therein on behalf of the LRA have the authority to do so.

(8) A commitment from the LRA that the proceeds from any sale or lease of the EDC parcel (or any portion thereof) received by the LRA during at least the first seven years after the date of the initial transfer of property, except

proceeds that are used to pay consideration to the Secretary concerned under paragraph (h) of this section, shall be used to support economic redevelopment of, or related to, the installation. In the case of phased transfers, the Secretary concerned shall require that this commitment apply during at least the first seven years after the date of the last transfer of property to the LRA. For the purposes of calculating this reinvestment period, a lease in furtherance of conveyance shall constitute a transfer. The use of proceeds to pay for, or offset the costs of, public investment on or related to the installation for any of the following purposes shall be considered a use to support the economic redevelopment of, or related to, the installation—

- (i) Road construction;
- (ii) Transportation management facilities;
- (iii) Storm and sanitary sewer construction;
- (iv) Police and fire protection facilities and other public facilities;
- (v) Utility construction;
- (vi) Building rehabilitation;
- (vii) Historic property preservation;
- (viii) Pollution prevention equipment or facilities;
- (ix) Demolition;
- (x) Disposal of hazardous materials and hazardous waste generated by demolition;
- (xi) Landscaping, grading, and other site or public improvements; and
- (xii) Planning for or the marketing of the development and reuse of the installation.

(9) A commitment from the LRA to execute the agreement for transfer of the property and accept control of the property within a reasonable time, as determined by the Secretary concerned after consultation with the LRA, after the date of the property disposal record of decision. The determination of reasonable time should take account of the ability of the Secretary concerned to provide the deed covenants, or covenant deferral, provided for under section 120(h)(3) and (4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)(3) and (4)).

(e) The Secretary concerned shall review the application and, to the extent

practicable, provide a preliminary determination within 30 days of receipt as to whether the Military Department can accept the application for negotiation of terms and conditions, subject to the following findings:

(1) The LRA submitting the application has been duly recognized by the DoD Office of Economic Adjustment;

(2) The application is complete. With respect to the elements of the application specified in paragraph (d)(6) and (d)(7)(i) of this section, the Secretary concerned may accept the application for negotiation of terms and conditions without this element, provided the Secretary concerned is satisfied that the LRA has a reasonable plan in place to provide the element prior to transfer of the property; and

(3) The proposed EDC will more effectively enable achievement of the job generation objectives of the redevelopment plan regarding the parcel requested than the application of other federal real property disposal authorities.

(f) Upon acceptance of an EDC application, the Secretary concerned shall determine if the proposed terms and conditions are fair and reasonable. The Secretary concerned may propose and negotiate any alternative terms or conditions that the Secretary considers necessary. The following factors shall be considered, as appropriate, in evaluating the terms and conditions of the proposed transfer, including price, time of payment, and other relevant methods of compensation to the Federal government:

(1) Local economic conditions and adverse impact of closure or realignment on the region and potential for economic recovery through an EDC.

(2) Extent of short- and long-term job generation.

(3) Consistency with the entire redevelopment plan.

(4) Financial feasibility of the development and proposed consideration, including financial and market analysis and the need and extent of proposed infrastructure and other investments.

(5) Extent of state and local investment, level of risk incurred, and the LRA's ability to implement the redevelopment plan. Higher risk assumed and investment made by the LRA

should be recognized with more favorable terms and conditions, to encourage local investment to support job generation.

(6) Current local and regional real estate market conditions, including market demand for the property.

(7) Incorporation of other Federal agency interests and concerns, including the applicability of other Federal surplus property disposal authorities.

(8) Economic benefit to the Federal Government, including protection and maintenance cost savings, environmental clean-up savings, and anticipated consideration from the transfer.

(9) Compliance with applicable Federal, state, interstate, and local laws and regulations.

(g) The Secretary concerned shall negotiate the terms and conditions of each transaction with the LRA. The Secretary concerned shall have the discretion and flexibility to enter into agreements that specify the form of payment and the schedule.

(h)(1) The Secretary concerned may accept, as consideration, any combination of the following:

(i) Cash, including a share of the revenues that the local redevelopment authority receives from third-party buyers or lessees from sales and leases of the conveyed property (*i.e.*, a share of the revenues generated from the redevelopment project);

(ii) Goods and services;

(iii) Real property and improvements; and

(iv) Such other consideration as the Secretary considers appropriate.

(2) The consideration may be accepted over time.

(3) All cash consideration for property at a military installation where the date of approval of closure or realignment is before January 1, 2005, shall be deposited in the account established under Section 2906(a) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Pub. L. 101-510; 10 U.S.C. 2687 note). All cash consideration for property at a military installation where the date of approval of closure or realignment is after January 1, 2005, shall be deposited in the account established under Section 2906A(a) of the Defense Base Closure and Realignment Act of 1990 (part

A of title XXIX of Pub. L. 101-510; 10 U.S.C. 2687 note).

(4) The Secretary concerned may use in-kind consideration received from an LRA at any location under control of the Secretary concerned.

(i) The LRA and the Secretary concerned may agree on a schedule for sale of parcels and payment participation.

(j) Additional provisions shall be incorporated in the conveyance documents to protect the Department's interest in obtaining the agreed upon consideration, which may include such items as predetermined release prices, accounting standards, or other appropriate clauses designed to ensure payment and protect against fraudulent transactions. Every agreement for an EDC shall contain provisions allowing the Secretary concerned to recoup from the LRA such portion of the proceeds from a sale or lease by the LRA as the Secretary concerned determines appropriate if the LRA does not use the proceeds to support economic redevelopment of or related to the installation during the period specified in paragraph (d)(8) of this section. The Secretary concerned and an LRA may enter into a mutually agreed participation agreement which may include input by the Secretary concerned on the LRA's disposal of EDC parcels.

(k) The Secretary concerned should take account of property value but is not required to formally determine the estimated fair market value of the property for any EDC. The consideration negotiated should be based on a business plan and development proforma that assumes the uses in the redevelopment plan. The Secretary concerned may determine the nature and extent of any additional information needed for purposes of an informed negotiation. This may include, but is not limited to, an economic and market analysis, construction estimates, a real estate pro forma analysis, or an appraisal. To the extent not prohibited by law, information used should be shared with the LRA.

(l) After evaluating the application based upon the criteria specified in

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paragraph (f) of this section, and negotiating terms and conditions, the Secretary concerned shall present the proposed EDC to the Deputy Under Secretary of Defense (Installations and Environment) for formal coordination before announcing approval of the application.

[76 FR 70880, Nov. 16, 2011]

## § 174.10 [Reserved]

### § 174.11 Leasing of real property to non-Federal entities.

(a) Leasing of real property to non-Federal entities prior to the final disposition of closing and realigning installations may facilitate state and local economic adjustment efforts and encourage economic redevelopment, but the Secretary concerned will always concentrate on the final disposition of real and personal property.

(b) In addition to leasing property at fair market value, to assist local redevelopment efforts the Secretary concerned may also lease real and personal property, pending final disposition, for less than fair market value if the Secretary determines that:

(1) A public interest will be served as a result of the lease; and,

(2) The fair market value of the lease is unobtainable or not compatible with such public benefit.

(c) Pending final disposition of an installation, the Secretary concerned may grant interim leases which are short-term leases that make no commitment for future use or ultimate disposal. When granting an interim lease, the Secretary will generally lease to the LRA but can lease property directly to other entities. If the interim lease (after complying with NEPA) is entered into prior to completion of the final disposal decisions, the term may be for up to five years, including options to renew, and may contain restrictions on use. Leasing should not delay the final disposal of the property. After completion of the final disposal decisions, the term of the lease may be longer than five years.

(d) If the property is leased for less than fair market value to the LRA and the interim lease permits the property to be subleased, the interim lease shall provide that rents from the subleases

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will be applied by the lessee to the protection, maintenance, repair, improvement, and costs related to the property at the installation consistent with 10 U.S.C. 2667.

### § 174.12 Leasing of transferred real property by Federal agencies.

(a) The Secretary concerned may transfer real property that is still needed by a Federal agency (which for purposes of this section includes DoD Components) to an LRA provided the LRA agrees to lease the property to the Federal agency in accordance with all statutory and regulatory guidance.

(b) The decision whether to transfer property pursuant to such a leasing arrangement rests with the Secretary concerned. However, a Secretary shall only transfer property subject to such a leasing arrangement if the Federal agency that needs the property agrees to the leasing arrangement.

(c) If the subject property cannot be transferred pursuant to such a leasing arrangement (*e.g.*, the relevant Federal agency prefers ownership, the LRA and the Federal agency cannot agree on terms of the lease, or the Secretary concerned determines that such a lease would not be in the Federal interest), such property shall remain in Federal ownership unless and until the Secretary concerned determines that it is surplus.

(d) If a building or structure is proposed for transfer pursuant to this section, that which is leased by the Federal agency may be all or a portion of that building or structure.

(e) Transfers pursuant to this section must be to an LRA.

(f) Either existing Federal tenants or Federal agencies desiring to locate onto the property after operational closure may make use of such a leasing arrangement. The Secretary concerned may not enter into such a leasing arrangement unless:

(1) In the case of a Defense Agency, the Secretary concerned is acting in an Executive Agent capacity on behalf of the Agency that certifies that such a leasing arrangement is in the interest of that Agency; or,

(2) In the case of a Military Department, the Secretary concerned certifies that such a leasing arrangement

is in the best interest of the Military Department and that use of the property by the Military Department is consistent with the obligation to close or realign the installation in accordance with the recommendations of the Defense Base Closure and Realignment Commission.

(g) Property eligible for such a leasing arrangement is not surplus because it is still needed by the Federal Government. Even though the LRA would not otherwise have to include such property in its redevelopment plan, it should include the property in its redevelopment plan anyway to take into account the planned Federal use of such property.

(h) The terms of the LRA's lease to the Federal Government should afford the Federal agency rights as close to those associated with ownership of the property as is practicable. The requirements of the General Services Administration (GSA) Federal Acquisition Regulation (48 CFR part 570) are not applicable to the lease, but provisions in that regulation may be used to the extent they are consistent with this part. The terms of the lease are negotiable subject to the following:

(1) The lease shall be for a term of no more than 50 years, but may provide for options for renewal or extension of the term at the request of the Federal Government. The lease term should be based on the needs of the Federal agency.

(2) The lease, or any renewals or extensions thereof, shall not require rental payments.

(3) Notwithstanding paragraph (h)(2) of this section, if the lease involves a substantial portion of the installation, the Secretary concerned may obtain facility services for the leased property and common area maintenance from the LRA or the LRA's assignee as a provision of the lease.

(A) Such services and common area maintenance shall be provided at a rate no higher than the rate charged to non-Federal tenants of the transferred property.

(B) Such services and common area maintenance shall not include—

(i) Municipal services that a State or local government is required by law to provide to all landowners in its juris-

diction without direct charge, including police protection; or

(ii) Firefighting or security-guard functions.

(C) The Federal agency may be responsible for services such as janitorial, grounds keeping, utilities, capital maintenance, and other services normally provided by a landlord. Acquisition of such services by the Federal agency is to be accomplished through the use of Federal Acquisition Regulation procedures or otherwise in accordance with applicable statutory and regulatory requirements.

(4) The lease shall include a provision prohibiting the LRA from transferring fee title to another entity during the term of the lease, other than one of the political jurisdictions that comprise the LRA, without the written consent of the Federal agency occupying the leased property.

(5)(i) The lease shall include an option specifying that if the Federal agency no longer needs the property before the expiration of the term of the lease, the remainder of the lease term may be satisfied by the same or another Federal agency that needs property for a similar use. ("Similar use" is a use that is comparable to or essentially the same as the use under the original lease, as determined by the Secretary concerned.)

(ii)(B) If the tenant is a DoD Component, before notifying GSA of the availability of the leasehold, it shall determine whether any other DoD Component has a requirement for the leasehold; in doing so, it shall consult with the LRA. If another DoD Component has a requirement for the leasehold, that DoD Component shall be allowed to assume the leasehold for the remainder of its term. If no DoD Component has a requirement for the leasehold, the tenant shall notify GSA in accordance with paragraph (h)(5)(ii)(A) of this section.

(A) The Federal tenant shall notify the GSA of the availability of the leasehold. GSA will then decide whether to exercise this option after consulting with the LRA or other property owner. The GSA shall have 60 days from the date of notification in which to identify a Federal agency to serve out the term of the lease and to notify

the LRA or other property owner of the new tenant. If the GSA does not notify the LRA or other property owner of a new tenant within such 60 days, the leasehold shall terminate on a date agreed to by the Federal tenant and the LRA or other property owner.

(B) If the GSA decides not to exercise this option after consulting with the LRA or other property owner, the leasehold shall terminate on a date agreed to by the Federal tenant and the LRA or other property owner.

(6) The terms of the lease shall provide that the Federal agency may repair and improve the property at its expense after consultation with the LRA.

(i) Property subject to such a leasing arrangement shall be conveyed in accordance with the existing EDC procedures. The LRA shall submit the following in addition to the application requirements outlined in §174.9(e) of this part:

(1) A description of the parcel or parcels the LRA proposes to have transferred to it and then to lease to a Federal agency;

(2) A written statement signed by an authorized representative of the Federal agency that it agrees to accept the lease of the property; and,

(3) A statement explaining why such a leasing arrangement is necessary for the long-term economic redevelopment of the installation property.

(j) The exact amount of consideration, or the formula to be used to determine that consideration, as well as the schedule for payment of consideration must be agreed upon in writing before transfer pursuant to this section.

### Subpart E—Personal Property

#### § 174.13 Personal property.

(a) This section outlines procedures to allow transfer of personal property to the LRA for the effective implementation of a redevelopment plan. Personal property does not include fixtures.

(b) The Secretary concerned, supported by DoD Components with personal property on the installation, will take an inventory of the personal property, including its condition, within 6

months after the date of approval of closure or realignment. This inventory will be limited to the personal property located on the real property to be disposed of by the Military Department. The inventory will be taken in consultation with LRA officials. If there is no LRA, the Secretary concerned shall consult with the local government in whose jurisdiction the installation is wholly located, or a local government agency or a State government agency designated for that purpose by the Governor of the State. Based on these consultations, the installation commander will determine the items or category of items that have the potential to enhance the reuse of the real property.

(c) Except for property subject to the exemptions in paragraph (e) of this section, personal property with potential to enhance the reuse of the real property shall remain at an installation being closed or realigned until the earlier of:

(1) One week after the Secretary concerned receives the redevelopment plan;

(2) The date notified by the LRA that there will be no redevelopment plan;

(3) 24 months after the date of approval of the closure or realignment of the installation; or

(4) 90 days before the date of the closure or realignment of the installation.

(d) National Guard property under the control of the United States Property and Fiscal Officer is subject to inventory and may be made available for redevelopment planning purposes.

(e) Personal property may be removed upon approval of the installation commander or higher authority, as prescribed by the Secretary concerned, after the inventory required in paragraph (b) of this section has been sent to the LRA, when:

(1) The property is required for the operation of a unit, function, component, weapon, or weapons system at another installation;

(2) The property is uniquely military in character and is likely to have no civilian use (other than use for its material content or as a source of commonly used components). This property consists of classified items; nuclear, biological, and chemical items; weapons and munitions; museum property or

items of significant historic value that are maintained or displayed on loan; and similar military items;

(3) The property is not required for the reutilization or redevelopment of the installation (as jointly determined by the Secretary concerned and the LRA);

(4) The property is stored at the installation for purposes of distribution (including spare parts or stock items) or redistribution and sale (DoD excess/surplus personal property). This property includes materials or parts used in a manufacturing or repair function but does not include maintenance spares for equipment to be left in place;

(5) The property meets known requirements of an authorized program of a DoD Component or another Federal agency that would have to purchase similar items, and is the subject of a written request by the head of the DoD Component or other Federal agency. If the authority to acquire personal property has been delegated, a copy of the delegation must accompany the request. (For purposes of this paragraph, "purchase" means the DoD Component or Federal agency intends to obligate funds in the current quarter or next six fiscal quarters.) The DoD Component or Federal agency must pay packing, crating, handling, and transportation charges associated with such transfers of personal property;

(6) The property belongs to a non-appropriated fund instrumentality (NAFI) of the Department of Defense; separate arrangements for communities to purchase such property are possible and may be negotiated with the Secretary concerned;

(7) The property is not owned by the Department of Defense, *i.e.*, it is owned by a Federal agency outside the Department of Defense or by non-Federal persons or entities such as a State, a private corporation, or an individual; or,

(8) The property is needed elsewhere in the national security interest of the United States as determined by the Secretary concerned. This authority may not be re-delegated below the level of an Assistant Secretary. In exercising this authority, the Secretary may transfer the property to any DoD Component or other Federal agency.

(f) Personal property not subject to the exemptions in paragraph (e) of this section may be conveyed to the LRA as part of an EDC for the real property if the Secretary concerned makes a finding that the personal property is necessary for the effective implementation of the redevelopment plan.

(g) Personal property may also be conveyed separately to the LRA under an EDC for personal property. This type of EDC can be made if the Secretary concerned determines that the transfer is necessary for the effective implementation of a redevelopment plan with respect to the installation. Such determination shall be based on the LRA's timely application for the property, which should be submitted to the Secretary upon completion of the redevelopment plan. The application must include the LRA's agreement to accept the personal property after a reasonable period and will otherwise comply with the requirements of §§174.9 and 174.10 of this part. The transfer will be subject to reasonable limitations and conditions on use.

(h) Personal property that is not needed by a DoD Component or a tenant Federal agency or conveyed to an LRA (or a state or local jurisdiction in lieu of an LRA), or conveyed as related personal property together with the real property, will be transferred to the Defense Reutilization and Marketing Office for disposal in accordance with applicable regulations.

(i) Useful personal property not needed by the Federal Government and not qualifying for transfer to the LRA under an EDC may be donated to the community or LRA through the appropriate State Agency for Surplus Property (SASP) under 41 CFR part 102-37 surplus program guidelines. Personal property donated under this procedure must meet the usage and control requirements of the applicable SASP.

### Subpart F—Maintenance and Repair

#### § 174.14 Maintenance and repair.

(a) Facilities and equipment located on installations being closed are often important to the eventual reuse of the installation. This section provides maintenance procedures to preserve

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and protect those facilities and items of equipment needed for reuse in an economical manner that facilitates installation redevelopment.

(b) In order to ensure quick reuse, the Secretary concerned, in consultation with the LRA, will establish initial levels of maintenance and repair needed to aid redevelopment and to protect the property for the time periods set forth in paragraph (c) of this section. Where agreement between the Secretary and the LRA cannot be reached, the Secretary will determine the required levels of maintenance and repair and its duration. In no case will these initial levels of maintenance:

(1) Exceed the standard of maintenance and repair in effect on the date of approval of closure or realignment;

(2) Be less than maintenance and repair required to be consistent with Federal Government standards for excess and surplus properties as provided in the Federal Management Regulations of the GSA, 41 CFR part 102;

(3) Be less than the minimum levels required to support the use of such facilities or equipment for nonmilitary purposes; or,

(4) Require any property improvements, including construction, alteration, or demolition, except when the demolition is required for health, safety, or environmental purposes, or is economically justified in lieu of continued maintenance expenditures.

(c) Unless the Secretary concerned determines that it is in the national security interest of the United States, the levels of maintenance and repair specified in paragraph (b) of this section shall not be changed until the earlier of:

(1) One week after the Secretary concerned receives the redevelopment plan;

(2) The date notified by the LRA that there will be no redevelopment plan;

(3) 24 months after the date of approval of the closure or realignment of the installation; or

(4) 90 days before the date of the closure or realignment of the installation.

(d) The Secretary concerned may extend the time period for the initial levels of maintenance and repair for property still under the Secretary's control for an additional period, if the Sec-

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retary determines that the LRA is actively implementing its redevelopment plan, and such levels of maintenance are justified.

(e) Once the time period for the initial or extended levels of maintenance and repair expires, the Secretary concerned will reduce the levels of maintenance and repair to levels consistent with Federal Government standards for excess and surplus properties as provided in the Federal Management Regulations of the GSA, except in the case of facilities still being used to perform a DoD mission.

### Subpart G—Environmental Matters

#### § 174.15 Indemnification under Section 330 of the National Defense Authorization Act for Fiscal Year 1993.

Section 330 of the National Defense Authorization Act for Fiscal Year 1993, Pub. L. 102-484, as amended, provides for indemnification of transferees of closing Department of Defense properties under circumstances specified in that statute. The authority to implement this provision of law has been delegated by the Secretary of Defense to the General Counsel of the Department of Defense; therefore, this provision of law shall only be referred to or recited in any deed, sales agreement, bill of sale, lease, license, easement, right-of-way, or transfer document for real or personal property after obtaining the written concurrence of the Deputy General Counsel (Environment and Installations), Office of the General Counsel, Department of Defense.

#### § 174.16 Real property containing explosive or chemical agent hazards.

The DoD Component controlling real property known to contain or suspected of containing explosive or chemical agent hazards from past DoD military munitions-related or chemical warfare-related activities shall, prior to transfer of the property out of Department of Defense control, obtain the DoD Explosives Safety Board's approval of measures planned to ensure protectiveness from such hazards, in accordance with DoD Directive 6055.9E, *Explosives Safety Management and the DoD Explosives Safety Board*.

**§ 174.17 NEPA.**

At installations subject to this part, NEPA analysis shall comply with the promulgated NEPA regulations of the Military Department exercising real property accountability for the installation, including any requirements relating to responsibility for funding the analysis. See 32 CFR parts 651 (for the Army), 775 (for the Navy), and 989 (for the Air Force). Nothing in this section shall be interpreted as releasing a Military Department from complying with its own NEPA regulation.

**§ 174.18 Historic preservation.**

(a) The transfer, lease, or sale of National Register-eligible historic property to a non-Federal entity at installations subject to this part may constitute an “adverse effect” under the regulations implementing the National Historic Preservation Act (36 CFR 800.5(a)(2)(vii)). One way of resolving this adverse effect is to restrict the use that may be made of the property subsequent to its transfer out of Federal ownership or control through the imposition of legally enforceable restrictions or conditions. The Secretary concerned may include such restrictions or conditions (typically a real property interest in the form of a restrictive covenant or preservation easement) in any deed or lease conveying an interest in historic property to a non-Federal entity. Before doing so, the Secretary should first consider whether the historic character of the property can be protected effectively through planning and zoning actions undertaken by units of State or local government; if so, working with such units of State or local government to protect the property through these means is preferable to encumbering the property with such a covenant or easement.

(b) Before including such a covenant or easement in a deed or lease, the Secretary concerned shall consider—

(1) Whether the jurisdiction that encompasses the property authorizes such a covenant or easement; and

(2) Whether the Secretary can give or assign to a third party the responsibility for monitoring and enforcing such a covenant or easement.

**PART 175 [RESERVED]**

**PART 176—REVITALIZING BASE CLOSURE COMMUNITIES AND COMMUNITY ASSISTANCE—COMMUNITY REDEVELOPMENT AND HOMELESS ASSISTANCE**

**Sec.**

- 176.1 Purpose.
- 176.5 Definitions.
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- 176.45 Disposal of buildings and property.

**AUTHORITY:** 10 U.S.C. 2687 note.

**SOURCE:** 62 FR 35346, July 1, 1997, unless otherwise noted.

**§ 176.1 Purpose.**

This part implements the Base Closure Community Redevelopment and Homeless Assistance Act, as amended (10 U.S.C. 2687 note), which instituted a new community-based process for addressing the needs of the homeless at base closure and realignment sites. In this process, Local Redevelopment Authorities (LRAs) identify interest from homeless providers in installation property and develop a redevelopment plan for the installation that balances the economic redevelopment and other development needs of the communities in the vicinity of the installation with the needs of the homeless in those communities. The Department of Housing and Urban Development (HUD) reviews the LRA’s plan to see that an appropriate balance is achieved. This part also implements the process for identifying interest from State and local entities for property under a public benefit transfer. The LRA is responsible for concurrently identifying interest from homeless providers and State and local entities interested in property under a public benefit transfer.

**§ 176.5 Definitions.**

As used in this part:

**CERCLA.** Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 *et seq.*).

*Communities in the vicinity of the installation.* The communities that constitute the political jurisdictions (other than the State in which the installation is located) that comprise the LRA for the installation. If no LRA is formed at the local level, and the State is serving in that capacity, the communities in the vicinity of the installation are deemed to be those political jurisdiction(s) (other than the State) in which the installation is located.

*Continuum of care system.*

(1) A comprehensive homeless assistance system that includes:

(i) A system of outreach and assessment for determining the needs and condition of an individual or family who is homeless, or whether assistance is necessary to prevent an individual or family from becoming homeless;

(ii) Emergency shelters with appropriate supportive services to help ensure that homeless individuals and families receive adequate emergency shelter and referral to necessary service providers or housing finders;

(iii) Transitional housing with appropriate supportive services to help those homeless individuals and families who are not prepared to make the transition to independent living;

(iv) Housing with or without supportive services that has no established limitation on the amount of time of residence to help meet long-term needs of homeless individuals and families; and,

(v) Any other activity that clearly meets an identified need of the homeless and fills a gap in the continuum of care.

(2) Supportive services are services that enable homeless persons and families to move through the continuum of care toward independent living. These services include, but are not limited to, case management, housing counseling, job training and placement, primary health care, mental health services, substance abuse treatment, child care, transportation, emergency food and clothing family violence services, education services, moving services, assistance in obtaining entitlements, and referral to veterans services and legal services.

*Consolidated Plan.* The plan prepared in accordance with the requirements of 24 CFR part 91.

*Day.* One calendar day including weekends and holidays.

*DoD.* Department of Defense.

*HHS.* Department of Health and Human Services.

*Homeless person.*

(1) An individual or family who lacks a fixed, regular, and adequate nighttime residence; and

(2) An individual or family who has a primary nighttime residence that is:

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or,

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(3) This term does not include any individual imprisoned or otherwise detained under an Act of the Congress or a State law.

*HUD.* Department of Housing and Urban Development.

*Installation.* A base, camp, post, station, yard, center, homeport facility for any ship or other activity under the jurisdiction of DoD, including any leased facility, that is approved for closure or realignment under the Base Closure and Realignment Act of 1988 (Pub. L. 100-526), as amended, or the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101-510), as amended (both at 10 U.S.C. 2687, note).

*Local redevelopment authority (LRA).* Any authority or instrumentality established by State or local government and recognized by the Secretary of Defense, through the Office of Economic Adjustment, as the entity responsible for developing the redevelopment plan with respect to the installation or for directing implementation of the plan.

*NEPA.* National Environmental Policy Act of 1969 (42 U.S.C. 4320).

*OEA.* Office of Economic Adjustment, Department of Defense.

*Private nonprofit organization.* An organization, no part of the net earnings

of which inures to the benefit of any member, founder, contributor, or individual; that has a voluntary board; that has an accounting system or has designated an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting procedures; and that practices non-discrimination in the provision of assistance.

*Public benefit transfer.* The transfer of surplus military property for a specified public purpose at up to a 100-percent discount in accordance with 40 U.S.C. 471 *et seq.* or 49 U.S.C. 47151–47153.

*Redevelopment plan.* A plan that is agreed by the LRA with respect to the installation and provides for the reuse or redevelopment of the real property and personal property of the installation that is available for such reuse and redevelopment as a result of the closure of the installation.

*Representative(s) of the homeless.* A State or local government agency or private nonprofit organization, including a homeless assistance planning board, that provides or proposes to provide services to the homeless.

*Substantially equivalent.* Property that is functionally suitable to substitute for property referred to in an approved Title V application. For example, if the representative of the homeless had an approved Title V application for a building that would accommodate 100 homeless persons in an emergency shelter, the replacement facility would also have to accommodate 100 at a comparable cost for renovation.

*Substantially equivalent funding.* Sufficient funding to acquire a substantially equivalent facility.

*Surplus property.* Any excess property not required for the needs and the discharge of the responsibilities of all Federal Agencies. Authority to make this determination, after screening with all Federal Agencies, rests with the Military Departments.

*Title V.* Title V of the Steward B. McKinney Homeless Assistance Act of 1987 (42 U.S.C. 11411) as amended by the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103–160).

*Urban county.* A county within a metropolitan area as defined at 24 CFR 570.3.

#### § 176.10 Applicability.

(a) *General.* This part applies to all installations that are approved for closure/realignment by the President and Congress under Pub. L. 101–510 after October 25, 1994.

(b) *Request for inclusion under this process.* This part also applies to installations that were approved for closure/realignment under either Public Law 100–526 or Public Law 101–510 prior to October 25, 1994 and for which an LRA submitted a request for inclusion under this part to DoD by December 24, 1994. A list of such requests was published in the FEDERAL REGISTER on May 30, 1995 (60 FR 28089).

(1) For installations with Title V applications pending but not approved before October 25, 1994, the LRA shall consider and specifically address any application for use of buildings and property to assist the homeless that were received by HHS prior to October 25, 1994, and were spending with the Secretary of HHS on that date. These pending requests shall be addressed in the LRA's homeless assistance submission.

(2) For installations with Title V applications approved before October 25, 1994 where there is an approved Title V application, but property has not been assigned or otherwise disposed of by the Military Department, the LRA must ensure that its homeless assistance submission provides the Title V applicant with:

- (i) The property requested;
- (ii) Properties, on or off the installation, that are substantially equivalent to those requested;
- (iii) Sufficient funding to acquire such substantially equivalent properties;
- (iv) Services and activities that meet the needs identified in the application; or,
- (v) A combination of the properties, funding, and services and activities described in §176.10(b)(2)(i)–(iv) of this part.

(c) *Revised Title V process.* All other installations approved for closure or realignment under either Public Law

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100-526 or Public Law 101-510 prior to October 25, 1994, for which there was no request for consideration under this part, are covered by the process stipulated under Title V. Buildings or property that were transferred or leased for homeless use under Title V prior to October 25, 1994, may not be reconsidered under this part.

### § 176.15 Waivers and extensions of deadlines.

(a) After consultation with the LRA and HUD, and upon a finding that it is in the interest of the communities affected by the closure/realignment of the installation, DoD, through the Director of the Office of Economic Adjustment, may extend or postpone any deadline contained in this part.

(b) Upon completion of a determination and finding of good cause, and except for deadlines and actions required on the part of DoD, HUD may waive any provision of §§ 176.20 through 176.45 of this part in any particular case, subject only to statutory limitations.

### § 176.20 Overview of the process.

(a) *Recognition of the LRA.* As soon as practicable after the list of installations recommended for closure or realignment is approved, DoD, through OEA, will recognize an LRA for the installation. Upon recognition, OEA shall publish the name, address, and point of contact for the LRA in the FEDERAL REGISTER and in a newspaper of general circulation in the communities in the vicinity of the installation.

(b) *Responsibilities of the Military Department.* The Military Department shall make installation properties available to other DoD components and Federal agencies in accordance with the procedures set out at 32 CFR part 174. The Military Department will keep the LRA informed of other Federal interest in the property during this process. Upon completion of this process the Military Department will notify HUD and either the LRA or the Chief Executive Officer of the State, as appropriate, and publish a list of surplus property on the installation that will be available for reuse in the FEDERAL REGISTER and a newspaper of general circulation in the communities in the vicinity of the installation.

(c) *Responsibilities of the LRA.* The LRA should begin to conduct outreach efforts with respect to the installation as soon as is practicable after the date of approval of closure/realignment of the installation. The local reuse planning process must begin no later than the date of the Military Department's FEDERAL REGISTER publication of available property described at § 176.20(b). For those installations that began the process described in this part prior to August 17, 1995, HUD will, on a case-by-case basis, determine whether the statutory requirements have been fulfilled and whether any additional requirements listed in this part should be required. Upon the FEDERAL REGISTER publication described in § 176.20(b), the LRA shall:

(1) Publish, within 30 days, in a newspaper of general circulation in the communities in the vicinity of the installation, the time period during which the LRA will receive notices of interest from State and local governments, representatives of the homeless, and other interested parties. This publication shall include the name, address, telephone number and the point of contact for the LRA who can provide information on the prescribed form and contents of the notices of interest. The LRA shall notify DoD of the deadline specified for receipt of notices of interest. LRAs are strongly encouraged to make this publication as soon as possible within the permissible 30 day period in order to expedite the closure process.

(i) In addition, the LRA has the option to conduct an informal solicitation of notices of interest from public and non-profit entities interested in obtaining property via a public benefit transfer other than a homeless assistance conveyance under either 40 U.S.C. 471 *et. seq.* or 49 U.S.C. 47151-47153. As part of such a solicitation, the LRA may wish to request that interested entities submit a description of the proposed use to the LRA and the sponsoring Federal agency.

(ii) For all installations selected for closure or realignment prior to 1995 that elected to proceed under Public Law 103-421, the LRA shall accept notices of interest for not less than 30 days.

(iii) For installations selected for closure or realignment in 1995 or thereafter, notices of interest shall be accepted for a minimum of 90 days and not more than 180 days after the LRA's publication under § 176.20(c)(1).

(2) Prescribe the form and contents of notices of interest.

(i) The LRA may not release to the public any information regarding the capacity of the representative of the homeless to carry out its program, a description of the organization, or its financial plan for implementing the program, without the consent of the representative of the homeless concerned, unless such release is authorized under Federal law and under the law of the State and communities in which the installation concerned is located. The identity of the representative of the homeless may be disclosed.

(ii) The notices of interest from representatives of the homeless must include:

(A) A description of the homeless assistance program proposed, including the purposes to which the property or facility will be put, which may include uses such as supportive services, job and skills training, employment programs, shelters, transitional housing or housing with no established limitation on the amount of time of residence, food and clothing banks, treatment facilities, or any other activity which clearly meets an identified need of the homeless and fills a gap in the continuum of care;

(B) A description of the need for the program;

(C) A description of the extent to which the program is or will be coordinated with other homeless assistance programs in the communities in the vicinity of the installation;

(D) Information about the physical requirements necessary to carry out the program including a description of the buildings and property at the installation that are necessary to carry out the program;

(E) A description of the financial plan, the organization, and the organizational capacity of the representative of the homeless to carry out the program; and,

(F) An assessment of the time required to start carrying out the program.

(iii) The notices of interest from entities other than representatives of the homeless should specify the name of the entity and specific interest in property or facilities along with a description of the planned use.

(3) In addition to the notice required under § 176.20(c)(1), undertake outreach efforts to representatives of the homeless by contacting local government officials and other persons or entities that may be interested in assisting the homeless within the vicinity of the installation.

(i) The LRA may invite persons and organizations identified on the HUD list of representatives of the homeless and any other representatives of the homeless with which the LRA is familiar, operating in the vicinity of the installation, to the workshop described in § 176.20(c)(3)(ii).

(ii) The LRA, in coordination with the Military Department and HUD, shall conduct at least one workshop where representatives of the homeless have an opportunity to:

(A) Learn about the closure/realignment and disposal process;

(B) Tour the buildings and properties available either on or off the installation;

(C) Learn about the LRA's process and schedule for receiving notices of interest as guided by § 176.20(c)(2); and,

(D) Learn about any known land use constraints affecting the available property and buildings.

(iii) The LRA should meet with representatives of the homeless that express interest in discussing possible uses for these properties to alleviate gaps in the continuum of care.

(4) Consider various properties in response to the notices of interest. The LRA may consider property that is located off the installation.

(5) Develop an application, including the redevelopment plan and homeless assistance submission, explaining how the LRA proposes to address the needs of the homeless. This application shall consider the notices of interest received from State and local governments, representatives of the homeless, and other interested parties. This shall

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include, but not be limited to, entities eligible for public benefit transfers under either 40 U.S.C. 471 *et. seq.*, or 49 U.S.C. 47151–47153; representatives of the homeless; commercial, industrial, and residential development interests; and other interests. From the deadline date for receipt of notices of interest described at §176.20(c)(1), the LRA shall have 270 days to complete and submit the LRA application to the appropriate Military Department and HUD. The application requirements are described at §176.30.

(6) Make the draft application available to the public for review and comment periodically during the process of developing the application. The LRA must conduct at least one public hearing on the application prior to its submission to HUD and the appropriate Military Department. A summary of the public comments received during the process of developing the application shall be included in the application when it is submitted.

(d) *Public benefit transfer screening.* The LRA should, while conducting its outreach efforts, work with the Federal agencies that sponsor public benefit transfers under either 40 U.S.C. 471 *et. seq.* or 49 U.S.C. 47151–47153. Those agencies can provide a list of parties in the vicinity of the installation that might be interested in and eligible for public benefit transfers. The LRA should make a reasonable effort to inform such parties of the availability of the property and incorporate their interests within the planning process. Actual recipients of property are to be determined by sponsoring Federal agency. The Military Departments shall notify sponsoring Federal agencies about property that is available based on the community redevelopment plan and keep the LRA apprised of any expressions of interest. Such expressions of interest are not required to be incorporated into the redevelopment plan, but must be considered.

[62 FR 35346, July 1, 1997, as amended at 71 FR 9927, Feb. 28, 2006]

### §176.25 HUD's negotiations and consultations with the LRA.

HUD may negotiate and consult with the LRA before and during the course of preparation of the LRA's application

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and during HUD's review thereof with a view toward avoiding any preliminary determination that the application does not meet any requirement of this part. LRAs are encouraged to contact HUD for a list of persons and organizations that are representatives of the homeless operating in the vicinity of the installation.

### § 176.30 LRA application.

(a) *Redevelopment plan.* A copy of the redevelopment plan shall be part of the application.

(b) *Homeless assistance submission.* This component of the application shall include the following:

(1) Information about homelessness in the communities in the vicinity of the installation.

(i) A list of all the political jurisdictions which comprise the LRA.

(ii) A description of the unmet need in the continuum of care system within each political jurisdiction, which should include information about any gaps that exist in the continuum of care for particular homeless subpopulations. The source for this information shall depend upon the size and nature of the political jurisdictions(s) that comprise the LRA. LRAs representing:

(A) Political jurisdictions that are required to submit a Consolidated Plan shall include a copy of their Homeless and Special Needs Population Table (Table 1), Priority Homeless Needs Assessment Table (Table 2), and narrative description thereof from that Consolidated Plan, including the inventory of facilities and services that assist the homeless in the jurisdiction.

(B) Political jurisdictions that are part of an urban county that is required to submit a Consolidated Plan shall include a copy of their Homeless and Special Needs Population Table (Table 1), Priority Homeless Needs Assessment Table (Table 2), and narrative description thereof from that Consolidated Plan, including the inventory of facilities and services that assist the homeless in the jurisdiction. In addition, the LRA shall explain what portion of the homeless population and subpopulations described in the Consolidated Plan are attributable to the political jurisdiction it represents.

(C) A political jurisdiction not described by §176.30(b)(1)(ii)(A) or §176.30(b)(1)(ii)(B) shall submit a narrative description of what it perceives to be the homeless population within the jurisdiction and a brief inventory of the facilities and services that assist homeless persons and families within the jurisdiction. LRAs that represent these jurisdictions are not required to conduct surveys of the homeless population.

(2) Notices of interest proposing assistance to homeless persons and/or families.

(i) A description of the proposed activities to be carried out on or off the installation and a discussion of how these activities meet a portion or all of the needs of the homeless by addressing the gaps in the continuum of care. The activities need not be limited to expressions of interest in property, but may also include discussions of how economic redevelopment may benefit the homeless;

(ii) A copy of each notice of interest from representatives of the homeless for use of buildings and property and a description of the manner in which the LRA's application addresses the need expressed in each notice of interest. If the LRA determines that a particular notice of interest should not be awarded property, an explanation of why the LRA determined not to support that notice of interest, the reasons for which may include the impact of the program contained in the notice of interest on the community as described in §176.30(b)(2)(iii); and,

(iii) A description of the impact that the implemented redevelopment plan will have on the community. This shall include information on how the LRA's redevelopment plan might impact the character of existing neighborhoods adjacent to the properties proposed to be used to assist the homeless and should discuss alternative plans. Impact on schools, social services, transportation, infrastructure, and concentration of minorities and/or low income persons shall also be discussed.

(3) Legally binding agreements for buildings, property, funding, and/or services.

(i) A copy of the legally binding agreements that the LRA proposes to

enter into with the representative(s) of the homeless selected by the LRA to implement homeless programs that fill gaps in the existing continuum of care. The legally binding agreements shall provide for a process for negotiating alternative arrangements in the event that an environmental analysis conducted under §176.45(b) indicates that any property identified for transfer in the agreement is not suitable for the intended purpose. Where the balance determined in accordance with §176.30(b)(4) provides for the use of installation property as a homeless assistance facility, legally binding agreements must provide for the reversion or transfer, either to the LRA or to another entity or entities, of the buildings and property in the event they cease to be used for the homeless. In cases where the balance proposed by the LRA does not include the use of buildings or property on the installation, the legally binding agreements need not be tied to the use of specific real property and need not include a reverter clause. Legally binding agreements shall be accompanied by a legal opinion of the chief legal advisor of the LRA or political jurisdiction or jurisdictions which will be executing the legally binding agreements that the legally binding agreements, when executed, will constitute legal, valid, binding, and enforceable obligations on the parties thereto;

(ii) A description of how buildings, property, funding, and/or services either on or off the installation will be used to fill some of the gaps in the current continuum of care system and an explanation of the suitability of the buildings and property for that use; and,

(iii) Information on the availability of general services such as transportation, police, and fire protection, and a discussion of infrastructure such as water, sewer, and electricity in the vicinity of the proposed homeless activity at the installation.

(4) An assessment of the balance with economic and other development needs.

(i) An assessment of the manner in which the application balances the expressed needs of the homeless and the needs of the communities comprising

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the LRA for economic redevelopment and other development; and

(ii) An explanation of how the LRA's application is consistent with the appropriate Consolidated Plan(s) or any other existing housing, social service, community, economic, or other development plans adopted by the jurisdictions in the vicinity of the installation.

(5) A description of the outreach undertaken by the LRA. The LRA shall explain how the outreach requirements described at §176.20(c)(1) and §176.20(c)(3) have been fulfilled. This explanation shall include a list of the representatives of the homeless the LRA contacted during the outreach process.

(c) *Public comments.* The LRA application shall include the materials described at §176.20(c)(6). These materials shall be prefaced with an overview of the citizen participation process observed in preparing the application.

**§ 176.35 HUD's review of the application.**

(a) *Timing.* HUD shall complete a review of each application no later than 60 days after its receipt of a completed application.

(b) *Standards of review.* The purpose of the review is to determine whether the application is complete and, with respect to the expressed interest and requests of representatives of the homeless, whether the application:

(1) *Need.* Takes into consideration the size and nature of the homeless population in the communities in the vicinity of the installation, the availability of existing services in such communities to meet the needs of the homeless in such communities, and the suitability of the buildings and property covered by the application for use and needs of the homeless in such communities. HUD will take into consideration the size and nature of the installation in reviewing the needs of the homeless population in the communities in the vicinity of the installation.

(2) *Impact of notices of interest.* Takes into consideration any economic impact of the homeless assistance under the plan on the communities in the vicinity of the installation, including:

(i) Whether the plan is feasible in light of demands that would be placed on available social services, police and fire protection, and infrastructure in the community; and,

(ii) Whether the selected notices of interest are consistent with the Consolidated Plan(s) of any other existing housing, social service, community economic, or other development plans adopted by the political jurisdictions in the vicinity of the installation.

(3) *Legally binding agreements.* Specifies the manner in which the buildings, property, funding, and/or services on or off the installation will be made available for homeless assistance purposes. HUD will review each legally binding agreement to verify that:

(i) They include all the documents legally required to complete the transactions necessary to realize the homeless use(s) described in the application;

(ii) They include all appropriate terms and conditions;

(iii) They address the full range of contingencies including those described at §176.30(b)(3)(i);

(iv) They stipulate that the buildings, property, funding, and/or services will be made available to the representatives of the homeless in a timely fashion; and,

(v) They are accompanied by a legal opinion of the chief legal advisor of the LRA or political jurisdiction or jurisdictions which will be executing the legally binding agreements that the legally binding agreements will, when executed, constitute legal, valid, binding, and enforceable obligations on the parties thereto.

(4) *Balance.* Balances in an appropriate manner a portion or all of the needs of the communities in the vicinity or the installation for economic redevelopment and other development with the needs of the homeless in such communities.

(5) *Outreach.* Was developed in consultation with representatives of the homeless and the homeless assistance planning boards, if any, in the communities in the vicinity of the installation and whether the outreach requirements described at §176.20(c)(1) and §176.20(c)(3) have been fulfilled by the LRA.

(c) *Notice of determination.* (1) HUD shall, no later than the 60th day after its receipt of the application, unless such deadline is extended pursuant to §176.15(a), send written notification both to DoD and the LRA of its preliminary determination that the application meets or fails to meet the requirements of §176.35(b). If the application fails to meet the requirements, HUD will send the LRA:

- (i) A summary of the deficiencies in the application;
- (ii) An explanation of the determination; and,
- (iii) A statement of how the LRA must address the determinations.

(2) In the event that no application is submitted and no extension is requested as of the deadline specified in §176.20(c)(5), and the State does not accept within 30 days a DoD written request to become recognized as the LRA, the absence of such application will trigger an adverse determination by HUD effective on the date of the lapsed deadline. Under these conditions, HUD will follow the process described at §176.40.

(d) *Opportunity to cure.* (1) The LRA shall have 90 days from its receipt of the notice of preliminary determination under §176.35(c)(1) within which to submit to HUD and DoD a revised application which addresses the determinations listed in the notice. Failure to submit a revised application shall result in a final determination, effective 90 days from the LRA's receipt of the preliminary determination, that the redevelopment plan fails to meet the requirements of §176.35(b).

(2) HUD shall, within 30 days of its receipt of the LRA's resubmission send written notification of its final determination of whether the application meets the requirements of §176.35(b) to both DOD and the LRA.

#### §176.40 Adverse determinations.

(a) *Review and consultation.* If the resubmission fails to meet the requirements of §176.35(b) or if no resubmission is received, HUD will review the original application, including the notices of interest submitted by representatives of the homeless. In addition, in such instances or when no

original application has been submitted, HUD:

(1) Shall consult with the representatives of the homeless, if any, for purposes of evaluation the continuing interest of such representatives in the use of buildings or property at the installation to assist the homeless;

(2) May consult with the applicable Military Department regarding the suitability of the buildings and property at the installation for use to assist the homeless; and,

(3) May consult with representatives of the homeless and other parties as necessary.

(b) *Notice of decision.* (1) Within 90 days of receipt of an LRA's revised application which HUD determines does not meet the requirements of §176.35(b), HUD shall, based upon its reviews and consultations under §176.40(a):

(i) Notify DoD and the LRA of the buildings and property at the installation that HUD determines are suitable for use to assist the homeless, and;

(ii) Notify DoD and the LRA of the extent to which the revised redevelopment plan meets the criteria set forth in §176.35(b).

(2) In the event that an LRA does not submit a revised redevelopment plan under §176.35(d), HUD shall, based upon its reviews and consultations under §176.40(a), notify DoD and the LRA of the buildings and property at the installation that HUD determines are suitable for use to assist the homeless, either

(i) Within 190 days after HUD sends its notice of preliminary adverse determination under §176.35(c)(1), if an LRA has not submitted a revised redevelopment plan; or

(ii) Within 390 days after the Military Department's FEDERAL REGISTER publication of available property under §176.20(b), if no redevelopment plan has been received and no extension has been approved.

#### §176.45 Disposal of buildings and property.

(a) *Public benefit transfer screening.* Not later than the LRA's submission of its redevelopment plan to DoD and HUD, the Military Development will conduct an official public benefit

transfer screening in accordance with the Federal Property Management Regulations (41 CFR 101–47.303–2) based upon the uses identified in the redevelopment plan. Federal sponsoring agencies shall notify eligible applicants that any request for property must be consistent with the uses identified in the redevelopment plan. At the request of the LRA, the Military Department may conduct the official State and local public benefit screening at any time after the publication of available property described at §176.20(b).

(b) *Environmental analysis.* Prior to disposal of any real property, the Military Department shall, consistent with NEPA and section 2905 of the Defense Base Closure and Realignment Act of 1990, as amended (10 U.S.C. 2687 note), complete an environmental impact analysis of all reasonable disposal alternatives. The Military Department shall consult with the LRA throughout the environmental impact analysis process to ensure both that the LRA is provided the most current environmental information available concerning the installation, and that the Military Department receives the most current information available concerning the LRA's redevelopment plans for the installation.

(c) *Disposal.* Upon receipt of a notice of approval of an application from HUD under §176.35(c)(1) or §176.35(d)(2), DoD shall dispose of buildings and property in accordance with the record of decision or other decision document prepared under §176.45(b). Disposal of buildings and property to be used as homeless assistance facilities shall be to either the LRA or directly to the representative(s) of the homeless and shall be without consideration. Upon receipt of a notice from HUD under §176.40(b), DoD will dispose of the buildings and property at the installation in consultation with HUD and the LRA.

(d) *LRA's responsibility.* The LRA shall be responsible for the implementation of and compliance with legally binding agreements under the application.

(e) *Reversions to the LRA.* If a building or property reverts to the LRA under a legally binding agreement under the application, the LRA shall take appro-

appropriate actions to secure, to the maximum extent practicable, the utilization of the building or property by other homeless representatives to assist the homeless. An LRA may not be required to utilize the building or property to assist the homeless.

## PART 179—MUNITIONS RESPONSE SITE PRIORITIZATION PROTOCOL (MRSPP)

### Sec.

- 179.1 Purpose.
- 179.2 Applicability and scope.
- 179.3 Definitions.
- 179.4 Policy.
- 179.5 Responsibilities.
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### APPENDIX A TO PART 179—TABLES OF THE MUNITIONS RESPONSE SITE PRIORITIZATION PROTOCOL (MRSPP).

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

SOURCE: 70 FR 58028, Oct. 5, 2005, unless otherwise noted.

#### § 179.1 Purpose.

The Department of Defense (the Department) is adopting this Munitions Response Site Prioritization Protocol (MRSPP) (hereinafter referred to as the “rule”) under the authority of 10 U.S.C. 2710(b). Provisions of 10 U.S.C. 2710(b) require that the Department assign to each defense 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 Department Field Activities, and any other Department organizational entity or instrumentality established to perform a government function (hereafter referred to collectively as the “Components”).

(b) The rule in this part shall be applied at all locations:

- (1) That are, or were, owned by, leased to, or otherwise possessed or used by the Department, and

(2) That are known to, or suspected of, containing unexploded ordnance (UXO), discarded military munitions (DMM), or munitions constituents (MC), and

(3) That are included in the inventory established pursuant to 10 U.S.C. 2710(a).

(c) The rule in this part shall not be applied at the locations not included in the inventory required under 10 U.S.C. 2710(a). The locations not included in the inventory are:

(1) Locations that are not, or were not, owned by, leased to, or otherwise possessed or used by the Department,

(2) Locations neither known to contain, or suspected of containing, UXO, DMM, or MC,

(3) Locations outside the United States,

(4) Locations where the presence of military munitions results from combat operations,

(5) Currently operating military munitions storage and manufacturing facilities,

(6) Locations that are used for, or were permitted for, the treatment or disposal of military munitions, and

(7) Operational ranges.

### § 179.3 Definitions.

This part includes definitions for many terms that clarify its scope and applicability. Many of the terms relevant to this part are already defined, either in 10 U.S.C. 101, 10 U.S.C. 2710(e), or the Code of Federal Regulations. Where this is the case, the statutory and regulatory definitions are repeated here strictly for ease of reference. Citations to the U.S. Code or the Code of Federal Regulations are provided with the definition, as applicable. Unless used elsewhere in the U.S. Code or the Code of Federal Regulations, these terms are defined only for purposes of this part.

*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), and combinations of natural and man-made obstacles.

*Chemical agent (CA)* means a chemical compound (to include experimental compounds) that, through its chemical properties produces lethal or other

damaging effects on human beings, is intended for use in military operations to kill, seriously injure, or incapacitate persons through its physiological effects. Excluded are research, development, testing and evaluation (RDTE) solutions; riot control agents; chemical defoliants and herbicides; smoke and other obscuration materials; flame and incendiary materials; and industrial chemicals. (This definition is based on the definition of "chemical agent and munition" in 50 U.S.C. 1521(j)(1).)

*Chemical Agent (CA) Hazard* is a condition where danger exists because CA is present in a concentration high enough to present potential unacceptable effects (e.g., death, injury, damage) to people, operational capability, or the environment.

*Chemical Warfare Materiel (CWM)* means generally configured as a munition containing a chemical compound that is intended to kill, seriously injure, or incapacitate a person through its physiological effects. CWM includes V- and G-series nerve agents or H-series (mustard) and L-series (lewisite) blister agents in other-than-munition configurations; and certain industrial chemicals (e.g., hydrogen cyanide (AC), cyanogen chloride (CK), or carbonyl dichloride (called phosgene or CG)) configured as a military munition. Due to their hazards, prevalence, and military-unique application, chemical agent identification sets (CAIS) are also considered CWM. CWM does not include riot control devices; chemical defoliants and herbicides; industrial chemicals (e.g., AC, CK, or CG) not configured as a munition; smoke and other obscuration-producing items; flame and incendiary-producing items; or soil, water, debris, or other media contaminated with low concentrations of chemical agents where no CA hazards exist. For the purposes of this Protocol, CWM encompasses four subcategories of specific materials:

(1) *CWM, explosively configured* are all munitions that contain a CA fill and any explosive component. Examples are M55 rockets with CA, the M23 VX mine, and the M360 105-mm GB artillery cartridge.

(2) *CWM, nonexplosively configured* are all munitions that contain a CA fill, but that do not contain any explosive

components. Examples are any chemical munition that does not contain explosive components and VX or mustard agent spray canisters.

(3) *CWM, bulk container* are all non-munitions-configured containers of CA (e.g., a ton container) and CAIS K941, toxic gas set M-1 and K942, toxic gas set M-2/E11.

(4) *CAIS* are military training aids containing small quantities of various CA and other chemicals. All forms of CAIS are scored the same in this rule, except CAIS K941, toxic gas set M-1; and CAIS K942, toxic gas set M-2/E11, which are considered forms of CWM, bulk container, due to the relatively large quantities of agent contained in those types of sets.

*Components* means the Office of the Secretary of Defense, the Military Departments, the Defense Agencies, the Department Field Activities, and any other Department organizational entity or instrumentality established to perform a government function.

*Defense site* means locations that are or were owned by, leased to, or otherwise possessed or used by the Department. The term does not include any operational range, operating storage or manufacturing facility, or facility that is used for or was permitted for the treatment or disposal of military munitions. (10 U.S.C. 2710(e)(1))

*Discarded military munitions (DMM)* means military munitions that have been abandoned without proper disposal or removed from storage in a military magazine or other storage area for the purpose of disposal. The term does not include UXO, military munitions that are being held for future use or planned disposal, or military munitions that have been properly disposed of consistent with applicable environmental laws and regulations. (10 U.S.C. 2710(e)(2))

*Explosive hazard* means a condition where danger exists because explosives are present that may react (e.g., detonate, deflagrate) in a mishap with potential unacceptable effects (e.g., death, injury, damage) to people, property, operational capability, or the environment.

*Military munitions* means all ammunition products and components produced for or used by the armed forces

for national defense and security, including ammunition products or components under the control of the Department of Defense, the Coast Guard, the Department of Energy, and the National Guard. The term includes confined gaseous, liquid, and solid propellants; explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries, including bulk explosives and chemical warfare agents; chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, and demolition charges; and devices and components of any item thereof. The term does not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components, other than nonnuclear components of nuclear devices that are managed under the nuclear weapons program of the Department of Energy after all required sanitization operations under the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*) have been completed. (10 U.S.C. 101(e)(4))

*Military range* means designated land and water areas set aside, managed, and used to research, develop, test, and evaluate military munitions, other ordnance, or weapon systems, or to train military personnel in their use and handling. Ranges include firing lines and positions, maneuver areas, firing lanes, test pads, detonation pads, impact areas, and buffer zones with restricted access and exclusionary areas. (40 CFR 266.201)

*Munitions and explosives of concern* distinguishes specific categories of military munitions that may pose unique explosives safety risks, such as UXO, as defined in 10 U.S.C. 101(e)(5); discarded military munitions, as defined in 10 U.S.C. 2710(e)(2); or munitions constituents (e.g., TNT, RDX), as defined in 10 U.S.C. 2710(e)(3), present in high enough concentrations to pose an explosive hazard.

*Munitions constituents* means any materials originating from UXO, discarded military munitions, or other military munitions, including explosive and nonexplosive materials, and

emission, degradation, or breakdown elements of such ordnance or munitions. (10 U.S.C. 2710(e)(3))

*Munitions response* means response actions, including investigation, removal actions, and remedial actions, to address the explosives safety, human health, or environmental risks presented by UXO, discarded military munitions (DMM), or munitions constituents (MC), or to support a determination that no removal or remedial action is required.

*Munitions response area (MRA)* means any area on a defense site that is known or suspected to contain UXO, DMM, or MC. Examples are former ranges and munitions burial areas. An MRA comprises one or more munitions response sites.

*Munitions response site (MRS)* means a discrete location within an MRA that is known to require a munitions response.

*Operational range* means a range that is under the jurisdiction, custody, or control of the Secretary of Defense and that is used for range activities, or although not currently being used for range activities, that is still considered by the Secretary to be a range and has not been put to a new use that is incompatible with range activities. (10 U.S.C. 101(e)(3))

*Range* means a designated land or water area that is set aside, managed, and used for range activities of the Department of Defense. The term includes firing lines and positions, maneuver areas, firing lanes, test pads, detonation pads, impact areas, electronic scoring sites, buffer zones with restricted access, and exclusionary areas. The term also includes airspace areas designated for military use in accordance with regulations and procedures prescribed by the Administrator of the Federal Aviation Administration. (10 U.S.C. 101(e)(1)(A) and (B))

*Range activities* means research, development, testing, and evaluation of military munitions, other ordnance, and weapons systems; and the training of members of the armed forces in the use and handling of military munitions, other ordnance, and weapons systems. (10 U.S.C. 101(3)(2))

*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, whether by malfunction, design, or any other cause. (10 U.S.C. 101(e)(5))

*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, the Department generally considers those MRSs posing the greatest hazard as being the highest priority for action. The priority assigned should be based on the overall conditions at each MRS, taking into consideration various factors relating to safety and environmental hazard potential.

(b) In addition to the priority assigned to an MRS, other considerations (*e.g.*, availability of specific equipment, intended reuse, stakeholder interest) can affect the sequence in which munitions response actions at a specific MRS are funded.

(c) It is Department policy to ensure that U.S. EPA, other federal agencies (as appropriate or required), state regulatory agencies, tribal governments, local restoration advisory boards or technical review committees, and local stakeholders are offered opportunities to participate in the application of the rule in this part and making sequencing recommendations.

#### § 179.5 Responsibilities.

Each Component shall:

(a) Apply the rule in this part to each MRS under its administrative control when sufficient data are available to populate all the data elements within any or all of the three hazard evaluation modules that comprise the rule. Upon further delineation and characterization of an MRA into more than one MRS, Components shall reapply

the rule to all MRSs within the MRA. In such cases where data are not sufficient to populate one or two of the hazard evaluation modules (*e.g.*, there are no constituent sampling data for the Health Hazard Evaluation [HHE] module), Components will assign a priority based on the hazard evaluation modules evaluated and reapply the rule once sufficient data are available to apply the remaining hazard evaluation modules.

(b) Ensure that the total acreage of each MRA is evaluated using this rule (*i.e.*, ensure the all MRSs within the MRA are evaluated).

(c) Ensure that EPA, other federal agencies (as appropriate or required), state regulatory agencies, tribal governments, local restoration advisory boards or technical review committees, local community stakeholders, and the current landowner (if the land is outside Department control) are offered opportunities as early as possible and throughout the process to participate in the application of the rule and making sequencing recommendations.

(1) To ensure EPA, other federal agency, state regulatory agencies, tribal governments, and local government officials are aware of the opportunity to participate in the application of the rule, the Component organization responsible for implementing a munitions response at the MRS shall notify the heads of these organizations (or their designated point of contact), as appropriate, seeking their involvement prior to beginning prioritization. Records of the notification will be placed in the Administrative Record and Information Repository for the MRS.

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

(d) Establish a quality assurance panel of Component personnel to review, initially, all MRS prioritization decisions. Once the Department determines that its Components are apply-

ing the rule in a consistent manner and the rule's application leads to decisions that are representative of site conditions, the Department may establish a sampling-based approach for its Components to use for such reviews. This panel reviewing the priority assigned to an MRS shall not include any participant involved in applying the rule to that MRS. If the panel recommends a change that results in a different priority, the Component shall report, in the inventory data submitted to the Office of the Deputy Under Secretary of Defense (Installations & Environment) (ODUSD[I&E]), the rationale for this change. The Component shall also provide this rationale to the appropriate regulatory agencies and involved stakeholders for comment before finalizing the change.

(e) Following the panel review, submit the results of applying the rule along with the other inventory data that 10 U.S.C. 2710(c) requires be made publicly available, to the ODUSD(I&E). The ODUSD(I&E) shall publish this information in the report on environmental restoration activities 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 Component shall provide specific justification to the ODUSD(I&E).

(f) Document in a Management Action Plan (MAP) or its equivalent all aspects of the munitions responses required at all MRSs for which that MAP is applicable. Department guidance requires that MAP be developed and maintained at an installation (or Formerly Used Defense Site [FUDS] property) level and address each site at that installation or FUDS. For the FUDS program, a statewide MAP may also be developed.

(g) Develop sequencing decisions at installations and FUDS with input from appropriate regulators and stakeholders (*e.g.*, community members of an installation's restoration advisory board or technical review committee), and document this development in the MAP. Final sequencing may be impacted by Component program management considerations. If the sequencing of any MRS is changed from the sequencing reflected in the current MAP,

the Component shall provide information to the appropriate regulators and stakeholders documenting the reasons for the sequencing change, and shall request their review and comment on that decision.

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

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

(1) Upon completion of a response action that changes site conditions in a manner that could affect the evaluation under this rule.

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

(3) To update or validate the priority assigned where that priority has been previously assigned based on evaluation of only one or two of the three hazard evaluation modules.

(4) Upon further delineation and characterization of an MRA into MRSs.

(5) To categorize any MRS previously classified as "evaluation pending."

#### § 179.6 Procedures.

The rule in this part comprises the following three hazard evaluation modules.

(a) Explosive Hazard Evaluation (EHE) module.

(1) The EHE module provides a single, consistent, Department-wide approach for the evaluation of explosive hazards. This module is used when there is a known or suspected presence of an explosive hazard. The EHE module is composed of three factors, each of which has two to four data elements that are intended to assess the specific conditions at an MRS. These factors are:

(i) *Explosive hazard*, which has the data elements *Munitions Type* and *Source of Hazard* and constitutes 40 percent of the EHE module score. (See appendix A to this part, tables 1 and 2.)

(ii) *Accessibility*, which has the data elements *Location of Munitions*, *Ease of Access*, and *Status of Property* and constitutes 40 percent of the EHE module score. (See appendix A, tables 3, 4, and 5.)

(iii) *Receptors*, which has the data elements *Population Density*, *Population Near Hazard*, *Types of Activities/Structures*, and *Ecological and/or Cultural Resources* and constitutes 20 percent of the EHE module score. (See appendix A, tables 6, 7, 8, and 9.)

(2) Based on MRS-specific information, each data element is assigned a numeric score, and the sum of these score is the EHE module score. The EHE module score results in an MRS being placed into one of the following ratings. (See appendix A, table 10.)

(i) *EHE Rating A (Highest)* is assigned to MRSs with an EHE module score from 92 to 100.

(ii) *EHE Rating B* is assigned to MRSs with an EHE module score from 82 to 91.

(iii) *EHE Rating C* is assigned to MRSs with an EHE module score from 71 to 81.

(iv) *EHE Rating D* is assigned to MRSs with an EHE module score from 60 to 70.

(v) *EHE Rating E* is assigned to MRSs with an EHE module score from 48 to 59.

(vi) *EHE Rating F* is assigned to MRSs with an EHE module score from 38 to 47.

(vii) *EHE Rating G (Lowest)* is assigned to MRSs with an EHE module score less than 38.

(3) There are also three other possible outcomes for the EHE module:

(i) *Evaluation pending*. This category is used when there are known or suspected UXO or DMM, but sufficient information is not available to populate the nine data elements of the EHE module.

(ii) *No longer required*. This category is reserved for MRSs that no longer require an assigned priority because the Department has conducted a response, all objectives set out in the decision document for the MRS have been achieved, and no further action, except for long-term management and recurring reviews, is required.

(iii) *No known or suspected explosive hazard*. This category is reserved for MRSs that do not require evaluation under the EHE module.

(4) The EHE module rating shall be considered with the CHE and HHE module ratings to determine the MRS priority.

(5) MRSs lacking information for determining an EHE module rating shall be programmed for additional study and evaluated as soon as sufficient data are available. Until an EHE module rating is assessed, MRSs shall be rated as “evaluation pending” for the EHE module.

(b) Chemical Warfare Materiel Hazard Evaluation (CHE) module. (1) The CHE module provides an evaluation of the chemical hazards associated with the physiological effects of CWM. The CHE module is used only when CWM are known or suspected of being present at an MRS. Like the EHE module, the CHE module has three factors, each of which has two to four data elements that are intended to assess the conditions at an MRS.

(i) *CWM hazard*, which has the data elements *CWM Configuration* and *Sources of CWM* and constitutes 40 percent of the CHE score. (See appendix A to this part, tables 11 and 12.)

(ii) *Accessibility*, which focuses on the potential for receptors to encounter the CWM known or suspected to be present on an MRS. This factor consists of three data elements, *Location of CWM*, *Ease of Access*, and *Status of Property*, and constitutes 40 percent of the CHE score. (See appendix A, tables 13, 14, and 15.)

(iii) *Receptor*, which focuses on the human and ecological populations that may be impacted by the presence of CWM. It has the data elements *Population Density*, *Population Near Hazard*, *Types of Activities/Structures*, and *Ecological and/or Cultural Resources* and constitutes 20 percent of the CHE score. (See appendix A, tables 16, 17, 18, and 19.)

(2) Similar to the EHE module, each data element is assigned a numeric score, and the sum of these scores (*i.e.*, the CHE module score) is used to determine the CHE rating. The CHE module score results in an MRS being placed

into one of the following ratings. (See appendix A, table 20.)

(i) *CHE Rating A (Highest)* is assigned to MRSs with a CHE score from 92 to 100.

(ii) *CHE Rating B* is assigned to MRSs with a CHE score from 82 to 91.

(iii) *CHE Rating C* is assigned to MRSs with a CHE score from 71 to 81.

(iv) *CHE Rating D* is assigned to MRSs with a CHE score from 60 to 70.

(v) *CHE Rating E* is assigned to MRSs with a CHE score from 48 to 59.

(vi) *CHE Rating F* is assigned to MRSs with a CHE score from 38 to 47.

(vii) *CHE Rating G (Lowest)* is assigned to MRSs with a CHE score less than 38.

(3) There are also three other potential outcomes for the CHE module:

(i) *Evaluation pending*. This category is used when there are known or suspected CWM, but sufficient information is not available to populate the nine data elements of the CHE module.

(ii) *No longer required*. This category is reserved for MRSs that no longer require an assigned priority because the Department has conducted a response, all objectives set out in the decision document for the MRS have been achieved, and no further action, except for long-term management and recurring reviews, is required.

(iii) *No known or suspected CWM hazard*. This category is reserved for MRSs that do not require evaluation under the CHE module.

(4) The CHE rating shall be considered with the EHE module and HHE module ratings to determine the MRS priority.

(5) MRSs lacking information for assessing a CHE module rating shall be programmed for additional study and evaluated as soon as sufficient data are available. Until a CHE module rating is assigned, the MRS shall be rated as “evaluation pending” for the CHE module.

(c) Health Hazard Evaluation (HHE) module.

(1) The HHE provides a consistent Department-wide approach for evaluating the relative risk to human health and the environment posed by MC. The HHE builds on the RRSE framework that is used in the Installation Restoration Program (IRP) and has been

modified to address the unique requirements of MRSs. The HHE module shall be used for evaluating the potential hazards posed by MC and other chemical contaminants. The HHE module is intended to evaluate MC at sites. Any incidental nonmunitions-related contaminants may be addressed incidental to a munitions response under the MMRP.

(2) The module has three factors:

(i) Contamination Hazard Factor (CHF), which indicates MC, and any nonmunitions-related incidental contaminants present; this factor contributes a level of High (H), Middle (M), or Low (L) based on Significant, Moderate, or Minimal contaminants present, respectively. (See appendix A to this part, table 21.)

(ii) Receptor Factor (RF), which indicates the receptors; this factor contributes a level of H, M, or L based on Identified, Potential, or Limited receptors, respectively. (See appendix A, table 21.)

(iii) Migration Pathway Factor (MPF), which indicates environmental migration pathways, and contributes a level of H, M, or L based on Evident, Potential or Confined pathways, respectively. (See appendix A, table 21.)

(3) The H, M, and L levels for the CHF, RF, and MPF are combined in a matrix to obtain composite three-letter combination levels that integrate considerations of all three factors. (See appendix A, table 22.)

(4) The three-letter combination levels are organized by frequency, and the resulting frequencies result in seven HHE ratings. (See appendix A, table 23.)

(i) HHE Rating A (Highest) is assigned to MRSs with an HHE combination level of high for all three factors.

(ii) HHE Rating B is assigned to MRSs with a combination level of high for CHF and RF and medium for MPF (HHM).

(iii) HHE Rating C is assigned to MRSs with a combination level of high for the CHF and RF and low for MPF (HHL), or high for CHF and medium for the RF and MPF (HMM).

(iv) HHE Rating D is assigned to MRSs with a combination level of high for the CHF, medium for the RF, and low for the MPF (HML), or medium for all three factors (MMM).

(v) HHE Rating E is assigned to MRSs with a combination level of high for the CHF and low for the RF and MPF (HLL), or medium for the CHF and RF and low for the MPF (MML).

(vi) HHE Rating F is assigned to MRSs with a combination level of medium for the CHF and low for the RF and MPF (MLL).

(vii) HHE Rating G (Lowest) is assigned to MRSs with a combination level of low for all three factors (LLL).

(5) The HHE three-letter combinations are replaced by the seven HHE ratings. (See appendix A, table 24.)

(6) There are also three other potential outcomes for the HHE module:

(i) *Evaluation pending*. This category is used when there are known or suspected MC, and any incidental nonmunitions-related contaminants present, but sufficient information is not available to determine the HHE module rating.

(ii) *No longer required*. This category is reserved for MRSs that no longer require an assigned MRS priority because the Department has conducted a response, all objectives set out in the decision document for the MRS have been achieved, and no further action, except for long-term management and recurring reviews, is required.

(iii) *No known or suspected munitions constituent hazard*. This rating is reserved for MRSs that do not require evaluation under the HHE module.

(7) The HHE module rating shall be considered with the EHE and CHE module ratings to determine the MRS priority.

(8) MRSs lacking information sufficient for assessing an HHE module rating shall be programmed for additional study and evaluated as soon as sufficient data are available. Until an HHE module rating is assigned, the MRS shall be classified as "evaluation pending" for the HHE module.

(d) *Determining the MRS priority*. (1) An MRS priority is determined based on integrating the ratings from the EHE, CHE, and HHE modules. Until all three hazard evaluation modules have been evaluated, the MRS priority shall be based on the results of the modules completed.

(2) Each MRS is assigned to one of eight MRS priorities based on the ratings of the three hazard evaluation modules, where Priority 1 indicates the highest potential hazard and Priority 8 the lowest potential hazard. Under the rule in this part, only MRSs with CWM can be assigned to Priority 1 and no MRS with CWM can be assigned to Priority 8. (See appendix A to this part, table 25.)

(3) An “evaluation pending” rating is used to indicate that an MRS requires further evaluation. This designation is only used when none of the three modules has a numerical rating (*i.e.*, 1 through 8) and at least one module is rated “evaluation pending.” The Department shall develop program metrics focused on reducing the number of MRSs with a status of “evaluating pending” for any of the three modules. (See appendix A, table 25.)

(4) A “no longer required” rating is used to indicate that an MRS no longer requires prioritization. The MRS will receive this rating when none of the three modules has a numerical (*i.e.*, 1 through 8) or an “evaluation pending” designation, and at least one of the modules is rated “no longer required.”

(5) A rating of “no known or suspected hazard” is used to indicate that an MRS has no known or expected hazard. This designation is used only when the hazard evaluation modules are rated as “no known or suspected explosive hazard,” “no known or suspected CWM hazard,” and “no known or suspected MC hazard.” (See appendix A, table 25.)

#### § 179.7 Sequencing.

(a) *Sequencing considerations.* The sequencing of MRSs for action shall be based primarily on the MRS priority determined through applying the rule in this part. Generally, an MRS that presents a greater relative risk to human health, safety, or the environment will be addressed before an MRS that presents a lesser relative risk. Other factors, however, may warrant consideration when determining the sequencing for specific MRSs. In evaluating other factors in sequencing decisions, the Department will consider a broad range of issues. These other, or risk-plus factors, do not influence or

change the MRS priority, but may influence the sequencing for action. Examples of factors that the Department may consider are:

(1) Concerns expressed by regulators or stakeholders.

(2) Cultural and social factors.

(3) Economic factors, including economic considerations pertaining to environmental justice issues, economies of scale, evaluation of total life cycle costs, and estimated valuations of long-term liabilities.

(4) Findings of health, safety, or ecological risk assessments or evaluations based on MRS-specific data.

(5) Reasonably anticipated future land use, especially when planning response actions, conducting evaluations of response alternatives, or establishing specific response action objectives.

(6) A community’s reuse requirements at Base Realignment and Closure (BRAC) installations.

(7) Specialized considerations of tribal trust lands (held in trust by the United States for the benefit of any tribe or individual). The United States holds the legal title to the land and the tribe holds the beneficial interest.

(8) Implementation and execution considerations (*e.g.*, funding availability; the availability of the necessary equipment and people to implement a particular action; examination of alternatives to responses that entail significant capital investments, a lengthy period of operation, or costly maintenance; alternatives to removal or treatment of contamination when existing technology cannot achieve established standards [*e.g.*, maximum contaminant levels]).

(9) Mission-driven requirements.

(10) The availability of appropriate technology (*e.g.*, technology to detect, discriminate, recover, and destroy UXO).

(11) Implementing standing commitments, including those in formal agreements with regulatory agencies, requirements for continuation of remedial action operations until response objectives are met, other long-term management activities, and program administration.

(12) Established program goals and initiatives.

(13) Short-term and long-term ecological effects and environmental impacts in general, including injuries to natural resources.

(b) *Procedures and documentation for sequencing decisions.* (1) Each installation or FUDS is required to develop and maintain a Management Action Plan (MAP) or its equivalent. Sequencing decisions, which will be documented in the MAP at military installations and FUDS, shall be developed with input from appropriate regulators and stakeholders (*e.g.*, community members of an installation's restoration advisory board or technical review committee). If the sequencing of an MRS is changed from the sequencing reflected in the current MAP, information documenting the reasons for the sequencing change will be provided for inclusion in the MAP. Notice of the change in the sequencing shall be provided to those regulators and stakeholders that provided input to the sequencing process.

(2) In addition to the information on prioritization, the Components shall ensure that information provided by regulators and stakeholders that may influence the sequencing of an MRS is included in the Administrative Record and the Information Repository.

(3) Components shall report the results of sequencing to ODUSD(I&E) (or successor organizations). ODUSD(I&E) shall compile the sequencing results reported by each Component and publish the sequencing in the report on environmental restoration activities 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 priority, specific justification shall be provided to the ODUSD(I&E).

APPENDIX A TO PART 179—TABLES OF  
THE MUNITIONS RESPONSE SITE  
PRIORITIZATION PROTOCOL

The tables in this Appendix are solely for use in implementing 32 CFR part 179.

Classification	Description	Score
<b>Sensitive</b>	<ul style="list-style-type: none"> <li>• All UXO that are considered likely to function upon any interaction with exposed persons (e.g., submunitions, 40mm high-explosive [HE] grenades, white phosphorus [WP] munitions, high-explosive antitank [HEAT] munitions, and practice munitions with sensitive fuzes, but excluding all other practice munitions).</li> <li>• All hand grenades containing energetic filler.</li> <li>• Bulk primary explosives, or mixtures of these with environmental media, such that the mixture poses an explosive hazard.</li> </ul>	30
<b>High explosive (used or damaged)</b>	<ul style="list-style-type: none"> <li>• All UXO containing a high-explosive filler (e.g., RDX, Composition B), that are not considered “sensitive.”</li> <li>• All DMM containing a high-explosive filler that have:               <ul style="list-style-type: none"> <li>- Been damaged by burning or detonation</li> <li>- Deteriorated to the point of instability.</li> </ul> </li> </ul>	25
<b>Pyrotechnic (used or damaged)</b>	<ul style="list-style-type: none"> <li>• All UXO containing pyrotechnic fillers other than white phosphorous (e.g., flares, signals, simulators, smoke grenades).</li> <li>• All DMM containing pyrotechnic fillers other than white phosphorous (e.g., flares, signals, simulators, smoke grenades) that have:               <ul style="list-style-type: none"> <li>- Been damaged by burning or detonation</li> <li>- Deteriorated to the point of instability.</li> </ul> </li> </ul>	20
<b>High explosive (unused)</b>	<ul style="list-style-type: none"> <li>• All DMM containing a high explosive filler that:               <ul style="list-style-type: none"> <li>- Have not been damaged by burning or detonation</li> <li>- Are not deteriorated to the point of instability.</li> </ul> </li> </ul>	15
<b>Propellant</b>	<ul style="list-style-type: none"> <li>• All UXO containing mostly single-, double-, or triple-based propellant, or composite propellants (e.g., rocket motor).</li> <li>• All DMM containing mostly single-, double-, or triple-based propellant, or composite propellants (e.g., rocket motor) that are:               <ul style="list-style-type: none"> <li>- Damaged by burning or detonation</li> <li>- Deteriorated to the point of instability.</li> </ul> </li> </ul>	15
<b>Bulk secondary high explosives, pyrotechnics, or propellant</b>	<ul style="list-style-type: none"> <li>• All DMM containing mostly single-, double-, or triple-based propellant, or composite propellants (e.g., rocket motor), that are deteriorated.</li> <li>• Bulk secondary high explosives, pyrotechnic compositions, or propellant (not contained in a munition), or mixtures of these with environmental media such that the mixture poses an explosive hazard.</li> </ul>	10

Table 1 Classifications Within the EHE Module <i>Munitions Type</i> Data Element		
Classification	Description	Score
<b>Pyrotechnic (not used or damaged)</b>	<ul style="list-style-type: none"> <li>• All DMM containing a pyrotechnic fillers (i.e., red phosphorous), other than white phosphorous filler, that:               <ul style="list-style-type: none"> <li>- Have not been damaged by burning or detonation</li> <li>- Are not deteriorated to the point of instability.</li> </ul> </li> </ul>	10
<b>Practice</b>	<ul style="list-style-type: none"> <li>• All UXO that are practice munitions that are not associated with a sensitive fuze.</li> <li>• All DMM that are practice munitions that are not associated with a sensitive fuze and that have not:               <ul style="list-style-type: none"> <li>- Been damaged by burning or detonation</li> <li>- Deteriorated to the point of instability.</li> </ul> </li> </ul>	5
<b>Riot control</b>	<ul style="list-style-type: none"> <li>• All UXO or DMM containing a riot control agent filler (e.g., tear gas).</li> </ul>	3
<b>Small arms</b>	<ul style="list-style-type: none"> <li>• All used munitions or DMM that are categorized as small arms ammunition. [Physical evidence or historical evidence that no other types of munitions (e.g., grenades, subcaliber training rockets, demolition charges) were used or are present on the MRS is required for selection of this category.]</li> </ul>	2
<b>Evidence of no munitions</b>	<ul style="list-style-type: none"> <li>• Following investigation of the MRS, there is physical evidence that there are no UXO or DMM present, or there is historical evidence indicating that no UXO or DMM are present.</li> </ul>	0
<b>Notes:</b> <ul style="list-style-type: none"> <li>• <i>Former</i> (as in "former military range") means the MRS is a location that was (1) closed by a formal decision made by the Component with administrative control over the location, or (2) put to a use incompatible with the presence of UXO, DMM, or MC.</li> <li>• <i>Historical evidence</i> means the investigation: (1) found written documents or records, (2) documented interviews of persons with knowledge of site conditions, or (3) found and verified other forms of information.</li> <li>• <i>Physical evidence</i> means: (1) recorded observations from on-site investigations, such as finding intact UXO or DMM, or munitions debris (e.g., fragments, penetrators, projectiles, shell casings, links, fins); (2) the results of field or laboratory sampling and analysis procedures; or (3) the results of geophysical investigations.</li> <li>• <i>Practice munitions</i> means munitions that contain an inert filler (e.g., wax, sand, concrete), a spotting charge (i.e., a small charge of red phosphorus, photoflash powder, or black powder used to indicate the point of impact), and a fuze.</li> <li>• The term <i>small arms ammunition</i> means ammunition, without projectiles that contain explosives (other than tracers), that is .50 caliber or smaller, or for shotguns.</li> </ul>		

Table 2 Classifications Within the EHE Module <i>Source of Hazard</i> Data Element		
Classification	Description	Score
<b>Former range</b>	<ul style="list-style-type: none"> <li>The MRS is a former military range where munitions (including practice munitions with sensitive fuzes) have been used. Such areas include impact or target areas, associated buffer and safety zones, firing points, and live-fire maneuver areas.</li> </ul>	10
<b>Former munitions treatment (i.e., OB/OD) unit</b>	<ul style="list-style-type: none"> <li>The MRS is a location where UXO or DMM (e.g., munitions, bulk explosives, bulk pyrotechnic, or bulk propellants) were burned or detonated for the purpose of treatment prior to disposal.</li> </ul>	8
<b>Former practice munitions range</b>	<ul style="list-style-type: none"> <li>The MRS is a former military range on which only practice munitions without sensitive fuzes were used.</li> </ul>	6
<b>Former maneuver area</b>	<ul style="list-style-type: none"> <li>The MRS is a former maneuver area where no munitions other than flares, simulators, smokes, and blanks were used. There must be evidence that no other munitions were used at the location to place an MRS into this category.</li> </ul>	5
<b>Former burial pit or other disposal area</b>	<ul style="list-style-type: none"> <li>The MRS is a location where DMM were buried or disposed of (e.g., disposed of into a water body) without prior thermal treatment.</li> </ul>	5
<b>Former industrial operating facilities</b>	<ul style="list-style-type: none"> <li>The MRS is a location that is a former munitions maintenance, manufacturing, or demilitarization facility.</li> </ul>	4
<b>Former firing points</b>	<ul style="list-style-type: none"> <li>The MRS is a firing point, where the firing point is delineated as an MRS separate from the rest of a former military range.</li> </ul>	4
<b>Former missile or air defense artillery emplacements</b>	<ul style="list-style-type: none"> <li>The MRS is a former missile defense or air defense artillery (ADA) emplacement not associated with a military range.</li> </ul>	2
<b>Former storage or transfer points</b>	<ul style="list-style-type: none"> <li>The MRS is a location where munitions were stored or handled for transfer between different modes of transportation (e.g., rail to truck, truck to weapon system).</li> </ul>	2
<b>Former small arms range</b>	<ul style="list-style-type: none"> <li>The MRS is a former military range where only small arms ammunition was used. [There must be evidence that no other types of munitions (e.g., grenades) were used or are present to place an MRS into this category.]</li> </ul>	1
<b>Evidence of no munitions</b>	<ul style="list-style-type: none"> <li>Following investigation of the MRS, there is physical evidence that no UXO or DMM are present, or there is historical evidence indicating that no UXO or DMM are present.</li> </ul>	0

**Notes:**

- *Former* (as in "former military range") means the MRS is a location that was (1) closed by a formal decision made by the Component with administrative control over the location, or (2) put to a use incompatible with the presence of UXO, DMM, or MC.
- *Historical evidence* means the investigation: (1) found written documents or records, (2) documented interviews of persons with knowledge of site conditions, or (3) found and verified other forms of information.
- *Physical evidence* means: (1) recorded observations from on-site investigations, such as finding intact UXO or DMM, or munitions debris (e.g., fragments, penetrators, projectiles, shell casings, links, fins); (2) the results of field or laboratory sampling and analysis procedures; or (3) the results of geophysical investigations.
- *Practice munitions* means munitions that contain an inert filler (e.g., wax, sand, concrete), a spotting charge (i.e., a small charge of red phosphorus, photoflash powder, or black powder used to indicate the point of impact), and a fuze.
- The term *small arms ammunition* means ammunition, without projectiles that contain explosives (other than tracers), that is .50 caliber or below, or for shotguns.

Table 3 Classifications Within the EHE Module <i>Information on the Location of Munitions Data Element</i>		
Classification	Description	Score
<b>Confirmed surface</b>	<ul style="list-style-type: none"> <li>Physical evidence indicates that there are UXO or DMM on the surface of the MRS.</li> <li>Historical evidence (e.g., a confirmed incident report or accident report) indicates there are UXO or DMM on the surface of the MRS.</li> </ul>	25
<b>Confirmed subsurface, active</b>	<ul style="list-style-type: none"> <li>Physical evidence indicates the presence of UXO or DMM in the subsurface of the MRS, and the geological conditions at the MRS are likely to cause UXO or DMM to be exposed, in the future, by naturally occurring phenomena (e.g., drought, flooding, erosion, frost, heat heave, tidal action), or intrusive activities (e.g., plowing, construction, dredging) at the MRS are likely to expose UXO or DMM.</li> <li>Historical evidence indicates that UXO or DMM are located in the subsurface of the MRS and the geological conditions at the MRS are likely to cause UXO or DMM to be exposed, in the future, by naturally occurring phenomena (e.g., drought, flooding, erosion, frost, heat heave, tidal action), or intrusive activities (e.g., plowing, construction, dredging) at the MRS are likely to expose UXO or DMM.</li> </ul>	20
<b>Confirmed subsurface, stable</b>	<ul style="list-style-type: none"> <li>Physical evidence indicates the presence of UXO or DMM in the subsurface of the MRS and the geological conditions at the MRS are not likely to cause UXO or DMM to be exposed, in the future, by naturally occurring phenomena, or intrusive activities at the MRS are not likely to cause UXO or DMM to be exposed.</li> <li>Historical evidence indicates that UXO or DMM are located in the subsurface of the MRS and the geological conditions at the MRS are not likely to cause UXO or DMM to be exposed, in the future, by naturally occurring phenomena, or intrusive activities at the MRS are not likely to cause UXO or DMM to be exposed.</li> </ul>	15
<b>Suspected (physical evidence)</b>	<ul style="list-style-type: none"> <li>There is physical evidence (e.g., munitions debris, such as fragments, penetrators, projectiles, shell casings, links, fins), other than the documented presence of UXO or DMM, indicating that UXO or DMM may be present at the MRS.</li> </ul>	10
<b>Suspected (historical evidence)</b>	<ul style="list-style-type: none"> <li>There is historical evidence indicating that UXO or DMM may be present at the MRS.</li> </ul>	5
<b>Subsurface, physical constraint</b>	<ul style="list-style-type: none"> <li>There is physical or historical evidence indicating that UXO or DMM may be present in the subsurface, but there is a physical constraint (e.g., pavement, water depth over 120 feet) preventing direct access to the UXO or DMM.</li> </ul>	2

Table 3 Classifications Within the EHE Module <i>Information on the Location of Munitions</i> Data Element		
Classification	Description	Score
<b>Small arms (regardless of location)</b>	<ul style="list-style-type: none"> <li>The presence of small arms ammunition is confirmed or suspected, regardless of other factors such as geological stability. [There must be evidence that no other types of munitions (e.g., grenades) were used or are present at the MRS to place an MRS into this category.]</li> </ul>	1
<b>Evidence of no munitions</b>	<ul style="list-style-type: none"> <li>Following investigation of the MRS, there is physical evidence that there are no UXO or DMM present, or there is historical evidence indicating that no UXO or DMM are present.</li> </ul>	0
<p><b>Notes:</b></p> <ul style="list-style-type: none"> <li><i>Historical evidence</i> means the investigation: (1) found written documents or records, (2) documented interviews of persons with knowledge of site conditions, or (3) found and verified other forms of information.</li> <li><i>Physical evidence</i> means: (1) recorded observations from on-site investigations, such as finding intact UXO or DMM, or munitions debris (e.g., fragments, penetrators, projectiles, shell casings, links, fins); (2) the results of field or laboratory sampling and analysis procedures; or (3) the results of geophysical investigations.</li> <li><i>In the subsurface</i> means the munition (i.e., a DMM or UXO) is (1) entirely beneath the ground surface, or (2) fully submerged in a water body.</li> <li><i>On the surface</i> means the munition (i.e., a DMM or UXO) is (1) entirely or partially exposed above the ground surface (i.e., above the soil layer), or (2) entirely or partially exposed above the surface of a water body (e.g., as a result of tidal activity).</li> <li>The term <i>small arms ammunition</i> means ammunition, without projectiles that contain explosives (other than tracers), that is .50 caliber or smaller, or for shotguns.</li> </ul>		

Classification	Description	Score
<b>No barrier</b>	<ul style="list-style-type: none"> <li>There is no barrier preventing access to any part of the MRS (i.e., all parts of the MRS are accessible).</li> </ul>	10
<b>Barrier to MRS access is incomplete</b>	<ul style="list-style-type: none"> <li>There is a barrier preventing access to parts of the MRS, but not the entire MRS.</li> </ul>	8
<b>Barrier to MRS access is complete, but not monitored</b>	<ul style="list-style-type: none"> <li>There is a barrier preventing access to all parts of the MRS, but there is no surveillance (e.g., by a guard) to ensure that the barrier is effectively preventing access to all parts of the MRS.</li> </ul>	5
<b>Barrier to MRS access is complete and monitored</b>	<ul style="list-style-type: none"> <li>There is a barrier preventing access to all parts of the MRS, and there is active, continual surveillance (e.g., by a guard, video monitoring) to ensure that the barrier is effectively preventing access to all parts of the MRS.</li> </ul>	0
<b>Notes:</b>		
<ul style="list-style-type: none"> <li><i>Barrier</i> 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.</li> </ul>		

Classification	Description	Score
<b>Non-DoD control</b>	<ul style="list-style-type: none"> <li>The MRS is at a location that is no longer owned by, leased to, or otherwise possessed or used by the Department. Examples are privately owned land or water bodies; land or water bodies owned or controlled by state, tribal, or local governments; and land or water bodies managed by other federal agencies.</li> </ul>	5
<b>Scheduled for transfer from DoD control</b>	<ul style="list-style-type: none"> <li>The MRS is on land or is a water body that is owned, leased, or otherwise possessed by the Department, and the Department plans to transfer that land or water body to the control of another entity (e.g., a state, tribal, or local government; a private party; another federal agency) within 3 years from the date the rule is applied.</li> </ul>	3
<b>DoD control</b>	<ul style="list-style-type: none"> <li>The MRS is on land or is a water body that is owned, leased, or otherwise possessed by the Department. With respect to property that is leased or otherwise possessed, the Department must control access to the MRS 24 hours per day, every day of the calendar year.</li> </ul>	0

Table 6 Classifications Within the EHE Module <i>Population Density</i> Data Element		
Classification	Definition	Score
<b>&gt; 500 persons per square mile</b>	<ul style="list-style-type: none"> <li>There are more than 500 persons per square mile in the county in which the MRS is located, based on U.S. Census Bureau data.</li> </ul>	5
<b>100 to 500 persons per square mile</b>	<ul style="list-style-type: none"> <li>There are 100 to 500 persons per square mile in the county in which the MRS is located, based on U.S. Census Bureau data.</li> </ul>	3
<b>&lt; 100 persons per square mile</b>	<ul style="list-style-type: none"> <li>There are fewer than 100 persons per square mile in the county in which the MRS is located, based on U.S. Census Bureau data.</li> </ul>	1
<b>Notes:</b>		
<ul style="list-style-type: none"> <li>If an MRS is in more than one county, the Component will use the largest population value among those counties. If the MRS is within or borders a city or town, the population density for that city or town, instead of the county population density, is used.</li> </ul>		

Table 7 Classifications Within the EHE Module <i>Population Near Hazard</i> Data Element		
Classification	Description	Score
<b>26 or more structures</b>	<ul style="list-style-type: none"> <li>There are 26 or more inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.</li> </ul>	5
<b>16 to 25</b>	<ul style="list-style-type: none"> <li>There are 16 to 25 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.</li> </ul>	4
<b>11 to 15</b>	<ul style="list-style-type: none"> <li>There are 11 to 15 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.</li> </ul>	3
<b>6 to 10</b>	<ul style="list-style-type: none"> <li>There are 6 to 10 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.</li> </ul>	2
<b>1 to 5</b>	<ul style="list-style-type: none"> <li>There are 1 to 5 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.</li> </ul>	1
<b>0</b>	<ul style="list-style-type: none"> <li>There are no inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.</li> </ul>	0
<b>Notes:</b>		
<ul style="list-style-type: none"> <li>The term <i>inhabited structures</i> means permanent or temporary structures, other than military munitions-related structures, that are routinely occupied by one or more persons for any portion of a day.</li> </ul>		

Table 8 Classifications Within the EHE Module <i>Types of Activities/Structures</i> Data Element		
Classification	Description	Score
<b>Residential, educational, commercial, or subsistence</b>	<ul style="list-style-type: none"> <li>Activities are conducted, or inhabited structures are located up to two miles from the MRS's boundary or within the MRS's boundary, that are associated with any of the following purposes: residential, educational, child care, critical assets (e.g., hospitals, fire and rescue, police stations, dams), hotels, commercial, shopping centers, playgrounds, community gathering areas, religious sites, or sites used for subsistence hunting, fishing, and gathering.</li> </ul>	5
<b>Parks and recreational areas</b>	<ul style="list-style-type: none"> <li>Activities are conducted, or inhabited structures are located up to two miles from the MRS's boundary or within the MRS's boundary, that are associated with parks, nature preserves, or other recreational uses.</li> </ul>	4
<b>Agricultural, forestry</b>	<ul style="list-style-type: none"> <li>Activities are conducted, or inhabited structures are located up to two miles from the MRS's boundary or within the MRS's boundary, that are associated with agriculture or forestry.</li> </ul>	3
<b>Industrial or warehousing</b>	<ul style="list-style-type: none"> <li>Activities are conducted, or inhabited structures are located up to two miles from the MRS's boundary or within the MRS's boundary, that are associated with industrial activities or warehousing.</li> </ul>	2
<b>No known or recurring activities</b>	<ul style="list-style-type: none"> <li>There are no known or recurring activities occurring up to two miles from the MRS's boundary or within the MRS's boundary.</li> </ul>	1
<b>Notes:</b>		
<ul style="list-style-type: none"> <li>The term <i>inhabited structures</i> means permanent or temporary structures, other than Department-related structures, that are routinely occupied by one or more persons for any portion of a day.</li> </ul>		

Table 9 Classifications Within the EHE Module <i>Ecological and/or Cultural Resources</i> Data Element		
Classification	Description	Score
<b>Ecological and cultural resources present</b>	<ul style="list-style-type: none"> <li>There are both ecological and cultural resources present on the MRS.</li> </ul>	5
<b>Ecological resources present</b>	<ul style="list-style-type: none"> <li>There are ecological resources present on the MRS.</li> </ul>	3
<b>Cultural resources present</b>	<ul style="list-style-type: none"> <li>There are cultural resources present on the MRS.</li> </ul>	3
<b>No ecological or cultural resources present</b>	<ul style="list-style-type: none"> <li>There are no ecological resources or cultural resources present on the MRS.</li> </ul>	0
<b>Notes:</b> <ul style="list-style-type: none"> <li><i>Ecological resources</i> means that (1) a threatened or endangered species (designated under the Endangered Species Act [ESA]) is present on the MRS; or (2) the MRS is designated under the ESA as critical habitat for a threatened or endangered species; or (3) there are identified sensitive ecosystems such as wetlands or breeding grounds present on the MRS.</li> <li><i>Cultural resources</i> means there are recognized cultural, traditional, spiritual, religious, or historical features (e.g., structures, artifacts, symbolism) on the MRS. Requirements for determining if a particular feature is a cultural resource are found in <i>the National Historic Preservation Act, Native American Graves Protection and Repatriation Act, Archeological Resources Protection Act, Executive Order 13007, and the American Indian Religious Freedom Act</i>. As examples: American Indians or Alaska Natives deem an MRS to be of religious significance; there are areas used by American Indians or Alaska Natives for subsistence activities (e.g., hunting, fishing).</li> </ul>		

Table 10 Determining the EHE Rating from the EHE Module Score	
Overall EHE Module Score	EHE Rating
The MRS has an overall EHE module score from 92 to 100.	EHE Rating A
The MRS has an overall EHE module score from 82 to 91.	EHE Rating B
The MRS has an overall EHE module score from 71 to 81.	EHE Rating C
The MRS has an overall EHE module score from 60 to 70.	EHE Rating D
The MRS has an overall EHE module score from 48 to 59.	EHE Rating E
The MRS has an overall EHE module score from 38 to 47.	EHE Rating F
The MRS has an overall EHE module score less than 38.	EHE Rating G
Alternative Module Ratings	Evaluation Pending
	No Longer Required
	No Known or Suspected Explosive Hazard

Table 11 Classifications Within the CHE Module <i>CWM Configuration</i> Data Element		
Classification	Description	Score
<b>CWM, explosive configuration, either UXO or damaged DMM</b>	The CWM known or suspected of being present at the MRS is: <ul style="list-style-type: none"> <li>Explosively configured CWM that are UXO (i.e., CWM/UXO).</li> <li>Explosively configured CWM that are DMM (i.e., CWM/DMM) that have been damaged.</li> </ul>	30
<b>CWM mixed with UXO</b>	<ul style="list-style-type: none"> <li>The CWM known or suspected of being present at the MRS are explosively configured CWM/DMM that have not been damaged, or nonexplosively configured CWM/DMM, or CWM not configured as a munition, that are commingled with conventional munitions that are UXO.</li> </ul>	25
<b>CWM, explosive configuration that are DMM (undamaged)</b>	<ul style="list-style-type: none"> <li>The CWM known or suspected of being present at the MRS are explosively configured CWM/DMM that have not been damaged.</li> </ul>	20
<b>CWM, not explosively configured or CWM, bulk container</b>	The CWM known or suspected of being present at the MRS is: <ul style="list-style-type: none"> <li>Nonexplosively configured CWM/DMM.</li> <li>Bulk CWM/DMM (e.g., ton container).</li> </ul>	15
<b>CAIS K941 and CAIS K942</b>	<ul style="list-style-type: none"> <li>The CWM/DMM known or suspected of being present at the MRS is CAIS K941-toxic gas set M-1 or CAIS K942-toxic gas set M-2/E11.</li> </ul>	12
<b>CAIS (chemical agent identification sets)</b>	<ul style="list-style-type: none"> <li>Only CAIS, other than CAIS K941 and K942, are known or suspected of being present at the MRS.</li> </ul>	10
<b>Evidence of no CWM</b>	<ul style="list-style-type: none"> <li>Following investigation, the physical evidence indicates that CWM are not present at the MRS, or the historical evidence indicates that CWM are not present at the MRS.</li> </ul>	0
<b>Notes:</b> <ul style="list-style-type: none"> <li>The term <i>CWM/UXO</i> means CWM that are UXO.</li> <li>The notation <i>CWM/DMM</i> means CWM that are DMM, to include CAIS K941, toxic gas set M-1; and K942, toxic gas set M-2/E11.</li> <li>The term <i>CAIS/DMM</i> means CAIS, other than CAIS K941 and K942.</li> <li><i>Historical evidence</i> means the investigation: (1) found written documents or records, (2) documented interviews of persons with knowledge of site conditions, or (3) found and verified other forms of information.</li> <li><i>Physical evidence</i> means: (1) recorded observations from on-site investigations, such as finding intact UXO or DMM, or munitions debris (e.g., fragments, penetrators, projectiles, shell casings, links, fins); (2) the results of field or laboratory sampling and analysis procedures; or (3) the results of geophysical investigations.</li> </ul>		

Table 12 Classifications Within the CHE Module Sources of CWM Data Element		
Classification	Description	Score
<b>Live-fire involving CWM</b>	<ul style="list-style-type: none"> <li>The MRS is a former military range that supported live-fire of explosively configured CWM and the CWM/UXO are known or suspected of being present on the surface or in the subsurface.</li> <li>The MRS is a former military range that supported live-fire with conventional munitions, and CWM/DMM are on the surface or in the subsurface commingled with conventional munitions that are UXO.</li> </ul>	10
<b>Damaged CWM/DMM surface or subsurface</b>	<ul style="list-style-type: none"> <li>There are damaged CWM/DMM on the surface or in the subsurface at the MRS.</li> </ul>	10
<b>Undamaged CWM/DMM surface</b>	<ul style="list-style-type: none"> <li>There are undamaged CWM/DMM on the surface at the MRS.</li> </ul>	10
<b>CAIS/DMM surface</b>	<ul style="list-style-type: none"> <li>There are CAIS/DMM on the surface.</li> </ul>	10
<b>Undamaged CWM/DMM, subsurface</b>	<ul style="list-style-type: none"> <li>There are undamaged CWM/DMM in the subsurface at the MRS.</li> </ul>	5
<b>CAIS/DMM subsurface</b>	<ul style="list-style-type: none"> <li>There are CAIS/DMM in the subsurface at the MRS.</li> </ul>	5
<b>Former CA or CWM Production Facilities</b>	<ul style="list-style-type: none"> <li>The MRS is a facility that formerly engaged in production of CA or CWM, and CWM/DMM is suspected of being present on the surface or in the subsurface.</li> </ul>	3
<b>Former Research, Development, Testing, and Evaluation (RDT&amp;E) facility using CWM</b>	<ul style="list-style-type: none"> <li>The MRS is at a facility that formerly was involved in non-live-fire RDT&amp;E activities (including static testing) involving CWM, and there are CWM/DMM suspected of being present on the surface or in the subsurface.</li> </ul>	3
<b>Former Training Facility using CWM or CAIS</b>	<ul style="list-style-type: none"> <li>The MRS is a location that formerly was involved in training activities involving CWM and/or CAIS (e.g., training in recognition of CWA, decontamination training) and CWM/DMM or CAIS/DMM are suspected of being present on the surface or in the subsurface.</li> </ul>	2
<b>Former Storage or Transfer points of CWM</b>	<ul style="list-style-type: none"> <li>The MRS is a former storage facility or transfer point (e.g., intermodal transfer) for CWM.</li> </ul>	1
<b>Evidence of no CWM</b>	<ul style="list-style-type: none"> <li>Following investigation, the physical evidence indicates that CWM are not present at the MRS, or the historical evidence indicates that CWM are not present at the MRS.</li> </ul>	0

**Notes:**

- The term *CWM /UXO* means CWM that are UXO.
- The notation *CWM/DMM* means CWM that are DMM, to include CAIS K941, toxic gas set M-1; and K942, toxic gas set M-2/E11.
- The term *CAIS/DMM* means CAIS, other than CAIS K941 and K942.
- *Historical evidence* means the investigation: (1) found written documents or records, (2) documented interviews of persons with knowledge of site conditions, or (3) found and verified other forms of information.
- *Physical evidence* means: (1) recorded observations from on-site investigations, such as finding intact UXO or DMM, or munitions debris (e.g., fragments, penetrators, projectiles, shell casings, links, fins); (2) the results of field or laboratory sampling and analysis procedures; or (3) the results of geophysical investigations.
- *In the subsurface* means the CWM (i.e., a DMM or UXO) is (1) entirely beneath the ground surface, or (2) fully submerged in a water body.
- *On the surface* means the CWM (i.e., a DMM or UXO) is (1) entirely or partially exposed above the ground surface (i.e., above the soil layer), or (2) entirely or partially exposed above the surface of a water body (e.g., as a result of tidal activity).

Table 13 Classifications Within the CHE Module <i>Information on the Location of CWM</i> Data Element		
Classification	Description	Score
<b>Confirmed surface</b>	<ul style="list-style-type: none"> <li>Physical evidence indicates that there are CWM on the surface of the MRS.</li> <li>Historical evidence (e.g., a confirmed incident report or accident report) indicates there are CWM on the surface of the MRS.</li> </ul>	25
<b>Confirmed subsurface, active</b>	<ul style="list-style-type: none"> <li>Physical evidence indicates the presence of CWM in the subsurface of the MRS and the geological conditions at the MRS are likely to cause CWM to be exposed, in the future, by naturally occurring phenomena (e.g., drought, flooding, erosion, frost, heat heave, tidal action), or intrusive activities (e.g., plowing, construction, dredging) at the MRS are likely to expose CWM.</li> <li>Historical evidence indicates that CWM are located in the subsurface of the MRS and the geological conditions at the MRS are likely to cause CWM to be exposed, in the future, by naturally occurring phenomena (e.g., drought, flooding, erosion, frost, heat heave, tidal action), or intrusive activities (e.g., plowing, construction, dredging) at the MRS are likely to expose CWM.</li> </ul>	20
<b>Confirmed subsurface, stable</b>	<ul style="list-style-type: none"> <li>Physical evidence indicates the presence of CWM in the subsurface of the MRS and the geological conditions at the MRS are not likely to cause CWM to be exposed, in the future, by naturally occurring phenomena, or intrusive activities at the MRS are not likely to cause CWM to be exposed.</li> <li>Historical evidence indicates that CWM are located in the subsurface of the MRS and the geological conditions at the MRS are not likely to cause CWM to be exposed, in the future, by naturally occurring phenomena, or intrusive activities at the MRS are not likely to cause CWM to be exposed.</li> </ul>	15
<b>Suspected (physical evidence)</b>	<ul style="list-style-type: none"> <li>There is physical evidence, other than the documented presence of CWM, indicating that CWM may be present at the MRS.</li> </ul>	10
<b>Suspected (historical evidence)</b>	<ul style="list-style-type: none"> <li>There is historical evidence indicating that CWM may be present at the MRS.</li> </ul>	5
<b>Subsurface, physical constraint</b>	<ul style="list-style-type: none"> <li>There is physical or historical evidence indicating that CWM may be present in the subsurface, but there is a physical constraint (e.g., pavement, water depth over 120 feet) preventing direct access to the CWM.</li> </ul>	2

Table 13 Classifications Within the CHE Module <i>Information on the Location of CWM</i> Data Element		
Classification	Description	Score
<b>Evidence of no CWM</b>	<ul style="list-style-type: none"> <li>Following investigation of the MRS, there is physical evidence that there is no CWM present or there is historical evidence indicating that no CWM are present.</li> </ul>	0
<p><b>Notes:</b></p> <ul style="list-style-type: none"> <li><i>Historical evidence</i> means the investigation: (1) found written documents or records, (2) documented interviews of persons with knowledge of site conditions, or (3) found and verified other forms of information.</li> <li><i>Physical evidence</i> means: (1) recorded observations from on-site investigations, such as finding intact UXO or DMM, or munitions debris (e.g., fragments, penetrators, projectiles, shell casings, links, fins); (2) the results of field or laboratory sampling and analysis procedures; or (3) the results of geophysical investigations.</li> <li><i>In the subsurface</i> means the CWM (i.e., a DMM or UXO) is (1) entirely beneath the ground surface, or (2) fully submerged in a water body.</li> <li><i>On the surface</i> means the CWM (i.e., a DMM or UXO) is (1) entirely or partially exposed above the ground surface (i.e., above the soil layer), or (2) entirely or partially exposed above the surface of a water body (e.g., as a result of tidal activity).</li> </ul>		

Table 14 Classifications Within the CHE Module <i>Ease of Access</i> Data Element		
Classification	Description	Score
<b>No barrier</b>	<ul style="list-style-type: none"> <li>There is no barrier preventing access to any part of the MRS (i.e., all parts of the MRS are accessible).</li> </ul>	10
<b>Barrier to MRS access is incomplete</b>	<ul style="list-style-type: none"> <li>There is a barrier preventing access to parts of the MRS, but not the entire MRS.</li> </ul>	8
<b>Barrier to MRS access is complete, but not monitored</b>	<ul style="list-style-type: none"> <li>There is a barrier preventing access to all parts of the MRS, but there is no surveillance (e.g., by a guard) to ensure that the barrier is effectively preventing access to all parts of the MRS.</li> </ul>	5
<b>Barrier to MRS access is complete and monitored</b>	<ul style="list-style-type: none"> <li>There is a barrier preventing access to all parts of the MRS, and there is active continual surveillance (e.g., by a guard, video monitoring) to ensure that the barrier is effectively preventing access to all parts of the MRS.</li> </ul>	0
<p><b>Notes:</b></p> <ul style="list-style-type: none"> <li><i>Barrier</i> 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.</li> </ul>		

Table 15 Classifications Within the CHE Module <i>Status of Property</i> Data Element		
Classification	Description	Score
<b>Non-DoD control</b>	<ul style="list-style-type: none"> <li>The MRS is at a location that is no longer owned by, leased to, or otherwise possessed or used by the Department. Examples are privately owned land or water bodies; land or water bodies owned or controlled by state, tribal, or local governments; and land or water bodies managed by other federal agencies.</li> </ul>	5
<b>Scheduled for transfer from DoD control</b>	<ul style="list-style-type: none"> <li>The MRS is on land or is a water body that is owned, leased, or otherwise possessed by the Department, and the Department plans to transfer that land or water body to control of another entity (e.g., a state, tribal, or local government; a private party; another federal agency) within 3 years from the date the rule is applied.</li> </ul>	3
<b>DoD control</b>	<ul style="list-style-type: none"> <li>The MRS is on land or is a water body that is owned, leased, or otherwise possessed by the Department. With respect to property that is leased or otherwise possessed, the Department controls access to the property 24 hours per day, every day of the calendar year.</li> </ul>	0

Table 16 Classifications Within the CHE Module <i>Population Density</i> Data Element		
Classification	Definition	Score
<b>&gt; 500 persons per square mile</b>	<ul style="list-style-type: none"> <li>There are more than 500 persons per square mile in the county in which the MRS is located, based on U.S. Census Bureau data.</li> </ul>	5
<b>100 to 500 persons per square mile</b>	<ul style="list-style-type: none"> <li>There are 100 to 500 persons per square mile in the county in which the MRS is located, based on U.S. Census Bureau data.</li> </ul>	3
<b>&lt; 100 persons per square mile</b>	<ul style="list-style-type: none"> <li>There are fewer than 100 persons per square mile in the county in which the MRS is located, based on U.S. Census Bureau data.</li> </ul>	1
<b>Notes:</b>		
<ul style="list-style-type: none"> <li>If an MRS is in more than one county, the Component will use the largest population value among those counties. If the MRS is within or borders a city or town, the population density for that city or town, instead of the county population density, is used.</li> </ul>		

Table 17 Classifications Within the CHE Module <i>Population Near Hazard</i> Data Element		
Classification	Description	Score
<b>26 or more structures</b>	<ul style="list-style-type: none"> <li>There are 26 or more inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.</li> </ul>	5
<b>16 to 25</b>	<ul style="list-style-type: none"> <li>There are 16 to 25 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.</li> </ul>	4
<b>11 to 15</b>	<ul style="list-style-type: none"> <li>There are 11 to 15 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.</li> </ul>	3
<b>6 to 10</b>	<ul style="list-style-type: none"> <li>There are 6 to 10 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.</li> </ul>	2
<b>1 to 5</b>	<ul style="list-style-type: none"> <li>There are 1 to 5 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.</li> </ul>	1
<b>0</b>	<ul style="list-style-type: none"> <li>There are no inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.</li> </ul>	0
<b>Notes:</b> <ul style="list-style-type: none"> <li>The term <i>inhabited structures</i> means permanent or temporary structures, other than military munitions-related structures, that are routinely occupied by one or more persons for any portion of a day.</li> </ul>		

Table 18 Classifications Within the CHE Module <i>Types of Activities/Structures</i> Data Element		
Classification	Description	Score
<b>Residential, educational, commercial, or subsistence</b>	<ul style="list-style-type: none"> <li>Activities are conducted, or inhabited structures are located up to two miles from the MRS's boundary or within the MRS's boundary, that are associated with any of the following purposes: residential, educational, child care, critical assets (e.g., hospitals, fire and rescue, police stations, dams), hotels, commercial, shopping centers, playgrounds, community gathering areas, religious sites, or sites used for subsistence hunting, fishing, and gathering.</li> </ul>	5
<b>Parks and recreational areas</b>	<ul style="list-style-type: none"> <li>Activities are conducted, or inhabited structures are located up to two miles from the MRS's boundary or within the MRS's boundary, that are associated with parks, nature preserves, or other recreational uses.</li> </ul>	4
<b>Agricultural, forestry</b>	<ul style="list-style-type: none"> <li>Activities are conducted, or inhabited structures are located up to two miles from the MRS's boundary or within the MRS's boundary, that are associated with agriculture or forestry.</li> </ul>	3
<b>Industrial or warehousing</b>	<ul style="list-style-type: none"> <li>Activities are conducted, or inhabited structures are located up to two miles from the MRS's boundary, or within the MRS's boundary, that are associated with industrial activities or warehousing.</li> </ul>	2
<b>No known or recurring activities</b>	<ul style="list-style-type: none"> <li>There are no known or recurring activities occurring up to two miles from the MRS's boundary or within the MRS's boundary.</li> </ul>	1
<b>Notes:</b> <ul style="list-style-type: none"> <li>The term <i>inhabited structures</i> means permanent or temporary structures, other than Department-related structures, that are routinely occupied by one or more persons for any portion of a day.</li> </ul>		

Table 19 Classifications Within the CHE Module <i>Ecological and/or Cultural Resources</i> Data Element		
Classification	Description	Score
<b>Ecological and cultural resources present</b>	<ul style="list-style-type: none"> <li>There are both ecological and cultural resources present on the MRS.</li> </ul>	5
<b>Ecological resources present</b>	<ul style="list-style-type: none"> <li>There are ecological resources present on the MRS.</li> </ul>	3
<b>Cultural resources present</b>	<ul style="list-style-type: none"> <li>There are cultural resources present on the MRS.</li> </ul>	3
<b>No ecological or cultural resources present</b>	<ul style="list-style-type: none"> <li>There are no ecological resources or cultural resources present on the MRS.</li> </ul>	0
<b>Notes:</b> <ul style="list-style-type: none"> <li><i>Ecological resources</i> means that: (1) a threatened or endangered species (designated under the Endangered Species Act [ESA]) is present on the MRS; or (2) the MRS is designated under the ESA as critical habitat for a threatened or endangered species; or (3) there are identified sensitive ecosystems such as wetlands or breeding grounds present on the MRS.</li> <li><i>Cultural resources</i> means there are recognized cultural, spiritual, traditional, religious, or historical features (e.g., structures, artifacts, symbolism) on the MRS. Requirements for determining if a particular feature is a cultural resource are found in <i>the National Historic Preservation Act, Native American Graves Protection and Repatriation Act, Archeological Resources Protection Act, Executive Order 13007, and the American Indian Religious Freedom Act</i>. As examples: American Indians or Alaska Natives deem an MRS to be of spiritual significance; there are areas that are used by American Indians or Alaska Natives for subsistence activities (e.g., hunting, fishing).</li> </ul>		

Table 20 Determining the CHE Rating from the CHE Module Score	
Overall CHE Module Score	CHE Rating
The MRS has an overall CHE module score from 92 to 100.	CHE Rating A
The MRS has an overall CHE module score from 82 to 91.	CHE Rating B
The MRS has an overall CHE module score from 71 to 81.	CHE Rating C
The MRS has an overall CHE module score from 60 to 70.	CHE Rating D
The MRS has an overall CHE module score from 48 to 59.	CHE Rating E
The MRS has an overall CHE module score from 38 to 47.	CHE Rating F
The MRS has an overall CHE module score less than 38.	CHE Rating G
Alternative Module Ratings	Evaluation Pending
	No Longer Required
	No Known or Suspected CWM Hazard

Table 21 HHE Factor Levels					
Contaminant Hazard Factor		Receptor Factor		Migration Pathway Factor	
Significant	High (H)	Identified	High (H)	Evident	High (H)
Moderate	Middle (M)	Potential	Middle (M)	Potential	Middle (M)
Minimal	Low (L)	Limited	Low (L)	Confined	Low (L)

Table 22 HHE Three-letter Combination Levels				
Contaminant Hazard Factor	Receptor Factor	Migration Pathway		
		Evident	Potential	Confined
Significant	Identified	HHH	HHM	HHL
	Potential	HHM	HMM	HML
	Limited	HHL	HML	HLL
Moderate	Identified	HHM	HMM	HML
	Potential	HMM	MMM	MML
	Limited	HML	MMM	MLL
Minimal	Identified	HHL	HML	HLL
	Potential	HML	MML	MLL
	Limited	HLL	MLL	LLL

Table 23 HHE Module Ratings	
Combination	Rating
HHH	A
HHM	B
HHL	C
HMM	
HML	
MMM	D
HLL	
MML	E
MLL	
LLL	
Alternative Module Ratings	Evaluation Pending
	No Longer Required
	No Known or Suspected MC Hazard

Table 24 HHE Module Rating				
Contaminant Hazard Factor	Receptor Factor	Migration Pathway		
		Evident	Potential	Confined
Significant	Identified	A	B	C
	Potential	B	C	D
	Limited	C	D	E
Moderate	Identified	B	C	D
	Potential	C	D	E
	Limited	D	E	F
Minimal	Identified	C	D	E
	Potential	D	E	F
	Limited	E	F	G

Table 25 MRS Priority Based on Highest Hazard Evaluation Module Rating					
EHE Module Rating	Priority	CHE Module Rating		HHE Module Rating	Priority
		Hazard Evaluation A (Highest)	Priority 1		
Hazard Evaluation A (Highest)	2	Hazard Evaluation B	2	Hazard Evaluation A (Highest)	2
Hazard Evaluation B	3	Hazard Evaluation C	3	Hazard Evaluation B	3
Hazard Evaluation C	4	Hazard Evaluation D	4	Hazard Evaluation C	4
Hazard Evaluation D	5	Hazard Evaluation E	5	Hazard Evaluation D	5
Hazard Evaluation E	6	Hazard Evaluation F	6	Hazard Evaluation E	6
Hazard Evaluation F	7	Hazard Evaluation G (Lowest)	7	Hazard Evaluation F	7
Hazard Evaluation G (Lowest)	8			Hazard Evaluation G (Lowest) Low	8
Evaluation Pending		Evaluation Pending		Evaluation Pending	
No Longer Required		No Longer Required		No Longer Required	
No Known or Suspected Explosive Hazard		No Known or Suspected CWM Hazard		No Known or Suspected MC Hazard	