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PART 141—ENTRY OF MERCHANDISE

■ 5. The general authority citation for Part 141 and specific authority citation for § 114.113 continue to read as follows:

Authority: 19 U.S.C. 66, 1448, 1624.

* * * * *

Section 141.113 also issued under 19 U.S.C. 1499, 1623.

§ 141.113 [Amended]

■ 6. In § 141.113, paragraph (b) is amended by removing the words ''12.130 of this chapter'' and by adding, in their place, the words ''§ 102.21 or § 102.22 of this chapter, as applicable,''.

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

■ 7. The general authority citation for Part 144 continues to read as follows:

Authority: 19 U.S.C. 66, 1484, 1557, 1559, 1624.

* * * * *

§ 144.38 [Amended]

■ 8. In § 144.38, paragraph (f)(1) is amended by removing the words ''§ 12.130 of this chapter'' and by adding, in their place, the words ''§ 102.21 or § 102.22 of this chapter, as applicable''.

PART 146—FOREIGN TRADE ZONES

■ 9. The authority citation for Part 146 is revised to read as follows:

Authority: 19 U.S.C. 66, 81a–81u, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624.

§ 146.63 [Amended]

■ 10. In § 146.63, paragraph (d)(1) is amended by removing the words § 12.130 of this chapter'' and by adding, in their place, the words ''§ 102.21 or § 102.22 of this chapter, as applicable''.

PART 163—RECORDKEEPING

■ 11. The authority citation for Part 163 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1510, 1624.

■ 12. The Appendix to Part 163 is amended by removing under section IV the listing of ''§ 12.130 Textiles and textile products Single country declaration Multiple country declaration VISA'' and the listing of ''§ 12.132 NAFTA textile requirements'', and by adding a new listing under section IV in numerical order to read as follows:

Appendix to Part 163—Interim (a)(1)(A) List.

* * * * *

IV. * * *

§ 102.25 NAFTA textile requirements

* * * * *

Robert C. Bonner,

Commissioner of Customs and Border Protection.

Approved: September 30, 2005.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 05–19985 Filed 9–30–05; 2:38 pm]

BILLING CODE 9110–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 179

Munitions Response Site Prioritization Protocol

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of Defense (hereinafter the Department) is promulgating the Munitions Response Site (MRS) Prioritization Protocol (MRSPP) (hereinafter referred to as the rule) as a rule. This rule implements the requirement established in section 311(b) of the National Defense Authorization Act for Fiscal Year 2002 for the Department to assign a relative priority for munitions responses to each location (hereinafter MRS) in the Department's inventory of defense sites known or suspected of containing unexploded ordnance (UXO), discarded military munitions (DMM), or munitions constituents (MC).

DATES: This rule is effective October 5, 2005.

FOR FURTHER INFORMATION CONTACT: If there are specific questions or to request an opportunity to review the docket for this rulemaking, please contact Ms. Patricia Ferrebee, Office of the Deputy Under Secretary of Defense (Installations & Environment) [ODUSD (I&E)], 703–571–9060. This final rule along with relevant background information is available on the World Wide Web at the Defense Environmental Network & Information eXchange Web site, *https://www.denix.osd.mil/MMRP*.

SUPPLEMENTARY INFORMATION:

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I. Authority

This rule is being finalized under the authority of section 311(b) of the National Defense Authorization Act for Fiscal Year 2002, codified at section 2710(b) of title 10 of the U.S. Code [10 U.S.C. 2710(b)].

II. Background

The Department of Defense (hereinafter the Department) developed the rule in consultation with states and tribes, as required by statute. The Department published the proposed rule in the **Federal Register** as a proposed rule on August 22, 2003, at 68 FR 50900. A technical correction to the proposed rule was published on September 10, 2003, at 68 FR 53430.

The public comment period for the proposed rule ended November 19, 2003. Sixteen commenters submitted comments on the proposed rule. The preamble to this final rule consists mainly of an explanation of the Department's responses to these comments. Therefore, both this preamble and the preamble to the proposed rule should be reviewed should a question arise as to the meaning or intent of the final rule. Unless directly contradicted or superseded by this preamble to the rule or by the rule, the preamble to the proposed rule reflects the Department's intent for the rule.

The preamble to the final rule provides a discussion of each proposed rule section on which comments were received. Revisions to the proposed rule that are simply editorial or that do not

reflect substantive changes are not addressed in this preamble.

In addition to the comments on the proposed rule, the Department received a number of comments that addressed topics outside the scope of the proposed rule. These topics included: The universe of sites that comprise the inventory, which is established by statute; funding for munitions responses; comments on data quality; a proposal for training to educate Department personnel, regulators, and/or stakeholders; and implementing guidance that the Department may develop for the rule. These comments are not addressed in this rule. All comments the Department received are presented in a ''Response to Comments'' document, which has been placed in the docket for this rulemaking.

III. Summary of Significant Changes to the Final Rule

The Department made a number of changes to the proposed rule that are reflected in this final rule. Many of these revisions pertain to clarification of terms and definitions based on comments received, or changes to reflect new statutory definitions promulgated in the National Defense Authorization Act for 2004 and codified at 10 U.S.C. 101.

The most significant change to the proposed rule pertains to the module that evaluates the potential health hazards associated with MC. The Department modified this module in response to several comments. This module now has seven potential outcomes (*i.e.*, A through G) rather than the three potential outcomes described in the proposed rule (*i.e.*, high, medium, and low). A detailed explanation of this modification is provided in a following section of this preamble.

The Department has also revised the proposed rule to clarify that current land owners may participate in application of the rule at Formerly Used Defense Sites (FUDS). Another change was to clarify that the quality assurance panel that reviews each priority will consist of only Department personnel.

IV. Response to Comments

This section contains the Department's responses to the comments received on the proposed rule, organized by the structure of the proposed and final rules.

A. Section 179.2. Applicability and Scope

Several commenters stated that the proposed rule should be published as Departmental guidance and not as a federal regulation. The Department, however, interpreted the language in the National Defense Authorization Act for 2002 as a term of art invoking the requirement for public comment provided in the Administrative Procedures Act. The Department is proceeding with publishing the final rule as a federal regulation.

One commenter stated that sites containing chemical warfare materiel (CWM) should be included as potential MRSs. The Department observes that the proposed rule makes clear that, if CWM is present at a defense site [as defined in 10 U.S.C. 2710(e)] in the form of UXO, DMM, or MC, that site would be an MRS and would be included in the inventory, and that all MRSs in the inventory are addressed under the rule. The Department made no change to the rule to address this comment.

Another comment stated that the Department had not clearly explained the scope of the exclusion for ''combat operations'' under 10 U.S.C. 2710(d)(2). This exclusion exempts from the requirement for inclusion in the inventory and application of the rule all locations where ''the presence of military munitions'' resulted ''from combat operations.'' The Department has not modified the rule.

A commenter requested that the Department change the Department's Control classification in the Status of Property data elements (proposed rule, Appendix A, Tables 5 and 15) to include land or water bodies owned, leased, or otherwise possessed by state military departments. The Department declined to make this change, as the Department does not have jurisdiction over properties owned, leased, or otherwise possessed by state military departments. Such locations are under state jurisdiction and would not be included in the 10 U.S.C. 2710(a) inventory.

B. Section 179.3. Definitions

This section of the preamble addresses comments on the definitions in section 179.3 of the proposed rule.

The Department has modified definitions from the proposed rule or included certain new definitions to make this regulation consistent with terms and definitions promulgated by the National Defense Authorization Act for Fiscal Year 2004. These terms and definitions are codified at 10 U.S.C. 101. Affected terms are military munitions, operational range, range activities, and UXO.

The Department has also added the term ''munitions and explosives of concern (MEC)'' to the final rule for consistency with new Department policy. MEC, which is intended to distinguish specific categories of military munitions that may pose unique explosives safety risks, means 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. As used in the rule, this term does not create any new category of materials covered under the proposed rule, nor does it exclude any category of materials covered under the proposed rule, and is adopted herein simply for consistency with terminology used elsewhere within the Department.

In response to a comment, the term ''chemical warfare agents'' has been changed to ''chemical agents.'' The definition of ''chemical warfare agents'' has also been changed to read: ''Chemical agent 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 adopted based on 50 U.S.C. 1521(j)(1) in which the term ''chemical agents and munitions'' means ''* * * an agent or munition that, through its chemical properties, produces lethal or other damaging effects on human beings, except that such term does not include riot control agents, chemical herbicides, smoke, and other obscuration materials.'' This change makes the terminology used in the final rule consistent with the existing statutory definition of ''chemical agent and munition'' in 50 U.S.C. 1521(j)(1). The Department observes that chemical agents under 50 U.S.C. 1521(j)(1) include the V- and G-series nerve agents; H-series (*i.e.*, ''mustard'' agents) and L-series (*i.e.*, lewisite) blister agents; and certain industrial chemicals, including hydrogen cyanide (AC), cyanogen chloride (CK), or carbonyl dichloride (called phosgene or CG), when contained in a military munition; and does not include riot control agents (*e.g.*, w-chloroacetophenone [CN] and o-chlorobenzylidenemalononitrile [CS] tear gas); chemical defoliants and herbicides; smoke and other obscuration materials; flame and incendiary materials; and industrial chemicals that

are not configured as a military munition.

The definition of ''chemical warfare materiel (CWM)'' has changed to reflect the adoption of the term ''chemical agent'' discussed previously in this rule.

One commenter stated that although the definition of ''military range'' includes buffer zones with restricted access and exclusionary areas, exclusionary zones at some former target bombing areas are not well defined. While the Department realizes this may be the case at some former military ranges, it believes site conditions and personnel experience will help ensure such areas are included and provide for reasonable application of the rule.

A commenter requested a change to the definition of ''MRS,'' maintaining that portions of a munitions response area (MRA) may not be part of an MRS and, therefore, would not be evaluated using this rule. The Department would like to clarify that, depending on site-specific factors, an MRA may be designated a single MRS or may be subdivided for the purposes of evaluation into multiple MRSs. In each and every case, however, once all the MRSs comprising an MRA have been evaluated (whether the MRA consists of a single MRS or multiple MRSs), the total acreage encompassed by the MRA will have been evaluated using this rule. Through this disciplined and documented approach, the protocol will ensure that an MRA's entire acreage will be addressed.

For example, in investigating a 1,000-acre MRA, the Department may identify five discrete locations (*e.g.*, MRS 1 through 5) that constitute 1,000 acres that require evaluation. Formal decision documents will be prepared for all five MRSs that document the Department's evaluations for the entire 1000 acres. This will ensure that the entire MRA acreage will be evaluated using the protocol.

One commenter requested adding to the end of the definition of ''MRA'': '' * * * therefore, all property within a munitions response area is known to require a munitions response.'' The Department observes that the definition of ''MRA'' already states, ''An MRA is comprised of one or more munitions response sites'' and the definition of an ''MRS'' is ''* * * a discrete location within an MRA that is known to require a munitions response.'' Because an MRA must comprise at least one MRS, the Department does not believe the definition requires modification as suggested by the commenter.

In response to another comment as to whether or not the acreage of an MRA includes water bodies, the Department observes that the acreage of an MRA may extend beyond the terrestrial boundary and include water bodies, such as lakes, ponds, streams, and coastal areas.

One commenter requested adding CWM, in addition to UXO, DMM, and MC, to the definitions of several terms, including MRA and MRS, and at several locations in the tables (Appendix A) of the proposed rule. The Department points out that the definition of ''military munitions'' already includes CWM; therefore, all other terms that build on the military munitions definition, specifically UXO and DMM, already include CWM.

C. Section 179.4. Policy

One commenter noted many positive attributes to the proposed rule. These included affirmative statements concerning the Department's active solicitation of participation by and inclusion of the states, the tribes, and stakeholders; identifying the need for a quality assurance panel to promote consistency in the application of the rule; straightforward recognition that the same level of information will not be available for all sites, and that for some sites, more information will be required in order to realistically apply the rule; and weighting factors, for the most part, are well explained and easy to understand. These comments did not require changing the proposed rule.

One commenter stated that the team approach to prioritization was too broad and implies that several people from multiple agencies, community groups, or tribes will need to be involved in the application of the rule to a specific MRS. The Department continues to believe that it is important to receive input and feedback from such sources in assigning a relative priority for response activities to each MRS and has not amended the proposed rule to address this comment.

The Department received a comment recommending that a state regulatory agency be designated to play a major role in the munitions response process, and if a state agency is unable to perform in this capacity, the U.S. Environmental Protection Agency (U.S. EPA) should do so. In such situations, involvement of U.S. EPA personnel is a matter for U.S. EPA to decide and not the Department; however, the Department notes that it will use a team approach for prioritization and encourages these agencies to participate.

The Department received a comment soliciting clarification on whether stakeholders will have input on the ''no longer required'' determination. An MRS will have the ''no longer required'' determination assigned only after the Response Complete (RC) or Remedy-in-Place (RIP) milestone is achieved. Stakeholders are afforded opportunities to participate and provide input throughout the munitions response process, to include prior to and following these milestones; however, stakeholders do not have a role in determining when an MRS has met the requirements for achieving these milestones.

D. Section 179.5. Responsibilities

A comment was received regarding the term ''administrative control'' and whether this term referred to specific Component's ownership responsibilities. The Department would like to clarify that the phrase ''under their administrative control'' reflects the delegation of responsibilities for munitions responses within the Department. This responsibility does not require the Department to have a current real property interest at a particular MRS.

The Department received several comments pertaining to prioritization at FUDS sites. One commenter asked for clarification of the phrase ''under the administrative control of,'' specifically pertaining to how the rule will apply at a FUDS. Under 10 U.S.C. 2701, the Department is required to ''carry out a program of environmental restoration * * * at each facility or site which was under the jurisdiction of the Secretary * * * at the time of actions leading to contamination.'' Therefore, under this requirement, the Department will apply the rule to an MRS at a FUDS if that MRS is included in the 10 U.S.C. 2710(a) inventory. FUDS, however, are not considered under the Department's control for the purposes of the Status of Property data elements in Appendix A, Tables 5 and 15.

Another commenter noted that for FUDS, the property owner should be involved with applying the rule to any MRS at the FUDS. The Department agrees and has modified section 179.5 to state: ''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 property owner (if the MRS is outside Departmental control) are offered opportunities to participate throughout the process of application of the rule and in making sequencing recommendations.''

Several commenters stated concerns pertaining to MRSs that have already been evaluated using the Risk

Assessment Code (RAC). The Department wishes to clarify that all MRSs in the 10 U.S.C. 2710(a) inventory will be evaluated using the rule and the most current information available, irrespective of whether that MRS has been evaluated under the RAC framework.

One commenter inquired whether a low prioritization score means ''no further action.'' The Department would like to clarify this is not the case. Prioritization scores are the first tool when defining the need for a munitions response.

One commenter asked the Department to add a definition of ''evaluation pending'' to the rule and publish procedures and time frames that apply to evaluation pending sites. The Department's response is that evaluation pending status is given to an MRS only when there is insufficient information to complete the evaluation using the rule. As soon as sufficient data are available, the MRS will be evaluated. Although the Department is not specifying time frames for addressing the MRS in evaluation pending status as part of this regulation, the Department will be developing specific goals to drive program progress.

A commenter asked for clarification as to when the rule will be applied at sites where the environmental restoration process is considered complete. The Department responds that, as stated in the proposed rule, an MRS no longer requires a priority when the Department has achieved the RC or RIP milestones. This means that a Component or another entity has conducted a munitions 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/or five-year reviews, is required.

There were many comments pertaining to the quality assurance panel that will review prioritization decisions, especially inquiries about the panel's composition and authority. The Department wishes to clarify that the panel will comprise Component representatives trained in application of the rule who were not involved in the initial scoring of a specific MRS being reviewed. Stakeholders participate in application of the rule at an MRS, but will not be part of the quality assurance panel. The panel is an internal management and oversight function to ensure consistency of the rule's application. Components are, however, required to provide regulators and stakeholders the opportunity to comment on the quality assurance panel's rationale for any changes to the priority originally assigned.

One commenter proposed that the circumstances under which the rule shall be reapplied include when a quality assurance panel recommends a priority change. In response, the Department states that the panel will not direct a Component to reapply the rule; rather, the panel's decision, when adopted, will supersede the original priority assigned. If the panel recommends a change that results in a different priority, the Component will report, in the inventory data submitted to the ODUSD(I&E), the rationale for this change. The Component will also provide this rationale to the appropriate regulatory agencies and involved stakeholders for comment before finalizing the change.

Another commenter expressed support for the quality assurance panel in ensuring uniform application of the rule, but voiced concern this panel may not be effective if they must review all decisions before the prioritization can be finalized. According to the comment, initially it may be more productive to require that the panel review a percentage of the priority decisions to ensure they can review enough data to decide either to support or to change the priority assigned. The Department's response is that absent a review of each prioritization decision, it cannot be stated with authority that all decisions are in fact representative of site conditions and that the rule has been applied in a consistent manner. For this reason, at least initially, the Department is unwilling to consider a sampling-based approach to the work of the quality assurance panel.

One commenter stated that the rule's emphasis on Management Action Plans (MAPs) may place a strain on already limited state resources, especially in those states that do not already have a MAP. The Department responds that MAPs have been a requirement for all sites addressed under the Defense Environmental Restoration Program (DERP) for many years. If a specific site is not addressed in a MAP, that matter should be referred to the appropriate Component's Deputy Assistant Secretary with responsibility for environmental matters. Should such a referral not result in action, the matter should then be referred to the ODUSD(I&E).

Another commenter questioned how the MAPs for several MRSs would be integrated with the statewide MAP being developed in the FUDS program. The Department would like to clarify that the statewide MAP in the FUDS program collectively addresses all FUDS within a state, and that a MAP for each individual FUDS is also required.

Several commenters noted that conditions at an MRS are subject to change and such changes should be reflected in the priority. The Department agrees and has designed the rule to be reapplied if any specific factor considered in the application of the rule changes and if that change has the potential to affect the priority assigned.

There were several comments pertaining to sites where investigations were previously conducted. In response, the Department affirms that an appropriate munitions response is required for each MRS, and that an MRS reaches the ''no longer required'' evaluation only when the Department has conducted a munitions 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/or five-year reviews, is required.

One commenter questioned the Department's reasons for rescoring sites based on a munitions response, arguing that the result will be to lower scores at the MRS without making progress toward completing all required munitions response activities. The commenter feels that partial munitions responses and continual rescoring is an inefficient approach to the program as a whole. The commenter suggests that once an MRS has received a score suitable to obtain funding, the score should not be lowered based on a munitions response that does not comprehensively and completely address the hazards present at the MRS. The Department disagrees, and notes that an annual reevaluation of the priority assigned to each MRS is statutorily mandated under 10 U.S.C. 2710(c)(1).

In response to a comment received on the certified letter the Department will send to states, territories, federal agencies, and tribal and local governments requesting their involvement in prioritization, the Department will send the letter to any known designee specified by the organization, or in the absence of such a designation, to the head of the organization.

E. Section 179.6. Procedures

This section addresses comments received on section 179.6 of the proposed rule and on the classification tables in Appendix A.

One commenter recommended that the Department revise the rule so that all data elements are consistent using a scale of zero to five; the Explosive Hazard Evaluation (EHE) module,

Chemical Warfare Materiel Hazard Evaluation (CHE) module, and Relative Risk Site Evaluation (RRSE) module be combined into one module; and the priority assigned to a site not be influenced by the type or source of the hazard that may be present at the site. The Department has not adopted such a change. Reducing the scale from seven to five, eliminating the modules, and not addressing the type and source of the hazard will not ensure that the priority given to an MRS adequately reflects the hazard posed by conditions at the MRS. The Department's objectives for the rule are: (1) ensuring that the priority sufficiently reflects actual conditions and potential hazards at the MRS, and (2) that the tool used be straightforward and easy to use. The current construct achieves those objectives.

One commenter requested clarification as to the correct procedure when multiple classifications apply at a given MRS. The commenter questioned whether the scores are cumulative within the module or if only the highest value is used. The Department wishes to clarify that the one highest value within each data element is used. For example, if at a specific MRS both (1) hand grenades containing an explosive filler, which would be categorized as sensitive under Appendix A, Table, and would score 30, and (2) DMM, containing a high-explosive filler, that have not been damaged by burning or detonation, which would be categorized as high explosive (unused) under Appendix A, Table 1, and would score 15 are present, the score (30 points) for the hand grenades containing an explosive filler would be selected.

Numerous comments received address both the EHE and CHE modules, particularly pertaining to the accessibility and receptor factors of these modules. Where this is the case, the comment and response appear under the EHE module responses for simplicity, but pertain to both sections.

1. Section 179.6(a). Explosive Hazard Evaluation Module

The Department received numerous comments on the Munitions Type data element (Appendix A, Table 1) and modified the rule to address many of the comments. For example, the Department modified two classifications within this data element to reflect the inherent difference between primary and secondary explosives. Explosives are classified as primary or secondary based on their susceptibility to initiation. Primary explosives, such as lead azide, are highly susceptible to initiation. Secondary explosives (*e.g.*, TNT, RDX, HMX), which constitute the bulk of the explosives likely to be present at an MRS, are formulated to be far less susceptible to initiation. To address these differences, the Department added to the sensitive classification: ''Bulk primary explosives, or mixtures of these with environmental media such that the mixture poses an explosive hazard.'' The Department also revised the Bulk high explosives, pyrotechnics or propellant classification to exclude primary explosives: ''Bulk secondary 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.''

Also pertaining to the Munitions Type data element, another commenter noted that bulk high explosives mixed with environmental media can be reactive as well as explosive, and the hazard threshold of explosive is too high and should be lowered. The commenter suggested adding ''or reactive'' after ''that result in the mixture being explosive'' in the description of ''bulk high explosives'' and definitions for the terms ''reactive'' and ''explosive soil.'' The Department chose not to make these changes because the commenter did define ''reactive'' in this context, and the focus of the EHE module is explosive hazards.

The Department also added an additional classification to the Munitions Type data element to reflect the lesser risk posed by pyrotechnics that are unused or undamaged. The Pyrotechnic (used or damaged) classification is assigned a score of 20 points, while the Pyrotechnic (not used or damaged) classification is assigned a score of 10 points.

The Department modified the text of the Propellant classification to be consistent with the other classifications, adding ''* * * that have been damaged by burning or detonation'' and ''* * * that are deteriorated to the point of instability'' to the criteria for propellants that are DMM. The Department also corrected the Practice classification pertaining to the criteria for DMM to read: ''* * * that have not been damaged by burning or detonation'' and ''* * * that have not deteriorated to the point of instability.'' The Department also provided greater detail in the definition of a ''practice munition.''

One commenter stated that all practice munitions should be classified together and any MRS with practice munitions should receive a score of 15. The commenter's position is that many practice munitions with sensitive fuzes have miniscule amounts of explosives, while other practice munitions without sensitive fuzes have a much larger explosive or pyrotechnic spotting charge (*e.g.*, practice bombs). Because practice bombs, which receive a score of 5, account for some of the most common and dangerous UXO and cause many serious injuries, the commenter feels that practice munitions without sensitive fuzes that have explosive or pyrotechnic spotting charges are not classified correctly. The Department agrees with the commenter that practice munitions with explosive or pyrotechnic charges do pose an explosive hazard. When developing the rule, the Department defined practice munitions as those munitions that contain inert filler. Practice munitions with explosive or pyrotechnic charges are classified separately under the same data element and are given a value.

One commenter identified an inconsistency pertaining to the Munitions Type data element in that the definition of ''small arms ammunition'' category used the term ''evidence'' but did not specify whether this included ''historical evidence'' and ''physical evidence,'' as is the case for ''evidence of no munitions.'' The Department has revised the small arms ammunitions category within the Munitions Type data element to state: ''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, sub-caliber training rockets, demolition charges) were used or are present on the MRS is required for selection of this category.]''

Several commenters questioned the level of investigation required for assessing whether physical or historical evidence indicates that no UXO or DMM are present and suggested that specific investigation requirements should be developed for different sites. The Department has defined both historical evidence and physical evidence in the rule. The personnel applying the rule at an MRS will determine the appropriate level of evidence. The Department will not provide additional detail in the final rule, but may address this situation in implementing guidance or training materials.

One commenter requested clarification on the applicability of the proposed rule to open burning/open detonation (OB/OD) units. The commenter expressed concern that the rule indicates that OB/OD sites are excluded because they were used or permitted for disposal of military munitions. The Department would like to clarify that OB/OD units are subject

to prioritization under the rule only when the unit meets the requirements for inclusion in the 10 U.S.C. 2710(a) inventory.

One commenter suggested specifically including quality assurance test ranges within the EHE module Source of Hazard data element (Appendix A, Table 2) as they are not currently identified. To the extent that a quality assurance test range is a location that is known or suspected of containing UXO, DMM, or MC and is included in the inventory required under 10 U.S.C. 2710(a), the rule would be applied to that location. To the extent that such a quality assurance test range meets the criteria of Appendix A, Table 2 (*i.e.*, it meets the test for being a ''former range''), it is already included.

One commenter did not understand why a former munitions treatment area or unit would receive a lower score than a former military range given the unknown hazard posed by munitions that have been treated by OB/OD. The Department's response is that the higher value assigned to former military ranges reflects the fact that UXO are fuzed munitions that have been through their firing and arming cycle. In contrast, munitions treated in an OB/OD unit, while potentially damaged, are not normally fuzed and would most likely not complete their arming sequence. For this reason, UXO at a former military range is considered to pose a greater hazard than DMM at an OB/OD site.

In response to a comment, the Department modified the Former industrial operating facilities classification within the Source of Munitions data element to include former munitions maintenance facilities.

A commenter requested the definition of ''evidence of no munitions'' within the Munitions Type, Source of Hazard, and Location of Munitions (Appendix A, Tables 1, 2, and 3) data elements be changed to indicate that evidence shows that no UXO or DMM were ''ever''resent. The Department declines to make this change as the Department does not want to exclude sites from this classification where evidence indicates that munitions were at one time present but have since been removed, for example, as part of normal Department operation of a military range while the range was in use. This situation is different from UXO or DMM that are removed as part of a munitions response, as described in the next paragraph.

Another commenter asked about UXO that is on the surface and has since been removed, and UXO that is emergent from year to year, such as through frost heave. If munitions were found on the surface of an MRS, the MRS would be classified as Confirmed Surface. If investigation confirms that there are only subsurface munitions present, and natural phenomena (*e.g.*, frost heave or tidal action) occur on the MRS, the second-highest category—Confirmed subsurface, active—should be selected.

In response to a comment, the Department clarified the definition of ''on the surface'' to mean above the soil layer. UXO found in the tundra of Alaska, for example, is considered ''on the surface'' for the purposes of the rule, as the tundra is above the soil layer.

Several commenters stated that within the Information on the Location of Munitions and the Information on the Location of CWM data elements (Appendix A, Tables 3 and 13), no water depth is specified for the Subsurface, physical constraint category. The Department, however, would like to note that in these tables, a water depth of 120 feet was cited as a physical constraint.

Several commenters asked the relevance for selecting 120 feet as the depth for constituting a subsurface physical constraint. The Department selected this depth because of the limited time (less than 15 minutes) normally allowed to scuba divers at this depth, the considerable effort needed to dive to and below this depth, and the dangers associated with such deep dives to basic scuba divers.

Also pertaining to Appendix A, Tables 3 and 13, a commenter requested that the Department use caution when evaluating activities that are ''likely to occur'' because land use and recreational activities can change in ways that no one can predict. The commenter also noted that similar caution is needed when evaluating physical constraints because some constraints are barriers only if they are both kept in place and maintained. The Department agrees with the commenter that conditions may change over time. To address changes that may occur over time, the rule requires reevaluation and rescoring if site conditions change.

Pertaining to the Ease of Access data elements (Appendix A, Tables 4 and 14), one commenter stated that the proposed rule was unclear if deep-water areas without any monitoring would be scored as a complete or incomplete barrier. The Department's response is that if a barrier such as deep water is present, it is evaluated as to its effectiveness in preventing access to all parts of the MRS. In the specific case described in the comment, deep-water areas not subject to surveillance would be scored as Barrier to MRS access is complete, but not monitored.

One commenter stated that it is inequitable that the highest score under the Ease of Access data element (Appendix A, Tables 4 and 14) is a ''10,'' indicating all areas of the MRS are accessible, whereas the Information on Location of Munitions and Information on Location of CWM data elements (Appendix A, Tables 3 and 13) have a maximum score of 20, and a score of 10 represents only the suspected presence of UXO or DMM. The Department believes the current construct is appropriate because the Information on Location of Munitions and Information on Location of CWM data elements address access to the munition or CWM, while the Ease of Access data elements address access to the MRS.

Some commenters noted that some terms, such as ''barrier,'' need further clarification to ensure all users apply the term consistently. For example, people may assess differently whether a security patrol is a partial barrier to the MRS or not a barrier at all. Additionally, perceptions of a barrier may vary, as ''deep or fast-moving water'' may be a challenge instead of a barrier to some people. The Department recognizes these commenters' points but believes the definition is sufficient for the purposes of prioritization. Final determination as to what features, either natural or man-made, are barriers should be based on site-specific knowledge and the judgment of the personnel applying the rule to a specific MRS. Additionally, the Component's quality assurance panels will ensure consistency in the final rule's application.

One commenter stated that some data elements, specifically within the accessibility and receptor factors, within the various modules and among modules, are redundant and should be consolidated. The Department disagrees. Each data element provides important information on its own, bringing data from different perspectives together to best reflect actual site conditions.

Several commenters expressed concern that the receptor factors of the EHE and CHE modules do not capture transient populations. The Department points out that two of the three data elements that address human receptors attempt to address population, regardless of whether it is permanent or transient. The Population Density data elements (Appendix A, Tables 6 and 16) focus on permanent population as based on U.S. Census Bureau data within a city, town, or county. The Population Near Hazard data elements (Appendix A, Tables 7 and 17) are based on any

inhabited structures, whether they are permanent or temporary, that are routinely occupied for any portion of a day. The Type of Activities/Structures data elements (Appendix A, Tables 8 and 18) are also intended to address both permanent and transient populations. The Department is confident that, combined, these data elements sufficiently address both permanent and transient populations.

A commenter questioned the relevance of the Population Density data element in scoring the EHE module because, per the comment, (1) this number is dependent upon and controlled by the Ease of Access data element, and (2) by including the Population Density element, the EHE module score unjustifiably and unnecessarily prioritizes higher those MRSs that are in more densely populated areas, even when potential access to the MRS is precluded by barriers. The Department disagrees because the Population Density data element considers both the on-site and off-site populations surrounding an MRS. While access is a prerequisite for an on-site population, the effects of an event (*e.g.*, an explosion) at an MRS may affect populations that are not on site. This is one of the reasons that several of the elements in the receptor factor include a swath extending up to two miles from the perimeter of the MRS. The same commenter also believed the Types of Activities/Structures data elements (Appendix A, Tables 8 and 18) can be reasonably measured via the Population Near Hazard data elements (Appendix A, Tables 7 and 17), noting that including the Types of Activities/Structures data elements only complicates the process and favors MRSs in higher population areas. The Department again disagrees. The Department included the Types of Activities/Structures data elements to account for the types of activities occurring on a site, and the potential for those activities to bring a receptor into contact with UXO or DMM. It was not developed to give undue weight to high-population areas.

One commenter did not agree that the two-mile criterion applied to evaluating the Population Near Hazard data element is reasonable or necessary for any MRS not having the potential to create a chemical agent hazard that could affect inhabitants within two miles of the boundary. Instead, distance criteria that more reasonably consider the risks from the actual or suspected types of explosive hazards should be used. The Department disagrees because the two-mile radius considers not only the size of the population that may come onto the MRS, but also the effects that an explosion on the MRS may have to areas off the MRS (*e.g.*, blast overpressure, fragment throw). While this distance may be less than two miles, the two-mile distance was selected as a conservative measure.

One commenter stated that the Population Near Hazard data elements should bear greater weight than the Population Density data elements because the greatest hazard is to the population closest to the MRS. The Department, however, notes that these data elements evaluate different aspects of population. The Population Density data elements are used to assess the number of persons that could possibly access the MRS, while the Population Near Hazard data elements focus on the population (through number of structures) within a two-mile range that could be impacted by an unintentional explosion or CA release. The data elements are complementary.

Several commenters disagreed with the Department's use of inhabited structures to indicate population in the Population Near Hazard and Types of Activities/Structures data elements as, for example, ''people may engage in all sorts of activities despite the absence of structures in the vicinity, and many of these activities would put them at considerably greater risk from military munitions than populations that are, relatively speaking, protected within structures.'' The Department notes the concern, but believes the rule sufficiently accounts for these populations. The rule relies on several indicators to assess potentially exposed populations. The Types of Activities/Structures data elements address activities conducted on the MRS, and the number of permanent or temporary structures present. Parks and recreational areas, where hikers, campers, and tourists may be present, are specifically included in the Types of Activities/Structures elements.

In response to one commenter's statement that UXO may be encountered through nonintrusive activities such as boating and fishing, the Department believes that such activities are accounted for in the Types of Activities/Structures data elements.

Several commenters noted that Types of Activities/Structures data elements seem structured to give the greatest weight to activities and structures involving the most people, and that warehousing, industrial, agricultural, and forestry activities are weighted less. Some commenters are concerned because these areas experience high-density populations and activities that penetrate the ground surface during working hours. The Department recognizes the commenters' concerns but notes that, even though agricultural and forestry activities penetrate the ground surface, the exposed population is typically smaller than commercial, residential, or recreational areas. The Department is balancing activity intrusiveness with the potential population that could be exposed to a hazard. The rule does, however, require reevaluation if site conditions change.

One commenter questioned how the scoring values among modules and within modules were selected. The commenter specifically noted that the numerical weighting assigned within and among data elements seemed arbitrary and unnecessarily complicated. Further, there is no rationale for applying a score of 30 (worst case score) to certain data elements and a value of only 5 (worst case score) to other data elements within the same module. The commenter cites the Population Near Hazard data element as an example. Within this data element, there are six classifications established based on the number of inhabited structures within a two-mile distance of an MRS. In this data element, 1–5 inhabited structures receives a score of only 1, while 26 or more inhabited structures receives a score of 5. The commenter believes that the score should be the same, regardless of whether a single residence or 26 residences were on or near the MRS. The Department disagrees with the commenter that all situations should be scored the same because it impairs differentiation and thus prioritization, which is the purpose of this rule. The rule-making development effort involved a series of meetings over a year and a half, including substantial consultation with states, tribes, and other federal agencies. The Department also tested the developing model during this time to determine if the model outcomes were reasonable given what was known about the trial MRSs. The data elements and scores as presented in the proposed rule provided the most rational results and distribution among the sites.

Many commenters believe that the definition of ''ecological resources'' (Appendix A, Tables 9 and 19) in the rule is too limited. The Department does not mean to imply that less sensitive ecological resources are not important. For the purposes of assigning a relative priority to each MRS, however, the Department believes that limiting this definition to the most sensitive habitats is appropriate so that these areas are elevated in priority.

Similar to the comments for ecological resources, a commenter noted that the definition of ''cultural resources'' used in the EHE and CHE modules is too narrow and the list of statutes should not be limited. The Department believes this definition is appropriate for the purposes of assigning a relative priority to each MRS.

One commenter stated that there may be only a few MRSs that score high enough to be included in the highest tier of the EHE module, and therefore, more sites will be distributed among the lower tiers. Based on the testing described in the proposed rule, the Department expects the universe of sites to be adequately distributed among the possible scores. The highest hazard sites are not expected to be the most numerous, nor are the lowest hazard sites expected to be the most numerous. The Department believes this construct is appropriate.

2. Section 179.6(b). Chemical Warfare Materiel Hazard Evaluation Module

One commenter agreed with the Department that MRSs with known or suspected CWM are important and deserve special attention. The commenter did state, however, that the potential for public exposure should be an important consideration when ranking such MRSs. MRSs that have high potential for public exposures and risk should be ranked higher than an MRS with CWM that has minimal opportunity for public exposure. The Department addressed this concern during the development of the rule by including data elements to factor in population density and public exposure. Based on the data used in the rule, an MRS with known or suspected CWM does not always rank higher than a site without CWM.

A commenter suggested that receptors under the CHE module should be weighted higher than those under the EHE module because CWM pose hazards associated with both the explosive impact and the dispersion of the chemical agents. The Department believes that the rule appropriately accounts for the special characteristics of CWM in the CWM Configuration and Sources of CWM data elements (Appendix A, Tables 11 and 12).

One commenter asked if all CWM is considered similar in the severity of its effects and regardless of concentration. The Department's response is that the rule does not consider the differences in the mechanism of action (e.g., neurotransmitter disruption) or the toxicological properties (*e.g.*, Lethal Dose for 50 percent of the exposed population [LD50]). The CWM Configuration and Sources of CWM data elements do address the differences in the hazards posed by CWM (*e.g.*, CWM with an explosive burster scores higher than CWM without a burster).

One commenter felt that classifying CWM mixed with UXO lower than CWM under the CWM Configuration data element does not make sense. The commenter stated that this implies that placing some conventional UXO at an MRS with known or suspected CWM can reduce the hazard at that site. To remedy the conflict, the commenter suggested deleting the category CWM mixed with UXO from Appendix A, Table 11 and treating all MRSs containing CWM UXO or damaged CWM DMM as the highest scoring hazard, irrespective of the presence of conventional munitions that are UXO or DMM. The Department, however, believes that explosively configured CWM, which are designed to achieve optimal dispersion of their chemical agent fill, that are UXO or that are damaged DMM should be assigned a higher score than undamaged CWM/DMM or CWM not configured as a munition that are mixed with conventional munitions that are UXO. The Department left this classification unchanged because the detonation of a conventional munition that both is a UXO and mixed with undamaged CWM/DMM or CWM not configured as a munition is less likely to result in a dispersal of any chemical agent present. The Department believes that the classifications assigned appropriately differentiate between the potential chemical agent hazards presented.

One commenter questioned why production facilities; research, development, testing and evaluation facilities; training facilities; and storage or transfer points were identified as separate categories with different hazard scorings within the Sources of CWM data element (Appendix A, Table 12). According to the commenter, the only important issues are: (1) The type of CWM (*i.e.*, it must be either UXO or DMM); (2) its condition (damaged or undamaged); and (3) the strength of evidence (known or suspected CWM contamination). The commenter recommended deleting all other categories. The Department does not believe that there are only three important issues and that the other categories are extraneous. The Department has identified those separate categories under the CWM Configuration and Sources of CWM data elements to enable it to evaluate all known and relevant data and to assign appropriate priorities.

One commenter stated that the rule does not consider CWM that has been managed via OB/OD activities or via on-site disposal (*e.g.*, burial). The Department disagrees, and observes that while not specifically described as OB/OD or burial sites, these sites have in common that any CWM present is DMM. The CWM Configuration data element (Appendix A, Table 11) specifically includes CWM that are DMM, and addresses those differently depending on whether or not the CWM has been damaged (irrespective of how that damage occurred). The Sources of CWM data element (Appendix A, Table 12) specifically considers DMM that are on the surface or in the subsurface, irrespective of how the CWM came to be there.

One commenter stated that it is not clear whether CWM mixed with UXO includes or purposely excludes explosively configured CWM. The Department's response is that explosively configured CWM that is either UXO or damaged DMM receives a score of 30 in Table 11 of Appendix A. The CWM mixed with UXO is used for undamaged CWM that are DMM or that are not configured as a munition, and that are commingled with conventional munitions that are UXO. These score 25.

One commenter questioned whether the receptor factor in the CHE module should be the same as for the EHE, given the impact of wind drift on populations if a chemical agent is released. Evaluation of factors such as dispersion by wind current is far more complex than is appropriate for a prioritization tool. Such factors may, however, be important during a munitions response and be important considerations in the evaluation of remedial alternatives. The Department believes that the current receptor construct is sufficient for assigning each MRS a relative priority.

3. Section 179.6(c). Health Hazard Evaluation (HHE) Module

The Department received a number of comments on the Relative Risk Site Evaluation (RRSE) module, which is intended to evaluate the health hazards associated with MC and any incidental nonmunitions-related contaminants at an MRS. The Department has revised and renamed this module in response to the most significant comments received on the proposed rule. Several commenters noted that although the EHE and CHE module results seemed well balanced in terms of the distribution of outcomes, the RRSE module appeared to score too many sites as ''high,'' inappropriately skewing the overall priority assigned to the MRS.

Specifically, it was observed that having only three outcomes (*i.e.*, high, medium, and low) as provided in the RRSE module can result in this one module being the dominating factor in the overall priority assignment. In response to this significant comment, the Department analyzed the construct of the module and revised it so that the outcome in the rule has seven possible answers, increasing the ability to differentiate among MRSs. Accordingly, the Department believes that the revised module better reflects the relative evaluation of explosive, CWM, and MC hazards potentially present at the site. The Department has also changed the name of the module to the Health Hazard Evaluation (HHE) Module to differentiate it from the three-outcome RRSE used in the Department's Installation Restoration program (IRP). The Department will apply the HHE only to MRSs subject to this rule. The HHE module is intended to evaluate health hazards associated with MC at an MRS, with only incidental nonmunitions-related contaminants addressed under the MMRP.

The RRSE will continue to be applied to sites in the IRP category of the DERP.

Within the revised framework, the data and the process by which the data are evaluated are the same as within the RRSE; however, the distinction between the previous and revised frameworks lies in the greater number of outcomes (*i.e.*, seven versus three). Only MRSs with the maximum results for the three factors (*i.e.*, Contaminant Hazard Factor (CHF), Receptor Factor, and Migration Pathway Factor) are assigned the highest priority (*i.e.*, Category A). In other words, only those MRSs with significant MC-related health hazards, an identified receptor, and an evident migration pathway are assigned to Category A for the HHE module.

Tables 1, 2, and 3 below illustrate the derivation of the seven categories of the HHE. Table 1, which reproduces Table 21 of Appendix A, provides the three potential outcomes for each of the factors in the HHE. Table 2, which reproduces Table 22 of Appendix A, illustrates the different possible combinations of the results. The frequency in this table denotes the number of times each combination is used. Table 3, which reproduces Table 23 of Appendix A, spreads the possible combinations across seven categories, permitting only the most and least hazardous combinations in the highest and lowest categories. The other combinations are spread across the five remaining categories in a bell curve based on frequency of the combination.

TABLE 1.—HHE MODULE RATING

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 2.—HHE MODULE RATING

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	MML	MLL
Minimal	Identified	HHL	HML	HLL
	Potential	HML	MML	MLL
	Limited	HLL	MLL	LLL

TABLE 3.—HHE MODULE

Combination	Frequency	Category
HHH	1	A
HHM	3	B
HHL	3	C
HMM	3	
HML	6	D
MMM	1	
HLL	3	E
MML	3	
MLL	3	F
LLL	1	G

A commenter asked why the ecological receptors for surface water and sediment in the Receptor factor are limited to critical habitats ''and other similar environments.'' The Department's response is that it chose to focus on locations of critical habitat as a means of delineating among ecological receptors. Almost all areas are habitat for some species, and considering all habitats equally provides no differentiating criteria. In response to the same commenter, the Department wishes to clarify that consumption of fish in contaminated waters is accounted for in the HHE.

One commenter questioned the exclusion of an ecological endpoint during the evaluation of surface soils and requested that the Department consider groundwater as a minor receptor factor. The Department's response is that ecological receptors are not considered for evaluation of the surface soil since ecological standards are generally not available for the CHF calculation.

Some comments were received requesting that the Department change the comparison value used for carcinogens from a 1×10^{-4} to a 1×10^{-6} value, which would make it consistent with some states' cleanup goals. This rule, however, is not using the 1×10^{-4} value for cleanup; it is being used to assign a relative priority for action. The Department believes that 1×10^{-4} is an appropriate value for prioritization. Further, changing the range will not change the relative ranking of any individual site, as all sites would shift equally if a different endpoint were used.

One commenter stated that the Receptor Factor should not be limited to surface soil as receptors have the potential for exposure to subsurface soil during intrusive activities or after development where subsurface soils have been brought to the surface. The

Department responds that where subsurface soil is coming to the surface, or is exposed in a manner in which people can contact it (*e.g.,* in an excavation), it is treated as surface soil.

Another commenter stated the module appears to underestimate the risks posed by landfills. The Department points out the releases from landfills usually do not include UXO, DMM, or MC. It is more likely that a landfill would be addressed under the IRP category of the DERP and, as such, would not be evaluated under this rule.

One commenter stated there is little detail describing the terms ''identified,'' ''potential,'' and ''limited'' receptors. Until guidance specific to the HHE is developed, the Department suggests reviewing the Relative Risk Site Evaluation Primer (available at *http://www.dtic.mil/envirodod*) for detailed information on the use of this factor.

A commenter remarked that the Receptor Factor for groundwater should consider individuals exposed inadvertently, such as construction workers conducting invasive activities, in addition to water supply exposure. The HHE was primarily developed to consider long-term chronic exposures, not short-term exposures, through water consumption because such exposures are the dominant case associated with groundwater contamination. Further, as part of prioritization, it would be difficult to determine if workers are being exposed in this way. Finally, this rule is not intended as a risk assessment nor will it take the place of a risk assessment, where unusual exposure scenarios can be properly considered.

A few commenters were concerned as to whether or not CHF values are established for all constituents, and if not, how the Department would establish these values. The Department will initially adopt the current contaminant tables in the Relative Risk Site Evaluation Primer as a basis for the HHE. These values are updated every few years. The Department will also continue to work with U.S. EPA in its efforts to promulgate CHF values for MC and for other constituents.

Several comments pertained to state involvement and concerns about data quality and consistency. The Department intends on developing guidance and conducting training to ensure consistency in implementation of the rule. Additionally, states will be involved in applying the rule, including the HHE module.

4. Section 179.6(d). Determining the MRS Priority

The Department received several comments regarding how the module for MC is integrated into the overall priority matrix because the EHE and CHE modules have seven categories and the RRSE category has three. Some commenters believe that because there are too few RRSE categories, sites with high RRSE scores drive the priority unnecessarily too high. In response to this and other comments, the Department revised the RRSE module (now the HHE module) to provide a number of categories consistent with the other modules in the rule.

One commenter remarked on the pros and cons of driving module scores into tiers versus discrete scores and on the Department's intentions. The Department's response is that the Department's intent was to assign relative priorities to each MRS, not to develop a one-N listing of priorities. If the latter had been the intent, the number of possible outcomes would have become unwieldy.

One commenter maintained that the module with the lowest numerical priority value should not determine the MRS priority. The commenter's view is that this approach is intrinsically flawed because it fails to consider the cumulative risk posed by the two modules having a lesser priority ranking, even though those risks may be significant, and when combined, may be greater than that posed by the third module. The commenter suggested that all module priority scores be considered cumulatively in determining the priority for establishing which MRS presents the greatest overall hazard. The Department acknowledges the commenter's concern that there is a cumulative aspect to the hazards evaluated by each module. During the development of the rule, the Department considered using a cumulative total to assign the priority but was unable to define the mathematical relationship between the three modules in a manner that appeared rational or acceptable to the states, tribes, and others consulted during the development. Therefore, the Department's approach is to assign the priority based on the highest hazard posed by the conditions at the site.

F. Section 179.7. Sequencing

Two commenters stated that although the factors to be considered in making sequencing decisions include the ''reasonably anticipated future land use,'' land use assumptions, even reasonable ones, may change and need to be reconsidered. The Department's response is that the rule is used to assign to each MRS a relative priority, given the associated risks. To the extent any specific factors considered in application of the rule change, and that change affects the priority assigned to an MRS, the annual reexamination of assigned priorities should identify and consider the change. As a rule, the Department will address those sites with the highest risk first. Sequencing decisions are, however, often driven by other factors. Although sequencing decisions may change as relative priorities change, once a sequencing decision is made and execution of the munitions response has begun, it is unlikely that a change in relative priority would affect the sequencing decision.

One commenter noted that the proposed rule required the Department to report the results of sequencing; however, there is no mention of how the Department will make available all the results of the ranking. In response, the Department will compile the sequencing results and make them available to the public.

V. Administrative Requirements

A. Regulatory Impact Analysis Pursuant to Executive Order 12866

Executive Order 12866 (58 FR 51735 [October 4, 1993]) requires each agency taking regulatory action to determine whether that action is ''significant.'' The agency must submit any regulatory actions that qualify as ''significant'' to the Office of Management and Budget (OMB) for review, assess the costs and benefits anticipated as a result of the proposed action, and otherwise ensure that the action meets the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more or adversely effect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Department has determined that the rule is not a significant rule under Executive Order 12866 because it is not likely to result in a rule that will meet any of the four prerequisites.

(1) The rule will not have an annual effect on the economy of $100 million or more or adversely affect in a material

way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.

The primary effect on the economy will be the necessity for state and/or local governments to conduct oversight of the environmental restoration activities. The Department previously determined that the rule does not place a burden in excess of $100 million each year on state, local, or tribal governments. The changes from the proposed rule do not significantly change the analysis conducted in support of the proposed rule, which showed that the effects on the economy as a whole, any particular sector of the economy, productivity, competition, or jobs are not significant. In addition, because the one impact that was identified, costs for state oversight are reimbursable through the Defense and State Memorandum of Agreement (DSMOA) program, the overall impact to any individual state is minimal.

Similarly, the previous determination that the proposed rule does not have a direct adverse effect on the environment, public health, and safety remains unchanged by the final rule. Any adverse effects were either a result of the actions that caused the UXO, DMM, or MC to be present at the MRS (e.g., the site's use as a military range, treatment of waste military munitions at the site) , which predate the application of the rule, or are the result of the munitions response activities that are implemented after the application of the rule. In the latter case, munitions response activities are performed under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), a process that fully considers the overall impacts to human health and the environment posed by UXO, DMM, or MC and the response to such.

For these reasons, the Department has determined that the rule will not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.

(2) The rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

Implementation of the rule will not create a serious inconsistency or otherwise interfere with another agency's action because the Department has lead authority for administering the DERP under 10 U.S.C. 2701(a)(1). The DERP statute delineates the responsibilities of the Department and authority of U.S. EPA to some extent. The Department is required by 10 U.S.C. 2701(a)(3) to consult with the U.S. EPA in its administration of the environmental restoration program. Further, Section 2701(c)(2) of the statute gives the Department the responsibility of conducting environmental restoration activities on all properties owned or leased by it, except those for which U.S. EPA has entered into a settlement with a potentially responsible party. The rule's ranking system will not interfere with the Hazard Ranking System (HRS) maintained by the U.S. EPA because each serves its own purpose. U.S. EPA uses the HRS to place uncontrolled waste sites on the National Priorities List (NPL). U.S. EPA does not use the HRS to determine the priority in funding U.S. EPA remedial response actions. The Department will use the rule to assign a relative priority to each MRS based on the risks posed at each MRS, relative to the risks posed at other MRSs, and may use the rule as a basis for determining which MRS will receive funding. The Department's use of the rule should not interfere with U.S. EPA's use of the HRS. The Department action may interfere with U.S. EPA action in a situation where U.S. EPA decides to pursue response action at an MRS that the Department has designated as a low priority. Where this occurs, the Department will cooperate, to the extent possible, with U.S. EPA and rely on existing interagency processes to reach agreement on MRS priorities and response actions. Based on the above reasoning, the Department has determined that there is minimal potential for inconsistencies or interference with action by any other agency.

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

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

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

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

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act [SBREFA] of 1996), requires that an agency conduct a regulatory flexibility analysis when publishing a notice of rulemaking for any proposed or final rule. The regulatory flexibility analysis determines the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). SBREFA amended the Regulatory Flexibility Act to require federal agencies to state the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

The Department hereby certifies that the rule will not have a significant economic impact on a substantial number of small entities. The nature of the rule provides the factual basis for a determination that no regulatory flexibility analysis is required. The rule merely provides a procedure by which the Department may assign a relative priority to each MRS for response actions. No costs are directly imposed on small entities nor is any action directly required of small entities through this rule. Because the Department bears the financial responsibility for remediating MRSs, and the source of its funding is Congress, implementation of the rule will not directly affect small entities in a financial manner. For the foregoing reasons, the Department believes that the rule, if promulgated, would not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, requires federal agencies to assess the effects of their regulatory actions on state, local, and tribal

governments and the private sector. Section 202 of the UMRA requires that, prior to promulgating proposed and final rules with ''federal mandates'' that may result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, the agency must prepare a written statement, including a cost-benefit analysis of the rule. Under Section 205 of the UMRA, the Department must also identify and consider a reasonable number of regulatory alternatives to the rule and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. Certain exceptions to Section 205 exist. For example, when the requirements of Section 205 are inconsistent with applicable law, Section 205 does not apply. In addition, an agency may adopt an alternative other than the least costly, most cost-effective, or least burdensome in those cases where the agency publishes with the final rule an explanation of why such alternative was not adopted. Section 203 of the UMRA requires that the agency develop a small government agency plan before establishing any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments. The small government agency plan must include procedures for notifying potentially affected small governments, providing officials of affected small governments with the opportunity for meaningful and timely input in the development of regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The Department has determined that the rule does not contain a federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments in the aggregate, or by the private sector in any one year. The term ''federal mandate'' means any provision in statute or regulation or any federal court ruling that imposes ''an enforceable duty'' upon state, local, or tribal governments, and includes any condition of federal assistance or a duty arising from participation in a voluntary federal program that imposes such a duty. The rule does not contain a federal mandate because it imposes no enforceable duty upon state, tribal, or local governments. The Department is responsible for funding munitions responses and imposes no costs on other entities by prioritizing MRSs using the rule. The Department recognizes that the state, local, or tribal government may expend funds to conduct oversight of the response activities. The rule, however, does not require such oversight. To the degree such oversight is required, it is required by preexisting law on which the rule has no effect.

D. Paperwork Reduction Act

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, prohibits a federal agency from conducting or sponsoring a collection of information that requires OMB approval, unless such approval has been obtained and the collection request displays a currently valid OMB control number. Nor is any person required to respond to an information collection request that has not complied with the PRA. The term ''collection of information'' includes collection of information from ten or more persons. The Department has determined that the PRA does not apply to this rule because, although the Department will collect information on the MRS, it does not mandate that any person supply information. All information collected from persons will be voluntary, for example, through an interview. Therefore, the PRA does not apply to the rule.

E. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, Section 12(d) (15 U.S.C. 272 note), directs federal agencies to use technical standards developed by voluntary consensus standards bodies in its regulatory activities, except in those cases in which using such standards would be inconsistent with applicable law or otherwise impractical. ''Technical standards'' means performance-based or design-specific technical specifications and related management systems practices. Voluntary consensus means that the technical standards are developed or adopted by voluntary consensus standards organizations. In those cases in which a federal agency does not use voluntary consensus standards that are available and applicable, the agency must provide OMB with an explanation.

The rule does not involve performance-based or design-specific technical specifications or related management systems practices. The values for relative risk used in the HHE module, to the extent they qualify as technical standards, were formed through consensus. The rule is therefore in compliance with the NTTAA.

F. Environmental Justice Requirements Under Executive Order 12898

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' a federal agency must, where practicable and appropriate, collect, maintain, and analyze information assessing and comparing environmental and human health risks borne by populations identified by race, national origin, or income. To the extent practical and appropriate, federal agencies must then use this information to determine whether their activities have disproportionately high and adverse human health or environmental effects on minority populations and low-income populations.

The Department believes that implementation of the rule will address environmental justice concerns in several ways. First, the rule will address environmental justice by ensuring that prioritization is based primarily on risk to the human health and environment of all populations. The Department recognizes that prioritization of MRSs for response action could result in a low-priority designation for some MRSs located in low-income or minority neighborhoods. Under the risk-based approach, such prioritization could only be viewed as environmental injustice if low-income and minority populations were disproportionately located near low-risk MRSs. However, should this be the case, the final rule would allow the Department to consider this fact in its sequencing decisions. Second, the Department has reserved a step in the rule for consideration of environmental justice concerns, having supplemented the risk-based prioritization decision with consideration of whether low-income or minority populations are near the MRS in question. Third, because the rule will provide the Department with an established method for choosing which MRSs to address first, it will ensure uniformity among decisions and eliminate the potential for intentional discrimination against low-income and minority populations. Finally, the Department's engagement with various stakeholders, most notably tribal governments, in developing the rule has helped to build consideration of environmental justice concerns into the rule.

The Department plans to continue to study the environmental justice effects once the rule is implemented. Until that time, no data exist regarding whether low-income and minority populations live near high-risk MRSs as opposed to low-risk MRSs. As such, there is

currently no way of determining whether generally focusing response efforts first at those MRSs that pose a relatively higher risk will in any way adversely affect these or any particular segment of the population. The Department decided to include environmental justice considerations in the body of the proposed rule as a precautionary measure, but will examine the effect of the rule on low-income and minority populations, once the Department has implemented it and has compiled data from which to draw.

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

G. Federalism Considerations Under Executive Order 13132

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), establishes certain requirements for federal agencies issuing regulations, legislative comments, proposed legislation, or other policy statements or actions that have ''federal implications.'' Under the Executive Order, any of these agency documents or actions have ''federal implications'' when they have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.'' Section 6 of the Executive Order prohibits any agency from issuing a regulation that has federal implications, imposes substantial direct compliance costs on state and local governments, and is not required by statute. Such a regulation may be issued only if the federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or the agency consults with state and local officials early in the process of developing the proposed regulation. Further, a federal agency may issue a regulation that has federalism implications and preempts state law only if the agency consults with state and local officials early in the process of developing the proposed regulation.

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

Finally, development of a method for prioritizing action at MRSs was specifically required by statute. Therefore, the requirements of the Executive Order, Section 6, do not apply to the rule.

List of Subjects in 32 CFR Part 179

Arms and munitions, Environmental protection, Government property, Military personnel.

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

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.
179.6. Procedures.
179.7. Sequencing.
Appendix A to Part 179—Tables of the Munitions Response Site Prioritization Protocol (MRSPP).

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

§ 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.

§ 173.3 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 applying 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 HHR 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.

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Table 1
Classifications Within the EHE Module *Munitions Type* Data Element

Classification	Description	Score
Sensitive	• 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). • All hand grenades containing energetic filler. • Bulk primary explosives, or mixtures of these with environmental media, such that the mixture poses an explosive hazard.	30
High explosive (used or damaged)	• All UXO containing a high-explosive filler (e.g., RDX, Composition B), that are not considered "sensitive." • All DMM containing a high-explosive filler that have: - Been damaged by burning or detonation - Deteriorated to the point of instability.	25
Pyrotechnic (used or damaged)	• All UXO containing pyrotechnic fillers other than white phosphorous (e.g., flares, signals, simulators, smoke grenades). • All DMM containing pyrotechnic fillers other than white phosphorous (e.g., flares, signals, simulators, smoke grenades) that have: - Been damaged by burning or detonation - Deteriorated to the point of instability.	20
High explosive (unused)	• All DMM containing a high explosive filler that: - Have not been damaged by burning or detonation - Are not deteriorated to the point of instability.	15
Propellant	• All UXO containing mostly single-, double-, or triple-based propellant, or composite propellants (e.g., rocket motor). • All DMM containing mostly single-, double-, or triple-based propellant, or composite propellants (e.g., rocket motor) that are: - Damaged by burning or detonation - Deteriorated to the point of instability.	15
Bulk secondary high explosives, pyrotechnics, or propellant	• All DMM containing mostly single-, double-, or triple-based propellant, or composite propellants (e.g., rocket motor), that are deteriorated. • 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.	10

Table 1
Classifications Within the EHE Module *Munitions Type* Data Element

Classification	Description	Score
Pyrotechnic (not used or damaged)	• All DMM containing a pyrotechnic fillers (i.e., red phosphorous), other than white phosphorous filler, that: - Have not been damaged by burning or detonation - Are not deteriorated to the point of instability.	10
Practice	• All UXO that are practice munitions that are not associated with a sensitive fuze. • All DMM that are practice munitions that are not associated with a sensitive fuze and that have not: - Been damaged by burning or detonation - Deteriorated to the point of instability.	5
Riot control	• All UXO or DMM containing a riot control agent filler (e.g., tear gas).	3
Small arms	• 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.]	2
Evidence of no munitions	• 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.	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 smaller, or for shotguns.

Table 2
Classifications Within the EHE Module *Source of Hazard* Data Element

Classification	Description	Score
Former range	• 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.	10
Former munitions treatment (i.e., OB/OD) unit	• 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.	8
Former practice munitions range	• The MRS is a former military range on which only practice munitions without sensitive fuzes were used.	6
Former maneuver area	• 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.	5
Former burial pit or other disposal area	• The MRS is a location where DMM were buried or disposed of (e.g., disposed of into a water body) without prior thermal treatment.	5
Former industrial operating facilities	• The MRS is a location that is a former munitions maintenance, manufacturing, or demilitarization facility.	4
Former firing points	• The MRS is a firing point, where the firing point is delineated as an MRS separate from the rest of a former military range.	4
Former missile or air defense artillery emplacements	• The MRS is a former missile defense or air defense artillery (ADA) emplacement not associated with a military range.	2
Former storage or transfer points	• 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).	2
Former small arms range	• 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.]	1
Evidence of no munitions	• 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.	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 *Information on the Location of Munitions* Data Element

Classification	Description	Score
Confirmed surface	• Physical evidence indicates that there are UXO or DMM on the surface of the MRS. • Historical evidence (e.g., a confirmed incident report or accident report) indicates there are UXO or DMM on the surface of the MRS.	25
Confirmed subsurface, active	• 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. • 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.	20
Confirmed subsurface, stable	• 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. • 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.	15
Suspected (physical evidence)	• 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.	10
Suspected (historical evidence)	• There is historical evidence indicating that UXO or DMM may be present at the MRS.	5
Subsurface, physical constraint	• 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.	2

Table 3
Classifications Within the EHE Module *Information on the Location of Munitions* Data Element

Classification	Description	Score
Small arms (regardless of location)	• 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.]	1
Evidence of no munitions	• 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.	0

Notes:

- *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 munition (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 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).
- The term *small arms ammunition* means ammunition, without projectiles that contain explosives (other than tracers), that is .50 caliber or smaller, or for shotguns.

Table 4 Classifications Within the EHE Module *Ease of Access* Data Element		
Classification	Description	Score
No barrier	• There is no barrier preventing access to any part of the MRS (i.e., all parts of the MRS are accessible).	10
Barrier to MRS access is incomplete	• There is a barrier preventing access to parts of the MRS, but not the entire MRS.	8
Barrier to MRS access is complete, but not monitored	• 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.	5
Barrier to MRS access is complete and monitored	• 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.	0
Notes: • *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), or a combination of natural and man-made obstacles.		

Table 5 Classifications Within the EHE *Status of Property* Data Element		
Classification	Description	Score
Non-DoD control	• 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.	5
Scheduled for transfer from DoD control	• 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.	3
DoD control	• 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.	0

Table 6
Classifications Within the EHE Module *Population Density* Data Element

Classification	Definition	Score
> 500 persons per square mile	• 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.	5
100 to 500 persons per square mile	• 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.	3
< 100 persons per square mile	• 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.	1

Notes:

- 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.

Table 7
Classifications Within the EHE Module *Population Near Hazard* Data Element

Classification	Description	Score
26 or more structures	• 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.	5
16 to 25	• 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.	4
11 to 15	• 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.	3
6 to 10	• 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.	2
1 to 5	• 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.	1
0	• There are no inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.	0

Notes:

- The term *inhabited structures* 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.

Table 8
Classifications Within the EHE Module *Types of Activities/Structures* Data Element

Classification	Description	Score
Residential, educational, commercial, or subsistence	• 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.	5
Parks and recreational areas	• 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.	4
Agricultural, forestry	• 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.	3
Industrial or warehousing	• 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.	2
No known or recurring activities	• There are no known or recurring activities occurring up to two miles from the MRS's boundary or within the MRS's boundary.	1

Notes:

- The term *inhabited structures* 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.

Table 9 Classifications Within the EHE Module *Ecological and/or Cultural Resources* Data Element		
Classification	Description	Score
Ecological and cultural resources present	• There are both ecological and cultural resources present on the MRS.	5
Ecological resources present	• There are ecological resources present on the MRS.	3
Cultural resources present	• There are cultural resources present on the MRS.	3
No ecological or cultural resources present	• There are no ecological resources or cultural resources present on the MRS.	0

Notes:

- *Ecological resources* 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.
- *Cultural resources* 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 *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*. 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).

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 *CWM Configuration* Data Element

Classification	Description	Score
CWM, explosive configuration, either UXO or damaged DMM	The CWM known or suspected of being present at the MRS is: • Explosively configured CWM that are UXO (i.e., CWM/UXO). • Explosively configured CWM that are DMM (i.e., CWM/DMM) that have been damaged.	30
CWM mixed with UXO	• 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.	25
CWM, explosive configuration that are DMM (undamaged)	• The CWM known or suspected of being present at the MRS are explosively configured CWM/DMM that have not been damaged.	20
CWM, not explosively configured or CWM, bulk container	The CWM known or suspected of being present at the MRS is: • Nonexplosively configured CWM/DMM. • Bulk CWM/DMM (e.g., ton container).	15
CAIS K941 and CAIS K942	• 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.	12
CAIS (chemical agent identification sets)	• Only CAIS, other than CAIS K941 and K942, are known or suspected of being present at the MRS.	10
Evidence of no CWM	• 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.	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.

Table 12
Classifications Within the CHE Module *Sources of CWM* Data Element

Classification	Description	Score
Live-fire involving CWM	• 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. • 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.	10
Damaged CWM/DMM surface or subsurface	• There are damaged CWM/DMM on the surface or in the subsurface at the MRS.	10
Undamaged CWM/DMM surface	• There are undamaged CWM/DMM on the surface at the MRS.	10
CAIS/DMM surface	• There are CAIS/DMM on the surface.	10
Undamaged CWM/DMM, subsurface	• There are undamaged CWM/DMM in the subsurface at the MRS.	5
CAIS/DMM subsurface	• There are CAIS/DMM in the subsurface at the MRS.	5
Former CA or CWM Production Facilities	• 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.	3
Former Research, Development, Testing, and Evaluation (RDT&E) facility using CWM	• The MRS is at a facility that formerly was involved in non-live-fire RDT&E activities (including static testing) involving CWM, and there are CWM/DMM suspected of being present on the surface or in the subsurface.	3
Former Training Facility using CWM or CAIS	• 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.	2
Former Storage or Transfer points of CWM	• The MRS is a former storage facility or transfer point (e.g., intermodal transfer) for CWM.	1
Evidence of no CWM	• 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.	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 *Information on the Location of CWM* Data Element

Classification	Description	Score
Confirmed surface	• Physical evidence indicates that there are CWM on the surface of the MRS. • Historical evidence (e.g., a confirmed incident report or accident report) indicates there are CWM on the surface of the MRS.	25
Confirmed subsurface, active	• 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. • 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.	20
Confirmed subsurface, stable	• 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. • 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.	15
Suspected (physical evidence)	• There is physical evidence, other than the documented presence of CWM, indicating that CWM may be present at the MRS.	10
Suspected (historical evidence)	• There is historical evidence indicating that CWM may be present at the MRS.	5
Subsurface, physical constraint	• 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.	2

Table 13
Classifications Within the CHE Module *Information on the Location of CWM* Data Element

Classification	Description	Score
Evidence of no CWM	• 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.	0

Notes:

- *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 14
Classifications Within the CHE Module *Ease of Access* Data Element

Classification	Description	Score
No barrier	• There is no barrier preventing access to any part of the MRS (i.e., all parts of the MRS are accessible).	10
Barrier to MRS access is incomplete	• There is a barrier preventing access to parts of the MRS, but not the entire MRS.	8
Barrier to MRS access is complete, but not monitored	• 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.	5
Barrier to MRS access is complete and monitored	• 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.	0

Notes:

- *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), or a combination of natural and man-made obstacles.

Table 15
Classifications Within the CHE Module *Status of Property* Data Element

Classification	Description	Score
Non-DoD control	• 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.	5
Scheduled for transfer from DoD control	• 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.	3
DoD control	• 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.	0

Table 16
Classifications Within the CHE Module *Population Density* Data Element

Classification	Definition	Score
> 500 persons per square mile	• 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.	5
100 to 500 persons per square mile	• 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.	3
< 100 persons per square mile	• 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.	1

Notes:

- 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.

Table 17
Classifications Within the CHE Module *Population Near Hazard* Data Element

Classification	Description	Score
26 or more structures	• 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.	5
16 to 25	• 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.	4
11 to 15	• 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.	3
6 to 10	• 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.	2
1 to 5	• 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.	1
0	• There are no inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.	0

Notes:

- The term *inhabited structures* 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.

Table 18
Classifications Within the CHE Module *Types of Activities/Structures* Data Element

Classification	Description	Score
Residential, educational, commercial, or subsistence	• 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.	5
Parks and recreational areas	• 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.	4
Agricultural, forestry	• 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.	3
Industrial or warehousing	• 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.	2
No known or recurring activities	• There are no known or recurring activities occurring up to two miles from the MRS's boundary or within the MRS's boundary.	1

Notes:

- The term *inhabited structures* 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.

Table 19 Classifications Within the CHE Module *Ecological and/or Cultural Resources* Data Element		
Classification	Description	Score
Ecological and cultural resources present	• There are both ecological and cultural resources present on the MRS.	5
Ecological resources present	• There are ecological resources present on the MRS.	3
Cultural resources present	• There are cultural resources present on the MRS.	3
No ecological or cultural resources present	• There are no ecological resources or cultural resources present on the MRS.	0

Notes:

- *Ecological resources* 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.
- *Cultural resources* 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 *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*. 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).

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	MML	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	D
MMM	
HLL	E
MML	
MLL	F
LLL	G
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	Priority	HHE Module Rating	Priority
Hazard Evaluation A (Highest)	2	Hazard Evaluation A (Highest)	1	Hazard Evaluation A (Highest)	2
Hazard Evaluation B	3	Hazard Evaluation B	2	Hazard Evaluation B	3
Hazard Evaluation C	4	Hazard Evaluation C	3	Hazard Evaluation C	4
Hazard Evaluation D	5	Hazard Evaluation D	4	Hazard Evaluation D	5
Hazard Evaluation E	6	Hazard Evaluation E	5	Hazard Evaluation E	6
Hazard Evaluation F	7	Hazard Evaluation F	6	Hazard Evaluation F	7
Hazard Evaluation G (Lowest)	8	Hazard Evaluation G (Lowest)	7	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	

Dated: September 27, 2005.

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Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–19696 Filed 10–4–05; 8:45 am]

BILLING CODE 5001–06–C