

DEPARTMENT OF DEFENSE (DOD)**Statement of Regulatory Priorities****Background**

The Department of Defense (DoD) is the largest Federal department, consisting of three military departments (Army, Navy, and Air Force), nine unified combatant commands, 16 Defense agencies, and nine DoD field activities. It has over 1,450,000 military personnel and 800,000 civilians assigned as of June 30, 1996, and over 500 military installations and properties in the continental United States, U.S. territories, and foreign countries. The overall size, composition, and dispersion of the Department of Defense, coupled with an innovative regulatory program, presents a challenge to the management of the Defense regulatory efforts under Executive Order (E.O.) 12866 "Regulatory Planning and Review" of September 30, 1993.

Because of its diversified nature, DoD is impacted by the regulations issued by regulatory agencies such as the Departments of Energy, Health and Human Services, Housing and Urban Development, Labor, Transportation, and the Environmental Protection Agency. In order to develop the best possible regulations that embody the principles and objectives embedded in E.O. 12866, there must be coordination of proposed regulations among the regulating agencies and the affected Defense components. Coordinating the proposed regulations in advance throughout an organization as large as DoD is a straightforward, yet formidable undertaking.

DoD is not a regulatory agency, but occasionally issues regulations that have an impact on the public. These regulations, while small in number compared to those of the regulating agencies, can be significant as defined in E.O. 12866. In addition, some of DoD's regulations may impact the regulatory agencies. An example of this is the rule implementing the Redevelopment Act requiring coordination with the Department of Housing and Urban Development. DoD, as an integral part of its program, not only receives coordinating actions from the regulating agencies but coordinates with the agencies that are impacted by its regulations as well.

The regulatory program within DoD fully incorporates the provisions of the President's priorities and objectives under E.O. 12866. Promulgating and implementing the regulatory program throughout DoD presents a unique

challenge to the management of our regulatory efforts.

Coordination*Interagency*

DoD annually receives regulatory plans from those agencies that impact the operation of the Department through the issuance of regulations. A system for coordinating the review process is in place, regulations are reviewed, and comments are forwarded to the Office of Management and Budget. The system is working in the Department, and the feedback from the Defense components is most encouraging, since they are able to see and comment on regulations from the other agencies before they are required to comply with them. The coordination process in DoD continues to work as outlined in E.O. 12866.

Internal

Through regulatory program points of contact in the Department, we have established a system that provides information from the Vice President and the Administrator of the Office of Information and Regulatory Affairs (OIRA) to the personnel responsible for the development and implementation of DoD regulations. Conversely, the system can provide feedback from DoD regulatory personnel to the Administrator, OIRA. DoD continues to refine its internal procedures, and this ongoing effort to improve coordination and communication practices is well received and supported within the Department.

Overall Priorities

The Department of Defense needs to function at a reasonable cost, while ensuring that it does not impose ineffective and unnecessarily burdensome regulations on the public. The rulemaking process should be responsive, efficient, cost-effective, and both fair and perceived as fair. This is being done at a time when there is significant ongoing downsizing in the Department, and it must react to the contradictory pressures of providing more services with fewer resources.

The Department of Defense, as a matter of overall priority for its regulatory program, adheres to the general principles set forth in E.O. 12866 as amplified below.

Problem Identification

Congress typically passes legislation to authorize or require an agency to issue regulations and often is quite specific about the problem identified for correction. Therefore, DoD does not

generally initiate regulations as a part of its mission.

Conflicting Regulations

DoD plans to issue one significant regulation this year, and the probability of developing conflicting regulations is low. Conversely, DoD is impacted to a great degree by the regulating agencies. From that perspective, DoD is in a position to advise the regulatory agencies of conflicts that appear to exist, using the coordination processes that exist in the DoD and other Federal agency regulatory programs. It is a priority in the Department to communicate with other agencies and the affected public to identify and proactively pursue regulatory problems that occur as a result of conflicting regulations both within and without the Department.

Alternatives

DoD will identify feasible alternatives that will obtain the desired regulatory objectives. Where possible, the Department encourages the use of incentives to include financial, quality-of-life, and others to achieve the desired regulatory results.

Risk Assessment

In consonance with the goal of the National Performance Review and the stated goal of the Secretary of Defense in "Acquisition Reform: A Mandate for Change," assessing and managing risk remains a priority in the DoD regulatory program.

Cost-Effectiveness

One of the highest priority objectives of DoD is to obtain the desired regulatory objective by the most cost-effective method available. This may or may not be through the regulatory process. When a regulation is required, DoD considers incentives for innovation to achieve desired results, consistency in the application of the regulation, predictability of the activity outcome (achieving the expected results), and the costs for regulation development, enforcement, and compliance. These will include costs to the public, Government, and regulated entities, using the best available data or parametric analysis methods, in the cost-benefit analysis and the decisionmaking process.

In the current regulatory actions involving community revitalization, the cost of the regulation to the Government is basically the cost of developing and managing the procedures to dispose of excess real and personal property in the event of a base closure. In return, the

Government will receive reimbursement in the event of a direct sale or profit sharing in certain conveyance situations. Cost-effectiveness is being achieved.

Cost-Benefit

Conducting cost-benefit analyses on regulation alternatives is a priority in the Department of Defense so as to ensure that the potential benefits to society outweigh the costs. Evaluations of these alternatives are done quantitatively or qualitatively or both, depending on the nature of the problem being solved and the type of information and data available on the subject. DoD is committed to considering the most important alternative approaches to the problem being solved and providing the reasoning for selecting the proposed regulatory change over the other alternatives.

Information-Based Decisions

Lack of information in the rulemaking process has been a serious problem, and it is a priority regulatory issue with the Department of Defense. The new thrust of E.O. 12866, with open communications among other Federal agencies; State, local, and tribal governments; public interest groups; and the public at large, is a great step towards solving this problem.

In addition, the pressures of time also require agencies to make decisions with less information than would be ideal. To solve this problem, in part, a priority of the Department of Defense is to use the latest information technology to provide access to the most current technical, scientific, and demographic information in a timely manner through the world-wide communications capabilities which are available on the "information highway." Furthermore, the Department endeavors to increase the use of automation in the notice and comment rulemaking process in an effort to reduce time pressures in the rulemaking process. For example, all BRAC-related regulatory publications in the Federal Register include an e-mail address, allowing the public to submit their comments electronically. In addition, the public has now begun using this e-mail address to send in questions related to BRAC in general, which enhances communications at the grass roots level.

Performance-Based Regulations

Where appropriate, DoD is incorporating performance-based standards that allow the regulated parties to achieve the regulatory

objective in the most cost-effective manner.

Outreach Initiatives

DoD endeavors to obtain the views of appropriate State, local, and tribal officials and the public in implementing measures to enhance public awareness and participation both in developing and implementing regulatory efforts. Historically, this has included such activities as receiving comments from the public, holding hearings, and conducting focus groups. This reaching out to organizations and individuals who are affected by or involved in the particular regulatory action remains a significant regulatory priority of the Department and, we feel, results in much better regulations.

Coordination

DoD has enthusiastically embraced the coordination process between and among other Federal agencies in the development of new and revised regulations. Annually, DoD receives regulatory plans from key regulatory agencies and has established a systematic approach to providing the plans to the appropriate policy officials within the Department. Feedback from the DoD components indicates that this communication among the Federal agencies is a major step forward in improving regulations and the regulatory process, as well as in improving Government operations.

Minimizing Burden

In the regulatory process, there are more complaints concerning burden than anything else. In DoD, much of the burden is in the acquisition area. Over the years, acquisition regulations have grown and become burdensome principally because of legislative action. But, in coordination with Congress, the Office of Federal Procurement Policy, and the public, DoD is initiating significant reforms in acquisition so as to effect major reductions in the regulatory burden on personnel in Government and the public sectors. One such significant reduction in the burden imposed on the public was achieved in the review of DoD's Acquisition Management Systems and Data Requirements Control List. This list specifies data requirements used in Government contracts to support the design, test, manufacture, training, operation, and maintenance of procured items. This information is required in approximately 15 million DoD contracts annually for supplies, services, hardware, and software. As a result of ongoing reviews to reduce and

consolidate the amount of information collected from the public, DoD achieved a 33 million burden hour reduction due to program changes. An additional 17 million burden hour adjustment was made due to the reduction in the number of contracts, which resulted in an overall reduction of 50 million burden hours imposed on the public.

Additionally, last year, DoD reviewed its information collections with a view towards cutting the reporting burden on the public in half. This is a direct result of the reduction efforts initiated by the President and strongly supported in DoD. Specifically, an April 21, 1995, White House memorandum requested a 50 percent reduction in the frequency of regularly scheduled public reports. In response, DoD identified for review 19 eligible reporting requirements which it imposes on the public. In May 1996, DoD completed this review and successfully reduced the overall reporting burden by eliminating six reports entirely and reducing the reporting frequency of the remaining 13 reports by at least 50 percent.

Simple Design

Ensuring that regulations are simple and easy to understand is a high regulatory priority in the Department of Defense. All too often the regulations are complicated, difficult to understand, and subject to misinterpretation, all of which can result in the costly process of litigation. The objective in the development of regulations is to write them in clear, concise language that is simple and easy to understand.

In summary, the rulemaking process in DoD should produce a rule that addresses an identifiable problem, implements the law, incorporates the President's policies defined in E.O. 12866, is in the public interest, is consistent with other rules and policies, is based on the best information available, is rationally justified, is cost-effective, can actually be implemented, is acceptable and enforceable, is easily understood, and stays in effect only as long as is necessary. Moreover, the proposed rule or the elimination of a rule should simply make sense.

Specific Priorities

For this regulatory plan, there are five specific DoD priorities, all of which reflect the established regulatory principles. One of these, "Closed, Transferred, and Transferring Ranges Containing Military Munitions," is a significant regulatory action as defined by E.O. 12866. In those areas where rulemaking or participation in the

regulatory process is required, DoD has studied and developed policy and regulation which incorporate not only the provisions of the President's priorities and objectives under the Executive order but also those of the National Performance Review, dated September 1993.

DoD has focused its regulatory resources on the most serious environmental, health, and safety risks. Perhaps most significant is that each of the five priorities described below promulgates regulations to offset the resource impacts of Federal decisions on the public or to improve the quality of public life, such as those regulations concerning base closures, wetlands, acquisition, health care delivery, and munitions ranges.

Base Realignment and Closure (BRAC) Activities

Revitalizing Base Closure Communities and Community Assistance

On July 2, 1993, President Clinton announced a plan to provide for more rapid redevelopment and job creation in communities affected by base realignment and closure (BRAC) decisions. This Presidential initiative marked a fundamental change in the policy of Federal property disposal at BRAC sites by giving top priority to helping affected communities realize early reuse of base assets to spur economic recovery.

Following the President's announcement, DoD worked with representatives of the National Economic Council and the Congress to develop legislation that would enable DoD to implement the plan. In November 1993, Congress supported the President's plan by enacting the Base Closure Community Assistance Act (subtitle A of title XXIX of the National Defense Authorization Act for Fiscal Year (FY) 1994, P.L. 103-160), referred to here as "title XXIX." This legislation substantially amended the base closure laws and provided the Department of Defense with the tools it needed to carry out the President's plan.

After publishing an interim final rule, an amendment to the interim final rule, and reviewing numerous public comments received in response to those publications and during outreach visits and public hearings, the Department published a final rule (32 CFR parts 91 and 92) implementing the provisions of title XXIX and providing interpretive guidance concerning other changes to the BRAC process. The rule covered topics including real property screening to aid disposal planning, property

conveyances at or below fair market value (referred to as "Economic Development Conveyances"), interim leasing, personal property disposal, and minimum maintenance levels necessary to support civilian reuse.

Although great strides had been made to improve the process, the Department recognized that further refinements were still needed. Accordingly, new statutory authorities were requested, which Congress incorporated into the National Defense Authorization Act for FY 1996 (P.L. 104-106). These new authorities include the following provisions that will be implemented by the Department in amendments to three rules planned for publication later this year:

- An amendment to the Department's leasing authority which authorizes, in certain circumstances, longer term interim leases (greater than the old 5-year limitation) and limits the scope of any environmental analysis required to support an interim lease. This new authority will also allow the Department to permit some building modification, demolition, and new construction.
- A new real property transfer authority which allows base closure property that is still needed by DoD or another Federal agency to be transferred to a local redevelopment authority (LRA), provided the LRA leases back the property to DoD or the Federal agency at no cost. This authority is designed for those situations where small parcels or individual buildings that are still needed by a Federal agency are surrounded by property that will be conveyed to the LRA. Use of a "lease back" will allow the LRA to have certainty over the future use of the property (they will own and can use it when the Federal occupant vacates) while still ensuring that continuing Federal needs are met.
- Another new real property transfer authority which authorizes the Secretary of Defense to enter into agreements to transfer property or facilities at closing bases to a person who agrees to provide, in exchange for the property, housing units located at another installation where there is a shortage of suitable housing. This authority can help create a win/win situation by addressing, through an "exchange" of assets, the economic redevelopment needs of the community and the military's family housing needs.

Interagency Coordination

As the rules implementing these provisions are being developed, DoD

has been working closely with other Federal agencies to ensure our procedures work in concert with existing Federal programs. For example, in developing the rule implementing the "lease back" provision, we have been working with the General Services Administration on how existing Federal property management regulations will apply to leases under this authority. In addition, DoD worked with staff of the Council on Environmental Quality on the amendments to the existing BRAC leasing rule that are necessary to implement the new interim leasing authority.

Internal Coordination

Coordination is being sought from all facets of the Department during the development of the amendment to the BRAC rules. Coordinating components include the Departments of the Army, Navy, and Air Force; the Office of the General Counsel; the Office of the Deputy Under Secretary of Defense (Environmental Security); the Defense Finance and Accounting Service; and the Defense Logistics Agency.

Simple Design

All of the rules under development are being written in clear, concise language with the goal of making them simple and easy to understand. In addition, all of the amendments being made will also be reflected in DoD 4165.66-M "DoD Base Reuse Implementation Manual." The manual, developed after the first base closure rule was published last year, provides greater detail about the issues addressed in the rule. It is written in an easy-to-read question-and-answer format to help service implementers and members of the public find answers to specific questions about the base closure and reuse process. To provide wide access to the document, the manual is now available on the World Wide Web under DefenseLINK, Secretary of Defense, Principal Deputy Under Secretary of Defense (Acquisition and Technology), Industrial Affairs and Installations.

Community Redevelopment and Homeless Assistance

Title V of the Stewart B. McKinney Homeless Assistance Act of 1987 granted first priority on use of all surplus federally owned real and personal property, including former military installations, to the homeless. With respect to base closure properties, the McKinney Act title V provisions did not work well and caused disruption and conflicts at the local level. Consequently, Congress passed the Base Closure Community Redevelopment and

Homeless Assistance Act of 1994 (the Redevelopment Act), which exempted base closure property from the McKinney Act and created a new community-based process for addressing the needs of the homeless. Under this new improved process, homeless assistance providers work directly with LRAs on the development of a reuse plan that balances the community's economic development needs with the needs of the homeless in the community.

On August 8, 1995, the Department, in conjunction with the Department of Housing and Urban Development (HUD), published an interim rule (32 CFR part 92) implementing the provisions of the Redevelopment Act. That rule was open for public comment until October 16, 1995. In addition, amendments to the Redevelopment Act were passed by Congress as part of the National Defense Authorization Act for FY 1996. The Department is currently working with HUD on a final rule that takes into account both the public comments and the recent amendments.

Interagency Coordination

As with the development of the interim rule, the final rule is being written by an interagency working group comprised of staff from both DoD and HUD. All public comments on the interim rule are being reviewed by both agencies and changes to the interim rule based on the recent amendments are being drafted together. This effort is an excellent example of agencies working together to develop a coordinated strategy for implementing this new program.

One change to the Redevelopment Act being implemented in the final rule requires that agencies sponsoring public benefit transfers (PBT) under the Federal Property and Administrative Services Act "pre-certify" public and nonprofit entities who express an interest in obtaining property via a PBT during the community screening process. This section of the final rule will be coordinated with all applicable agencies.

Internal Coordination

The final rule will be issued after coordination with the Departments of the Army, Navy, and Air Force; the Office of the General Counsel; and the Office of the Deputy Under Secretary of Defense (Environmental Security).

Conflicting Regulations

The Redevelopment Act process involves both DoD and HUD. To avoid conflicting regulations, both agencies

have been working together to develop a single rule that outlines the roles of both agencies.

Simple Design

The final rule is being developed in clear, concise language in an effort to prevent misinterpretation of the process in which HUD, DoD, communities, homeless providers, and other State and local entities all participate. In addition, HUD, with the concurrence of DoD, recently published a guidebook to assist communities with completing the local screening and outreach process and preparing their application to HUD. The Redevelopment Act process is also outlined in DoD's Base Reuse Implementation Manual.

Preserve Quality and Quantity of Wetlands

During FY 1997, the U.S. Army Corps of Engineers is not proposing any significant regulations as defined by E.O. 12866. The Office of the Assistant Secretary of the Army (Civil Works) and the Corps will propose and complete several regulations initiated as part of the President's August 24, 1993, Wetlands Protection Plan and the President's 1995 Regulatory Reinvention Initiative. The wetlands protection plan provides for a fair, flexible, and effective approach to protecting America's wetlands through both regulatory and nonregulatory mechanisms. The regulatory reinvention initiative reinforced those provisions and included additional regulatory reform and streamlining provisions.

During 1996 and 1997, the Corps will propose and finalize three regulations pursuant to its authorities under section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act of 1899. The first regulation establishes the wetland delineator certification program. This regulation was proposed on March 14, 1995, and will be finalized by the end of 1996. This program provides for training and certification of individuals, as provided for by section 307(e) of the Water Resources Development Act of 1990, to submit for approval wetland delineations in accordance with the current Federal wetland delineation manual. Individuals can be certified as meeting certain standards, resulting in an expedited decision by the Corps on their submitted wetland delineation. The goal of the certification program is to improve the quality of consultant-prepared wetland delineations that are submitted to the Corps so that they can be reviewed and approved expeditiously.

The second regulation will establish an administrative appeal process whereby permit applicants and landowners can appeal permit denial decisions and jurisdictional determinations. This regulation was proposed on July 19, 1995, and will be finalized in 1996. The administrative appeal process will increase fairness to applicants and landowners in the permitting process by establishing a recourse to Corps permit denial decisions and jurisdictional determinations without pursuing litigation. The process will also provide for third-party involvement when the Corps reconsiders a previous denial. The final regulation will be a consolidation of the Corps rulemaking and guidance, including the above regulations, that have been issued since the last consolidated regulations dated November 13, 1986. The regulations will also be reorganized to make them clearer and easier to use.

Reform Defense Acquisition

In "Acquisition Reform: A Mandate for Change," the Secretary of Defense highlighted the need for acquisition reform: "The Department of Defense Bottom-up Review provides the vision and the blueprint for meeting the security challenges of the post-Cold War world, responding to threats anywhere in the world where U.S. interests are at risk. In today's environment, the current process will not always be able to meet the Department's need. DoD will not be able to carry out this blueprint without dramatic changes in its acquisition processes; that is, from determining what the Department needs to logistics support and reutilization requirements."

To meet these new security challenges, the United States must be able to rely heavily on commercial companies for defense needs. It cannot rely, as it has in the past, exclusively on companies that are predominantly defense suppliers. As the Secretary has stated, "the Department of Defense cannot afford the extra costs associated with keeping its industrial base isolated from the national base. The country needs the benefit that it would otherwise lose as a result of the defense industrial base being kept out of this national base." Assessing risk, managing rather than avoiding risk, performing cost-benefit analysis, and minimizing burden are cornerstones in the establishment of a cost-effective acquisition process that is consistent with E.O. 12866.

To make this drastic change, the acquisition process must be

fundamentally reengineered to ensure that the commercial sector is fully utilized to support Government needs and that all possible streamlining measures are adopted. The Federal Acquisition Streamlining Act of 1994, enacted into law on October 13, 1994, was a major step towards achieving this goal. Specifically, the legislation provided relief in the following major areas: (1) Comprehensive authority to facilitate commercial item acquisition and (2) simplifying and streamlining most contract actions. This legislation is the center of regulatory activity in the Department of Defense. DoD led the Governmentwide effort to implement the legislation in the Federal Acquisition Regulation (FAR).

We are also making necessary changes to the Defense Federal Acquisition Regulation Supplement (DFARS). The Department decided to approach the revision of the FAR on a part-by-part basis, addressing those parts where the most return could be obtained for the investment. As a result, the Department has led the effort to rewrite FAR part 15 covering Contracting by Negotiation, the method used to award the bulk of our acquisition dollars. DoD has also chartered 11 process action teams (PATs) to review discrete parts of the acquisition system. Based upon recommendations from these PATs, we are in the process of changing our internal acquisition regulations and policies. In accordance with the Systems Acquisition Oversight and Review PAT, DoD rewrote the Department's basic systems acquisition policy documents, DoD Directive 5000.1 and DoD Instruction 5000.2. The rewrite separated mandatory policy from discretionary alternative practices and emphasized the themes of teamwork, tailoring, empowerment, cost as an independent variable, and the use of commercial practices. As the result of the recommendations of our Automated Acquisition Information System PAT, DoD has developed and is fielding the Defense Acquisition Desk Book, an automated tool which provides access to individuals within the Department to all of the regulatory material, including the DoD 5000-series documents, the FAR and the DFARS, as well as other information in our possession, including discretionary alternative practices, concerning the acquisition system. The Department is committed to acquisition reform and will continue making significant improvements in this area, consistent with the NPR and E.O. 12866.

Improve Health Care Delivery in the Defense Department

DoD operates an extensive system of military medical treatment facilities, in support of two missions: Wartime readiness and peacetime benefits. The readiness mission maintains the peacetime health of active duty personnel and makes preparations to attend the sick and wounded in war; the benefits mission provides a health benefit as a condition of service to DoD's eligible beneficiaries, including dependents of active duty personnel and retired military personnel and their dependents and survivors.

The principal health-related regulatory publications of the Department involve CHAMPUS, the Civilian Health and Medical Program of the Uniformed Services (32 CFR part 199). Through CHAMPUS, DoD shares in the cost of civilian care obtained by eligible beneficiaries when services are unavailable in military medical treatment facilities. CHAMPUS regulations address comprehensively such issues as eligibility, benefits, authorized providers, claims payment, appeals procedures, and the like. Changes to the CHAMPUS regulations are coordinated by DoD with the Departments of Transportation (U.S. Coast Guard), Health and Human Services (Public Health Service), and Commerce (National Oceanographic and Atmospheric Administration), which also have beneficiaries eligible for CHAMPUS.

Amendments to the CHAMPUS regulations generally focus on program changes arising from revisions to the program's statutory base or from DoD initiatives to improve the program. Over the next few years, changes in management of high-cost care and revisions to reimbursement approaches for providers will be among DoD's regulatory priorities.

A major health care initiative of DoD is the TRICARE Program, which is intended to improve the management and integration of health care delivery in military medical treatment facilities and CHAMPUS and to increase access to health services, control health care costs, and strengthen quality assurance activities. A major feature of TRICARE is local health care delivery networks based on arrangements between military and civilian providers and organizations. Beneficiaries are able to enroll in an HMO-like option to receive all their care from this integrated military-civilian network or obtain care on a case-by-case basis from the network at preferred cost-sharing rates.

The regulatory vehicle for implementation of TRICARE is an amendment to the CHAMPUS regulation that was published on October 5, 1995. Amendments to this TRICARE regulation will be published to incorporate new policy changes and/or legislative directives. An extensive and ongoing effort to inform the public about TRICARE will enhance the E.O. 12866 objective of providing full information to the public to encourage substantial and meaningful participation in the regulatory process.

Closed, Transferred, and Transferring Ranges Containing Military Munitions

The range rule identifies a process for evaluating appropriate response actions on closed, transferred, and transferring military ranges. Response actions will address safety, human health, and the environment. The rule contains a five-part process that is consistent with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and is tailored to the special risks posed by military munitions and military ranges. All closed, transferred, and transferring military ranges will be identified. A range assessment will be conducted in which a site-specific accelerated response (various options for protective measures, including monitoring) will be implemented. If these measures are not sufficient, then a more detailed site-specific range evaluation will be conducted. Recurring reviews will be conducted, and an administrative close-out phase also is included.

This regulation is proposed under the authorities of the Defense Environmental Restoration Program (DERP), 10 U.S.C. 2701 et seq.; the DoD Explosive Safety Board (DDESB), 10 U.S.C. 172 et seq.; and section 104 of the CERCLA, 42 U.S.C. 9601 et seq., as delegated to the DoD by E.O. 12580 (59 FR 2923, January 23, 1994).

Section 107 of the Federal Facility Compliance Act of 1992 amended the Resource Conservation and Recovery Act (RCRA) and required the Environmental Protection Agency (EPA) to propose regulations identifying when conventional and chemical military munitions become hazardous waste under RCRA. EPA issued its proposed rule, which discussed military munitions on ranges, on November 8, 1995. EPA stated in this proposal that military munitions remaining on closed and transferred ranges would be considered "solid waste" according to the RCRA statutory definition of RCRA section 1004(27). However, the EPA

proposed rule also stated that if DoD promulgates rules pursuant to DoD's own statutory authorities then the DoD regulations would supersede or "sunset" the proposed RCRA regulations if: DoD's rules allow for public involvement in addressing closed and transferred (i.e., the range property is transferred from military control) military ranges, and DoD rules are fully protective of human health and the environment. (See 60 FR 56476, November 8, 1995.) DoD added a third category, transferring ranges, to more comprehensively address the issue.

The proposed rule was developed with extensive input from the public and other Federal agencies. A draft version of the rule was placed on the World Wide Web; meetings with representatives from State organizations, meetings with public groups, and meetings with other Federal agencies were critical in the formulation of the current draft version of the proposed rule.

DOD—Office of the Secretary (OS)

PROPOSED RULE STAGE

15. • CLOSED, TRANSFERRED, AND TRANSFERRING RANGES CONTAINING MILITARY MUNITIONS

Priority:

Other Significant

Reinventing Government:

This rulemaking is part of the Reinventing Government effort. It will revise text in the CFR to reduce burden or duplication, or streamline requirements.

Legal Authority:

10 USC 172 et seq; 10 USC 2701 et seq; 42 USC 9601 et seq; EO 12580

CFR Citation:

32 CFR 183

Legal Deadline:

None

Abstract:

The proposed DOD rule is in response to EPA's "sunset" provision. The DOD proposal addresses the unique explosives safety considerations associated with military munitions (including UXO) and the need for environmental protection, and it does so under DERP, 10 USC 172 et seq., and CERCLA authorities rather than under RCRA.

Statement of Need:

The Department of Defense (DOD) proposed rule identifies a process for evaluating appropriate response actions on closed, transferred, and transferring military ranges. Response actions will address safety, human health, and the environment. The rule contains a five-part process that is consistent with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and is tailored to the special risks posed by military munitions and military ranges. All closed, transferred, and transferring military ranges will be identified. A range assessment will be conducted in which a site-specific accelerated response (which may include various options for protective measures, including monitoring) will be implemented. If these measures are not sufficient, then a more detailed site-specific range evaluation will be conducted. Recurring reviews will be conducted in accordance with a schedule specified in the rule, and an administrative close-out phase also is included.

Summary of the Legal Basis:

Section 107 of the Federal Facility Compliance Act of 1992 amended the Resource Conservation and Recovery Act (RCRA) and required the U.S. Environmental Protection Agency (EPA) to propose regulations identifying when conventional and chemical military munitions become hazardous waste under RCRA. EPA issued its proposed rule on November 8, 1995, and this proposed rule discussed military munitions on ranges. EPA stated in this proposal that military munitions remaining on closed and transferred ranges would be considered "solid waste" according to the statutory definition contained in RCRA section 1004(27). However, the EPA proposed rule also stated that if DOD promulgates rules pursuant to DOD's own statutory authorities, then the DOD regulations would supersede, or "sunset," the proposed RCRA regulations, if: the DOD's rules allow for public involvement in addressing closed and transferred (i.e., the range property is transferred from military control) military ranges; and the DOD rules are fully protective of human health and the environment. (See 60 FR 56476, November 8, 1995). In writing the proposed rule, DOD voluntarily added a third category, transferring ranges, to more comprehensively address the issue.

This regulation is proposed under the authorities of the Defense Environmental Restoration Program (DERP), in 10 USC 2701 et seq; the DOD Explosive Safety Board (DDESB), in 10 USC 172 et seq; and section 104 of the CERCLA, in 42 USC 9601 et seq, as delegated to the DOD by EO 12580 (59 FR 2923, January 23, 1994).

Alternatives:

A single, specific process is necessary to avoid confusion and to ensure that effective response activities are undertaken in a fiscally responsible manner. That process must recognize and consider the unique explosives safety hazards associated with military munitions, and concomitantly, with any response activity conducted on closed, transferred, or transferring ranges. The process must ensure that the public and regulators are fully informed and engaged at every stage of the process, including substantial and meaningful public and regulator participation in the response selection and implementation. The process must be accessible and consistent, and lead to informed decisionmaking.

DOD considered several alternatives to address military munitions on closed, transferred, and transferring ranges. In doing so, DOD examined the relative merits of conducting responses under any one of the statutorily based processes (DERP, CERCLA, RCRA, 10 USC 172 et seq) or the status quo in meeting the goal of establishing a single, logical, and comprehensive process that addresses explosives safety, human health, and environmental concerns.

Anticipated Costs and Benefits:

Implementing the proposed rule equates to national incremental costs totaling \$709,000,000 over a period of 10 to 15 years with estimated annual costs of \$71,000,000 per year for a 10-year period or \$47,000,000 per year for a 15-year period. These costs are less than those of other alternatives. Benefits include: increased protection of the public; increased protection to unexploded ordnance response workers; consistent process; increased public involvement in responses; substantial role for regulatory agencies; and substantial role for other Federal land managers. Implementing a comprehensive approach to respond to these ranges while ensuring public safety, worker safety, and protection of human health and the environment is essential and would be a beneficial outcome of this rule.

Risks:

The degree of risk to the public is lessened by assuring a single, comprehensive process to respond to potential risks to safety, human health, and the environment at all closed, transferred, and transferring ranges. Public and regulatory acceptance of the rule is heightened through pre-proposal dialogue with stakeholders. DOD will continue to work with both public and governmental stakeholders and

regulators in developing this proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	10/00/96	
NPRM Comment	12/00/96	
Period End		

Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

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